7. Problems and Limitations in the International Machinery Governing International Trade

> "So today the message is a difficult one but it must be put across: there is no salvation outside a generally applied system of multilateral rules and every departure from the rules, however temporary or exceptional it is intended to be, helps to weaken the system and to destroy the confidence which governments and businessmen should be able to repose in it."
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> *Arthur Dunkel, 1982*

7.1 There is widespread anxiety concerning the prospects for international trade and the adequacy of existing international institutions to deal with trade problems in the 1980s. This anxiety is shared by both developing and developed countries. It has generated proposals for immediate and relatively marginal alterations in codes and practices, and much more ambitious suggestions for major institutional reform. Anxiety has intensified with the deepening of the current severe worldwide recession and the increase of protectionism, but in fact it preceded these developments. As noted in earlier chapters, the problems emanating from the existing international institutional machinery derive from longstanding gaps in coverage and limitations in the functioning of the GATT, changes in the trading environment which have reduced the impact of GATT rules, and the widespread emergence of new forms of protectionist practice.

7.2 Nevertheless, the GATT has substantial achievements to its credit and its very existence has probably prevented much more backsliding from

its founders' liberal trading ideals than there has been. The risks of reversion to inward-oriented policies, bilateral and discriminatory trade negotiations, and even trade and investment 'wars', risks which are perceived with particular clarity by the smaller and weaker trading nations, demand a major effort to restore credibility and order to the international trade regime. As the victims of increasing discrimination, the developing countries have disproportionate interest in a return to the first principles of the GATT: multilateralism and non-discrimination.

Non-Tariff Measures and the GATT

7.3 The foremost problem in the current multilateral trade regime is that, at a time when non-tariff measures (NTMs) have emerged as the most important form of trade barrier, the GATT has very limited machinery to deal with them. Where a relevant measure exists, because of the ambiguity of its drafting or the lack of objective definitions of crucial terms, it is often impossible to apply without the virtual certainty of dispute. In part, the GATT's limitations stem from the 'exceptions' to the general prohibition of quantitative restrictions (of Article XI) which were either written into its original articles or permitted by means of formal waivers later. In part, they are the product of new developments in private trade and governmental practices to which the GATT has not as yet been able to respond. The most important 'exceptions' to the GATT prohibition of quantitative restrictions, as far as the prospects for developing countries' exports are concerned, are those relating to textiles and clothing (under the MFA), the 'safeguard' clause (Article XIX), which has increasingly been honoured in the breach, and agriculture.

7.4 The greatest failure of the Tokyo Round was the breakdown of negotiations concerning the modalities of the safeguard clause (Article XIX). This was originally intended to authorise emergency action, including quantitative restrictions, when 'unforeseen developments' caused or threatened 'serious injury' to domestic producers; 'serious injury' was not defined. Its application was to be preceded by consultations and it was to be non-discriminatory among supplying countries. Originally intended to relate to 'emergencies' associated with prior tariff concessions, thereby encouraging greater liberalisation than might have been possible without such an escape clause, its use has long since been extended more widely. In recent years, the requirement of non-discrimination has discouraged resort to the clause. More and more 'safeguard' actions have ignored it in favour of quantitative restraints negotiated outside the legal framework of the GATT, particularly in the form of voluntary export restraints (VERs) and orderly marketing arrangements (OMAs), many of which were not publicly negotiated or even disclosed. The bringing of safeguard action of all kinds into the public domain and into an agreed

framework of rights and obligations is undoubtedly the most important element of 'unfinished business' from the Tokyo Round. Despite considerable further consultation, negotiations on this item are still at an impasse.

7.5 The principal point at issue is that of 'selectivity' (or discrimination) in the application of the measures in question. Developing countries resisted pressure on the part of some developed countries to agree to a code which would authorise discriminatory measures against only those countries which were the source of the 'disruptive' imports. While the developed countries in question argued that non-discriminatory application would harm 'innocent parties' and give rise to widespread claims for compensation among GATT members whose trade was held to be adversely affected, the developing countries were obviously reluctant to authorise discrimination against themselves, as they had done in the Multifibre Arrangement (MFA), to their sorrow.

