

## **FROM GATT TO WTO – Achievements & Challenges (1998).**

- ❖ GATT brought order to the “Jungle of Trade.”
- ❖ Eight rounds of trade negotiation.
- ❖ Only a few countries signed the *Tokyo Round agreements* of the 1970s.
- ❖ *Uruguay Round* started in 1986. 7 ½ years and 125 countries. Most complex in trade history. Great political change taking place in the Soviet Union and Eastern Europe. Agreements signed in 1994.
- ❖ *Two achievements* of the Uruguay Round:
  - New trade organization (WTO),
  - Single package of agreements.
    1. Agriculture & Intellectual Property.
    2. Settlement of Disputes.
- ❖ *Uruguay Round*:
  - Rules were agreed upon without reservations.
  - No opting out.
  - No loss of sovereignty (similar to signing a contract).
- ❖ Additional negotiations after Uruguay at *Singapore (1996)*. *Three new agreements*:
  - Telecommunications.
  - Information Technology.
  - Financial services.
- ❖ Further topics subject to negotiations after Singapore (some left over and some new): agriculture and services.
- ❖ *Newer topics* subject to discussion: competition, investment and government procurement.
- ❖ World trade is now 15 times larger than 50 years ago.
- ❖ Trade contributes to development.
- ❖ Public opinion influences the WTO through its member governments.
- ❖ Broader issues confront the international community: poverty, environment ... Can use other organizations, but don't want these issues to cover protectionism.
- ❖ *Newer challenges*:
  - Information technology (changing time and space for trade),
  - Rules to be applied globally. (Bringing in other countries.)
  - Regional groups to support global system.
  - Looking after poorer nations.
  - Regard to aspirations of people worldwide.
- ❖ Can't impose policies or values on others.
- ❖ Develop a rule-based system, trade relations not to be based upon power.
- ❖ Nations have accepted non-discrimination and consensus as basis of economic relations.

## SINGAPORE CONFERENCE: *Global Challenges (1997).*

The conference (1996) focused on *globalization and the marginalization of the poorer countries.*

- **Trade and Information Age.**
  - Technology has changed way of doing business, globally at real time.
  - Singapore gave boost to three agreements:
    1. Telecommunications Agreement. (1997). Promoting competition and foreign investment.
    2. Information Technology Agreement. (1997).
    3. Financial Services.
- **Trade as a Catalyst for Globalization.**
  - Open economies are more successful than closed ones.
- **Integrating Less Developed Countries.**
  - Erosion of preferential trade arrangements.
  - Need to diversify export of goods and services.
  - Open developed country markets.
  - Investors invest because of stability and reliability of legal system.
  - Need sound internal reforms.
  - Link between trade and investment.
  - Need to cooperate with other international organizations.
- **Functioning of the WTO.**
  - Universal rules for mutual benefit. By rule of law. Not sanctions or economic leverage.
  - Multilateral system and multilateral rules. (Not bilateral trade relations based on economic power.)
  - Rules based upon consensus. Have a dispute resolution system.
  - Increasingly poorer countries are having access to the dispute system.
  - Regional organizations are viewed as a first step (on a smaller scale) -- as long as complimentary to the multilateral system.
- **Trade and Environment.**
  - Exploring the relation of existing environment treaties relate to trade.
- **Exploring New Areas.**
  - Investment.
    - Trade and investment at the center of globalization.
  - Competition
    - Avoid private barriers by private corporations and multinationals (not governmental).
  - Government Procurement.
    - Only some countries are bound by existing rules. Big part of GNP.
- **Reaffirming Principles.**
  - General -- Economic globalization is creating anxious concerns.
  - Labor Principles.
    - Concern for core labor principles (ILO).
    - Don't want to use as an excuse for protectionism.

- **Concluding Observations.**
  - Capital for economic growth is knowledge. This is the real revolution.
  - We're at the threshold of real global economic growth.
  - Need to develop the global trading system.

## **SOLVING DISPUTES**

### ***First Litigation Case – US Gas; Consultation Case – Japan Recordings / TRIPS)***

#### ❖ **General:**

- Confidence & trust are essential for global trade,
- Economic prosperity is at stake in discussion over rules concerning disputes.
- The DSU is rule-based, not power based.
- Settlement system is intended to minimize the politicization of trade disputes.
- Impact of a decision -- It *benefits all states*:
  - A decision *clarifies* undertakings by states and creates an *obligation* for the losing party to bring laws into conformity with the decision (or pay compensation or face sanctions).
  - A litigated decision applies to parties only. However when law is changed it benefits all states (*multilateralization*).
  - States not party to a dispute will change own laws, even if not required by the limited nature of the decision or consultation outcome, since the obligations have become clearer.
- Trade interacts with larger issues.
- The dispute resolution system involves intersection of both *diplomacy* (consultation process) and *law / litigation* (the panel – AB process).
  - Pressure for greater transparency. Belief it will lead to greater acceptance of the WTO by international civil society.

#### ❖ **Initial intent of drafters:**

- *Automaticity*. The decision is automatically adopted.
- International rules into newer areas.
- Wanted an effective body (compared to the old GATT) and wanted enforcement.
- The DSU deals with disputes between governments.
- Consultation. 1<sup>st</sup> step. 60 days. Then have a panel.
- Panel proceedings. Have appeal to AB.
- Some aspects of arbitration (parties pick the panelists).
- Appellate Body. Will recommend “bringing into conformity with law.”
- Will have trade sanctions.
- Time is short. 1 year or 15 months with an appeal.
- Filing of a request for a panel will lead to an early settlement.
- Governments can't act unilaterally to settle disputes.