7.6 An effective safeguard provision, preventing or discouraging resort to OMAs and VERs outside the bounds of multilaterally agreed norms, is of the greatest importance to developing countries. To be effective, such a provision, whether a revised article of the GATT or a code, would permit emergency protection only in clearly defined circumstances, for specified periods of time, and subject to international surveillance and control. It would include a specific definition of 'serious injury' based upon economic and objectively verifiable criteria, and incorporate related provisions for the establishment of causality between 'disruptive' imports and the 'injury' in question. Such agreed terms would encourage adjustment and prevent the continued prolongation of 'emergency' protection as is at present normal.

7.7 Non-discrimination remains the only appropriate basis for an efficient and equitable regime for international trade, and 'selectivity' in the application of safeguard provisions would involve a further departure from this norm. But an effective and open safeguard system, to which resort is actually made, is so important to the further growth of exports from developing countries, that if one with the above characteristics could be agreed, a carefully controlled and temporary concession on 'selectivity' might still be in the immediate interests of these countries; it should be considered. The MFA 'model' cannot, however, be regarded as a happy, or even an encouraging, precedent in this respect.

7.8 For maximum advantage, the adoption of an improved and effective safeguard code would have to be supported by positive adjustment policies which emphasise resource redeployment and measures to encourage mobility of resources through support for retraining and relocation.

Adjustment is required on a continuing basis in response to technological change and other demand and supply factors. A strong case can be made, however, for special and additional measures to facilitate export expansion by developing countries where it can be demonstrated that adjustment problems are at least in part the product of import penetration from these countries.

7.9 The MFA within the GATT, and the plethora of VERs and OMAs outside it, are a standing reproach to the contracting parties for their inability to improve on the existing safeguard clause. Both the MFA and the multiplicity of safeguard actions must eventually be incorporated within a satisfactory and unified set of provisions for phased adjustment to altering comparative advantage, particularly as it relates to the rapidly expanding manufactured exports of developing countries.

7.10 In agriculture, the current difficulties derive from the longstanding exclusion of the sector from GATT norms. The international implications of national agricultural policies are now recognised as demanding international treatment. There is no longer any logic, if there ever was, for the treatment of agriculture as a special case.

The New Codes on Non-Tariff Measures

7.11 As the world has moved from a trading system in which the tariff was the central trade policy instrument, with other measures permitted only in exceptional circumstances, to one in which more flexible, contingent and discretionary NTMs dominate, there have been strenuous efforts within the GATT to preserve or establish some international order in the new arrangements. As has been seen in Chapter 2, a distinguishing feature of the Tokyo Round was the progress made in establishing codes of conduct for certain NTMs. These codes make a start in developing rules to provide more effective discipline, in the sense of multilaterally contracted rights and obligations enforceable by retaliatory sanctions, in the application of NTMs. They may assist in resisting protectionist pressures, or at least in setting limits to the arbitrary use of national power in the trading arena.

7.12 In negotiating the codes the difficulties of balancing the rights and obligations of countries with divergent trading circumstances were, however, such that only very limited progress was possible and there remain some highly negotiated ambiguities that need further clarification if the new GATT system is to be truly effective. That the codes only begin to deal with the problems of the new NTMs is universally recognised. How effective they will be ultimately depends upon the vigour and will of the contracting parties, including concerned developing countries, in respect

of their application and development. Some of the issues arising from the implementation of the codes, as they relate to the trade of developing countries, deserve at least brief discussion.

7.13 The code on technical barriers seeks to prevent unduly restrictive effects on trade from the domestic application of product standards or testing requirements, by requiring equal treatment for imports, the use of international standards where they exist, and by establishing mechanisms for the provision of information and consultation. The special development, financial and trade needs of developing countries are specifically recognised. There are a number of provisions relating, for instance, to technical assistance and the provision of information. It will take some time for this code to be put into effect, and it will be even longer before one will be able to assess its effectiveness.

7.14 The code on import licensing procedures seeks to mitigate, and provide for scrutiny of, unduly restrictive application of licensing arrangements. While in some instances intentional delays and obstructions in licensing systems can significantly restrict trade, this code is probably also of relatively minor immediate importance for developing countries' exports.

7.15 The extremely complex customs valuation code sought to develop uniform practices and to prohibit the assignment of arbitrarily higher valuations to imports for the purpose of raising collectable duties thereon. The developing countries' difficulties with such issues as the treatment of trade between related parties (intra-firm trade) and prices offered only to the importer concerned, were eventually accommodated, and provision was made for technical assistance and more time for implementation. This code clearly will not have a significant impact on developing countries' overall market access, although in some instances it may shift the instruments of protectionist practice to more visible forms.

7.16 The code on government procurement represents only a modest step towards the application of the principle of non-discrimination to the increasingly important area of official purchasing programmes. It establishes rules regarding tendering procedures, information requirements, transparency, and the like. But apart from the almost total exclusion of services, major elements in the public procurement of goods are not at present covered. These include procurement by state or local authorities in federal systems and by quasi-governmental authorities; activities in such major sectors as transport, telecommunications, electricity generating equipment and defence; and contracts valued at SDR 150,000 or less. Government procurement policies are frequently an

important element in national industrial and developmental policies — a point recognised in special provisions made for developing countries in the code — so that agreements in this sphere may be difficult, not only to achieve but also to maintain and police. There has, nevertheless, been agreement that there should be further negotiations concerning the possible widening of the scope of this code within three years of its entry into force.

7.17 What is of immediate concern to the developing countries is the element of bilateral reciprocity associated with its implementation. The code will not take effect between any two signatories without their first reaching agreement on their respective lists of purchasing entities. This gives developed countries, because of their larger markets, considerable powers to determine, unilaterally, what measures of reciprocity (in the matter of purchasing entities) would be consistent with the special and differential treatment for developing countries that is written into the code.

7.18 By far the most important of the new codes, for developing country exporters, is that on subsidies and countervailing duties (together with the related and revised anti-dumping code). This code restates the original GATT prohibitions and exceptions regarding export subsidies, with a modernised 'illustrative list' of prohibited measures, including those relating to export credit; but it also deals with subsidies introduced for domestic policy purposes to the degree that they imply subsidies on exports. Governments are authorised to impose countervailing import duties against subsidised exports from trading partners when they cause or threaten 'material injury' to the domestic industry. While it is asserted that such 'injury' is to be evaluated in terms of all relevant factors and indices, e.g. declines in output, sales, market share, profits, return on investment, etc., and that among the matters to be considered in ascertaining its source are the volume of subsidised imports, their effects upon prices for like products in the import market, and the consequent impact upon domestic producers, there is still in fact neither a GATT definition of 'material injury' nor an agreed means to determine a causal link between imports and 'injury'. This makes it possible for national legislation to differ on crucial points of interpretation and definition. Nor are there internationally agreed methods for calculating the extent of subsidy. There should be precise and multilaterally agreed means, based on economic concepts, of determining the causal link between imports and 'market disruption', 'material injury' or 'serious injury', and the extent of appropriate redress.

7.19 Both the subsidies/countervailing duties code and the revised anti-

dumping code authorise intergovernmental consultations leading to contractual 'undertakings' on the part of the subsidising exporter to stop subsidising, raise prices or fix a limit on the volume of exports, on breach of which severe penalties under national legislation would be permitted. Such negotiated bilateral settlements, lacking impartial disputes settlement mechanisms, are a long way from the original GATT norms of openness, 'bound' tariffs, and multilateralism. These provisions, together with the ambiguity concerning key definitions of 'injury' and the generally much greater dependence of small countries upon external trade, serve to bias the trading regime inappropriately (and perhaps inadvertently) in favour of the largest and strongest.