#### ❖ Case Study: *Venezuela v. U.S (Gasoline & Clean Air Act)*. (1996).

- Venezuela challenged U.S. regulations as being in violation of GATT Article Three (*National Treatment Principle*). Treating foreign importers less favorably compared to domestic producers.
- U.S. defended by relying on general exception clause of GATT Article 20 (protection of an exhaustible natural resource [clean air] and protection of human life and plant life).
- Panel and AB rules against the U.S.
- U.S. brought its regulations into conformity after 15 months.
- Brazil had joined as a party. The EU as a Third Party.
- This case shows that the DSU works in a neutral way.
- Little interest in unilateral actions.
- Shows diversity of cases and when cases deals with issues wider than just trade it is a tough situation.
- ❖ Amiable Settlement Case – Japan Records / TRIP / Term of Protection. (1996).
  - Involves intellectual property rights.
  - TRIPS required protection back to 1946 (50 years). Law only provided back to 1971.
  - Impacted recording industry in the U.S.
  - Japan produced for own domestic market and then sold also overseas.
  - Japan changed its law.
  - Other countries changed their laws. Settlement was a precedent.
- ❖ **What to do in the Future?**
  - DSU is a major success.
  - Large number of cases. Variety of cases.
  - Have less unilateral measures and less bilateral deals.
  - Less developed countries use the system. For example, India.
  - Smaller and poorer countries have a harder time.
  - Heavy weight on the secretariat.
  - Tougher cases dealing with newer issues:
    - Bananas
    - Beef
    - Sea turtles.
    - [FSC, Byrd Amendment, Bush Steel, GMO, Lumber, E-Gambling, U.S.-China litigation 2007-2011]
  - NGOs want to have access to provide their views. Some opposition (e.g. India).
  - General demand by the U.S. (government and private interest groups) for more transparency e.g. making documents and pleadings more available.

## TO THE HEART OF THE WTO

### [DOHA Development Agenda: *Perspectives of Brazil & Norway.*]

(Released: Jan. 2003).

- ❖ Trade has often led to conflict over the centuries.
- ❖ GATT (1948).
- ❖ WTO (1995).
- ❖ Seattle Ministerial (1999). Demonstrations raised many questions concerning globalization that the WTO needs to tackle (Pascal Lamy of the EU).
- ❖ DOHA Ministerial (2001) -- Launched the new trade round.
  
- ❖ Each country has its own economic and commercial interests in the WTO. Brazil and Norway represents countries at different stages of economic development.
- ❖ Better cooperation with NGO's required to build a better civil society. The WTO is determined to have better connections with civil society (via NGO's) concerning traditionally non-trade issues (but now related to trade).
- ❖ Former Director-General Mike Moore: "No one gets everything they want. But all must get something."
- ❖ The DOHA Conference (November 2001) -- Focus of new trade round will be on the marginalization of the LDC's.
  
- ❖ Norway: Concerned with *fisheries* and the resources of the sea, the sustainability of fisheries stock. Concerned about the preservation of subsidies in the fisheries area. Viewed as "*a way of life.*"
- ❖ The DOHA Round is concerned with increasing the integration of the LDC's into the global trading system, e.g., liberalizing the agricultural sector. DOHA adopted a program of issues to be addressed.
  
- ❖ Brazil: Has inequality within Brazil and looks to WTO and trade. Disagrees with the notion of "*Multi-functionality of Agriculture.*" Views this as an European theory.
- ❖ Some complain that we live in an "*upside down world.*" Countries call for liberalization, but they subsidize.
- ❖ Exporting is also important to Brazil. Exporting is of a high priority. Also concerned about three pillars of agriculture: production subsidy, export subsidy and restrictions on market access. For example, third largest exporter of short-range aircraft. (Brazil – Canada issue decided by the WTO).
  
- ❖ Norway: Concerned about other countries antidumping laws and subsidies. Wants to strengthen the service disciplines (maritime, energy and telecom). Concerned about high tariffs on exports of fish ("Tariff Peaks" of 20-40%). Non-trade concerns are also important.

- ❖ **Brazil: Objected to the rules concerning pharmaceutical patents in context of the TRIPS. Critical before DOHA, but glad of the Declaration at DOHA concerning pharmaceuticals and intellectual property rights (2001). Restrictions on poor countries in getting access to cheaper medicines (AIDS). Raises issues of public health. WTO is now sensitive to this.**
- ❖ **Three Pillars of Agriculture: Domestic Support (Subsidies); Export Subsidies; Market Access. These are areas that developing countries would like to see reformed so as to remove market restrictions and to promote global agriculture development among developing nations.**
- ❖ **Dispute Resolution System. Composed of independent experts. Accepted by nations as a referee as to disputes between nations. Nearly 300 disputes brought to the WTO since 1995 (to January 2003). Both Norway and Brazil have gone to the DSU.**
- ❖ **Even non-members of the WTO recognize the importance of expanding trade (integration into the global trading system) for national economic development.**
- ❖ **Accession. In order to join the WTO need to bring economy into conformity with the WTO rules. This is through negotiations with trading partners and acceptance by national parliaments. Current negotiations concern Russia. China's accession was in December 2001 (1/5 of the world's population).**
- ❖ **Decisions are made at the WTO pursuant to the *consensus principle*. Never resorted to voting. This needs to be more open in the context of gaining support from civil society. The new Director-General: WTO is democratic and transparent because it relies on member states representing their peoples.**