7.20 Developing countries frequently maintain fiscal and import regimes which result in domestic prices being higher than world prices when expressed in terms of official exchange rates. Export and other subsidies are therefore frequently essential elements in overall incentive systems which do not, in fact, disproportionately encourage non-primary exporting activity. This has been to some degree recognised in the subsidies/countervailing duties code through special provisions relating to developing country trade, including freedom for a developing country not to stop subsidies on non-primary exports immediately but merely to make a "commitment" to do so, "when the use of such export subsidies is inconsistent with its competitive and development needs". The United States has unilaterally taken the position, however, that it would not extend the code's provisions — in particular, the 'injury test' — to non-signatories (it has taken the same position on the government procurement code, excepting, however, the least developed countries). This position renders the m.f.n. provisions of the code conditional and reciprocal. Developing countries have been dissatisfied with the 'injury test' provisions and reluctant to take on some of the required obligations. Already, in a dispute with India, in which countervailing duties were applied to subsidised exports of industrial fasteners, the United States has demonstrated the discretionary and ambiguous elements of the code by unilaterally withholding its provisions even from a signatory developing country.

7.21 It is, in any case, clear that the existence of the subsidies/countervailing duties code has not prevented the major developed countries from paying substantial subsidies to industries such as motor vehicles and steel. Moreover, export subsidies on agricultural products have become the subject of major disputes among the developed countries since the code was written, suggesting that it might have weakened rather than reinforced the relevant provisions of the GATT in this sector. It seems fair to say that a sufficiently detailed and practical framework of rights and obligations has

yet to emerge in this code. Where protective action under Article XIX or the codes is taken, the burden of proof in respect of 'market disruption', 'injury', etc. and the obligation to demonstrate the causal link between imports and these phenomena (i.e. to show that such action is justified within the agreed rules) should be on the importing, not the exporting country.

Clarification, Disclosure and Litigation

7.22 It has been seen that many of the most important terms employed in the new GATT codes, key articles of the GATT itself (notably Article XIX — the safeguard clause) and the MFA, remain undefined. The result is that countries are free to impose trade barriers on the basis of their own national interpretations and definitions of such matters as 'material injury' (anti-dumping and countervailing duties), 'serious injury' (the safeguard clause), and 'market disruption' (the MFA). Similarly, there are no detailed agreements as to the ways of establishing the appropriate duties or other restraints in specific cases. The governments of the importing countries are not at present required to establish their case before any international surveillance body, except to a very limited extent in the MFA. Rather, the burden of proof is upon the exporting countries to show that the interpretations in question are incorrect. For most developing countries this burden is very difficult to assume. It is therefore a matter of the utmost importance that international norms, with specific economic analytical content, are established in respect of these terms and issues.

7.23 A great deal of further effort in the GATT is clearly required to clarify and interpret the rules that exist, as well as, where possible, to extend the GATT's scope (both in terms of activities that need to be covered and the types of protective device that remain at present outside the GATT). The aim in this process must be to establish rules that uphold and strengthen in practice the principle of non-discrimination and promote greater transparency in protective measures that are found to be necessary by the contracting parties. This work need not and should not wait for further rounds of trade liberalisation or negotiations for substantial reductions in quantitative restrictions. The GATT Ministerial Meeting could give much needed impetus to this effort.

7.24 The task of clarifying and improving the rules is obviously not simply a matter of improved drafting or of further negotiations on specific points of detail. Also required is agreement on underlying issues and a general improvement in the negotiating framework. Some of the ambiguities in the existing rules reflect the fact that divergent positions could only be superficially accommodated, or that the issues could be settled only in bilateral negotiations with respect to specific situations.

7.25 The instruments of the new protectionism are more flexible, contingent, and *ad hoc* in their application, than are m.f.n. tariffs which are 'bound' within the GATT. They are also frequently much less obvious and visible than are such trade barriers as tariffs or even many 'traditional' types of quantitative restriction. The constant changes, increased complexity and reduced transparency of many of the NTMs which are now in frequent use have added substantially to the difficulty of monitoring, surveillance, and assessment of effects. They have also greatly raised the cost to traders of acquiring relevant information concerning market access, at the same time as they have increased uncertainty on the question. The rising importance of these new protectionist NTMs puts a new premium on the need for governmental notification and transparency in respect of measures likely to affect international trade. Information, monitoring, and analysis in the sphere of trade barriers — particularly those affecting the exports of developing countries which have the least capacity to acquire their own information — are at present inadequate.

7.26 Transparency and surveillance activities should be assisted by the provision, within each developed country, of a public forum at which those who wish to maintain or impose protective barriers, explain their purpose and the proposed form of any new barrier. Those who expect to be adversely affected should have the opportunity to argue for levels and forms which will impose the least cost upon them.

7.27 Such arrangements are already to be found in some countries. For example, in Australia, increases in protection are generally not granted without a public inquiry at which all parties (including foreign exporters) have the opportunity to appear, and over the last decade or so the Australian Industries Assistance Commission has publicly reviewed all levels of protection. Reports are published for all inquiries and all decisions are widely publicized. The Commission's *Annual Report* and other publications give detailed and highly professional calculations of the extent and costs (to Australia) of its own protection. Somewhat similar arrangements exist in the United States and New Zealand.

7.28 Data collection on NTMs is at present conducted by the secretariats of GATT, UNCTAD and the IMF, among others. There exist important precedents for GATT/UNCTAD collaboration in activities of relevance to developing countries' trade, particularly in the sphere of technical assistance. (Indeed Article XXXVIII (section 2b) of the GATT specifically authorises such cooperation.) Such collaboration should be actively encouraged. A programme of monitoring, surveillance and assessment of NTMs erected by the developed countries (or at least the major ones) against exports from developing countries is needed. This, too, is an

obvious area for fruitful cooperation. A joint GATT/UNCTAD work programme should therefore be established as a matter of the highest urgency. The trade barriers to be monitored need not be confined to those at present explicitly notified to the GATT. Rather, the monitoring and surveillance exercise could be undertaken by the GATT and UNCTAD secretariats acting jointly, with the cooperation of other agencies, through a systematic process of investigation, in pursuit of multilaterally agreed objectives of increased transparency. The results should be regularly and publicly reported, perhaps in a manner analogous to that of the IMF's *Annual Report on Exchange Restrictions.* An alternative possible model is the UN Food and Agriculture Organization's published material on developments in various commodity markets. Increased transparency is a necessary first step toward reduction of the costs of the new protectionism to the developing countries.

7.29 The relative disadvantage of the smaller and weaker trading nations within the emerging trade regime does not merely concern a lack of information. While increased transparency and the regular provision of information would greatly assist developing countries in their trade and investment planning, they could still be severely and unnecessarily limited in their capacity to take advantage of trading opportunities by the high costs of making their case. Where trade barriers are contingent and dependent, in part, on the findings of courts and tribunals concerning the extent of export subsidy, the degree of 'injury', and the like, or upon the special pleading of particular firms or industries, the interests of the developing countries, and particularly of their smaller, nationally-owned firms, may be very inadequately represented. In some instances, the costs of litigation and representation can exceed the possible gains from the (quite uncertain) prospect of successful advocacy. The establishment of a 'legal aid' service should be considered through UN, GATT, Commonwealth or other auspices, to assist the most disadvantaged in making their case in circumstances where significant trading interests are at issue.

Bargaining, Reciprocity and Dispute Settlement

7.30 While the GATT is a multilateral instrument, its traditional *modus operandi* has been bilateral bargaining. From its inception a major principle in the tariff bargaining process has been reciprocity. At the same time, however, the results of the bilateral bargaining process have been applied, as a matter of principle, on a non-discriminatory (m.f.n.) basis.

7.31 Developing countries and the small developed countries have often complained that in the negotiating process in the GATT, particularly in the multilateral trade negotiations (MTNs), they play only a marginal role and

because of this their interests are not adequately represented. In these negotiations bargaining takes place mainly among the major countries and the agreed results are then given general application. These procedures effectively discriminate against smaller and poorer countries with little bargaining power, and have contributed to the relatively more limited reductions of trade barriers against some of the major manufactured exports of developing countries noted in Chapter 3. It is important to consider improvements in negotiating procedures in any future MTNs as well as in other GATT fora.

7.32 The GATT m.f.n. clause (Article I) is set out in the unconditional form. That means that a GATT signatory gets, as a matter of right, the benefit of tariff concessions, and of other concessions regarding import regimes, which any other GATT signatory accords, perhaps as a result of negotiation with only a limited number of other GATT countries. This is in contrast with the pre-GATT conditional form of the m.f.n. provision which required some reciprocity from each participant in the system for each new concession.

7.33 Moreover, Part IV of the GATT (which deals specifically with trade and development and whose provisions are set out in Appendix 1) stipulates that the developed contracting parties do not expect reciprocity for the commitments they make to reduce or remove tariffs and other barriers to the exports of less-developed contracting parties. Thus, the less-developed contracting parties are not expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments. The latter formulation was employed in the Declaration which launched the Tokyo Round; but reciprocity and the conditions in which it is appropriate are matters for unilateral interpretation.

7.34 Regrettably, there has been, in fact, a pronounced drift towards reciprocity and the pre-GATT form of conditional m.f.n. in negotiations for codes on NTMs, even though each of these codes provides for some sort of differential and more favourable treatment for developing countries. One of the most striking features of these codes, apart from the start they make on controlling certain modern forms of protection, is their incorporation of a graduated form of bilateral reciprocity. Quite apart from the graduated response now being required of developing countries, there is a new element of bilateral reciprocity in the codes applying between developed countries themselves. This is by no means a new concept in historical terms, but it is somewhat at variance with the course of recent developments in GATT concerning tariffs.

7.35 The code on subsidies and countervailing duties, discussed above (paragraph 7.18), best illustrates the way in which the GATT has been moving towards a bilateral concept of reciprocity, in keeping both with the practice in the 1930s and with certain concepts in bills now pending in the US Congress. While acknowledging the need of developing countries to use subsidies, including export subsidies, the code provides that "a developing country signatory should endeavour to enter into a commitment to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive and development needs". This and the following supporting clause are question-begging and have led to disputes. As stated earlier, the United States, the main trading country with an articulated countervailing policy, has taken the position that it would not extend the 'injury test' to countries which did not sign the code and that a developing country signing the code had to enter the required commitment. Similarly, the code on government procurement has reinforced the concept of bilateral reciprocity by requiring agreement on respective lists of purchasing entities between any two signatories.

7.36 Demands for bilateral reciprocity inevitably leave individual developing countries in a weak bargaining position since the developed countries, because of their larger markets and economic power, are in a position to determine, almost unilaterally, what measures of reciprocity would be consistent with the 'special and differential' treatment that is to be accorded to the particular developing country.

7.37 Disputes settlement under the existing international machinery is also essentially a bilateral matter. The GATT has traditionally been concerned with the containment of disputes and the seeking of bilateral accommodations among the contracting parties which can preserve the overall balance of advantage from participation, rather than with adjudication or punishment of transgressors. Its mechanisms for disputes settlement involve independent panels which operate in closed session, are highly vulnerable to political influence, and are ultimately powerless. It has even proved difficult to release reports with which one of the parties to the dispute disagrees. There are no effective mechanisms to follow up the decisions of panels.

7.38 With the recent burst of complaints which have been taken to the GATT, and the probable increase in the number of GATT 'cases' which will follow from the implementation of the new codes, there is bound to be increasing interest in disputes settlement procedures and follow-up. An important first step in the strengthening of these procedures, one which is in the particular interest of the weaker trading countries, is to open them to

public scrutiny. Transparency should be no less an important objective in this part of the international trade regime than it is in others.

The International Institutional Framework

7.39 A welcome start was made in the Tokyo Round to remove some of the formal deficiencies of the GATT system; but it had only limited success. A negotiating group was set up to review the international framework of rules in which world trade is conducted. The group, however, was concerned not with a general review of all the articles but only with those which permitted some scope for developing countries to be accorded 'special and differential' treatment. (In this connection it made some advances in disputes settlement procedures and in legitimising exceptions from two basic GATT principles — non-discrimination and reciprocity.) It is clear, however, from the present degree of malfunction in the international trading system that greater attention needs to be given to its adaptation to evolving circumstances and, in particular, to giving more practical effect to the GATT declarations relating to trade policies affecting the rate of economic progress in the developing countries.

7.40 In a world where the dynamics of technology and economic development are creating rapid changes in comparative advantage, it is extremely doubtful that a legalistic and narrowly-based approach, such as that embodied in the GATT, while essential, is sufficient to deal with the complex problems of adjustment faced by a variety of trading partners. The articles of the General Agreement are essentially concerned with trade, without taking account of the frequent need for industrial and other structural adjustment which is associated with it. The failure of the GATT to prevent increased protectionism in textiles and the proliferation of other restrictive sectoral arrangements may reflect a collapse of confidence by governments in the ability of their economies to adjust to competitive pressures, under the terms and timetables of the usual approaches. More optimistically, it may be that the present institutional arrangements do not properly reflect the continuing collective governmental interest in restraining individual countries in their trade policies.

7.41 The limitations of the GATT with regard to structural adjustment arise partly from its origin, when most of the chapters in the Havana Charter, including those on employment, restrictive business practices, and inter-governmental commodity agreements, were jettisoned. They were later taken up by other agencies, particularly UNCTAD. These bodies, however, are primarily consultative fora and their operational procedures are not always conducive to the negotiation of legally binding rights and obligations, as is possible in the GATT. Moreover, while providing a broader perspective to trade matters and more universal

participation, they do not seem to have developed a fully integrated approach with the inter-linked issues of structural adjustment.

7.42 On the other hand, for reasons already mentioned, as well as on account of its lack of universality (which may be inherent in a contractual arrangement), the GATT by itself cannot at present adequately deal with the broader issues of international economic policy relating to trade questions. Nevertheless, its Consultative Group of Eighteen could perhaps play a more useful role in this respect than it has done so far. For example, in view of past experience, it seems unlikely that the safeguard clause could be adequately developed from its present narrow concern with temporary difficulties, without a much broader consensus on criteria and mechanisms for predictable and equitable adjustments to shifts in internationl comparative advantage. There is therefore a clear need to establish joint machinery, linking GATT, UNCTAD and other international agencies, to discuss protectionism and structural adjustment, including the policy framework for agricultural, industrial and other sectors, which could lead to, and facilitate, negotiation of specific rights and obligations in appropriate agencies. This might involve an eventual merger of some of the existing agencies if that was considered to be the best way to promote a comprehensive and action-oriented approach to problems of trade and development.

7.43 As a first step, a joint programme should be launched by appropriate agencies to monitor and assess protectionism and adjustment in both agriculture and industry, with special attention directed to NTMs. Some elements of such a programme have been suggsted above.

7.44 A dilemma in all international arrangements and agencies is that their continued effective functioning is ultimately dependent upon support from the major trading powers. If the complexion of current arrangements were to alter in such a way as too severely to prejudice the actual or perceived interests of the United States and the EEC, for instance, they could well go their own way in trading matters to an even greater extent than they already do within the GATT system. To some degree there is already a tendency for some of the developed countries to take general trade and investment issues first to the consultative processes of the EEC or the OECD rather than to more universal multilateral fora, a tendency which has increased in recent years and which should be resisted. The credibility of the international trade machinery depends upon its acceptability and use by all of its formal adherents, as well as on the greater 'relevance' of its provisions and the universality of its participation.

7.45 Institutional improvements, such as those suggested above, could make an important contribution to overcoming protectionism. In the

present context of widespread economic difficulties they may constitute the only feasible avenue for multilateral progress. To put this in proper perspective, however, it must be said that while international rules and institutions can help, they are no substitute for governmental actions and decisions. Multilateralism, non-discrimination (except for what is agreed multilaterally), transparency and predictability — particularly in respect of NTMs, and consistent with special and differential treatment accorded to the developing countries — should be acceptable to all national governments as principles to govern international trade in agricultural and industrial products and in services, as well as providing a basis for lowering trade barriers.