

WTO: The Reawakening of Protectionism

The European Steel manufacturer Eurofer is launching an anti-dumping action against South African, Bulgarian, Indian, Iranian, Taiwanese and Yugoslavian steel exporters. This latest action underlines the growing protectionist stance the European Union (EU) seems to be taking in its trade relations with other states. Trade disputes between the EU and United States (US) have also increased considerably. The increase in protectionism not only harms the economic recovery prospects of developing nations, it also undermines the credibility and integrity of the World Trade Organisation (WTO) and the system of global free trade it underpins.

Significance

When South Africa rejoined the global political economy there was a general consensus that this return to the fold posed both opportunities and threats. Although the economy was grappling with the challenges of structural change in response to competitive pressures, it was hoped that the rules of free trade that govern the global trading system, and form the foundation of the WTO, would enhance South Africa's efforts. Indeed, many developing countries shared and continue to share this vision and hope. In a world of growing protectionism characterised by a sinister disregard for the trade rules that infuse the spirit and form the foundation of the WTO, the benefits of free trade will be jeopardised. This will be to the detriment of developing nations who are in the throes of adjustment and economic recovery in the wake of the turmoil in global markets.

Analysis

Shortly after the shocks of the Asian crisis and the Russian collapse emerged in the global economy, Latin American economic policy-makers were reported to be rethinking the virtues of liberalised trade regimes. Such questions would pose a significant threat to the global trading system's integrity. Fortunately, these misgivings were not realised. However, this did not guarantee that the ghost of protectionism would not overshadow the international political

economy in the wake of the crisis. Whilst the aftermath of the turmoil demands a stable multilateral trading system, that very system is under siege due to an impasse between the EU and US over the import of bananas to the EU. Anti-dumping measures are increasingly seen as thinly-veiled protectionism. Given the turbulent times the global economy has experienced, the *laager* of trade protectionism would seem to be a luxury that can be ill-afforded.

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EU's Bananas and the US

Frequent spats between the EU and US over trade in numerous products have become increasingly embittered. EU Commissioner for Trade, Sir Leon **Britain's** vision of a new Transatlantic Free Trade Area, has yet to see such an agreement formalised. In the divide that separates the dream from the reality a transatlantic standoff is developing over banana imports. The United States is threatening unilateral action and the introduction of 100% import duties on various EU products in retaliation for Brussels' non-compliance with a verdict of the WTO which found the EU's preferential import of bananas from former Caribbean and African colonies discriminatory. Similarly, a recent dispute regarding beef saw the US Senate adopt a resolution condemning the EU for its protectionist stance. The US and EU have turned to the dispute resolution panels of the WTO on numerous occasions to clear logjams in their trade relationship. This has seemingly been an ineffective exercise judging from their *ex post*



facto unilateral reactions. The US has become an ardent 'anti-dumper' with as many as 16 such cases launched in 1997, increasing to 25 cases in 1998. The EU is not innocent in this regard as growing anti-dumping actions recently saw South African steel exporters become the victims of anti-dumping suits. These measures constitute *de facto* protectionism, albeit by another name. The notable success rates of these cases give credence to concerns and calls for reform of the rules of the game of global trade. Between 1980 and 1997, 71% of anti-dumping cases lodged in the EU succeeded and in the US, 80% of such cases succeeded in the same period. The US has warned the EU on numerous occasions that its ultra-protectionist common agricultural policy (CAP) will be the target of heated and relentless negotiation at the upcoming round of global trade negotiations scheduled for 2000.

Such disagreements between the US and EU not only jeopardise the realisation of the vision of transatlantic trade, they also simultaneously undermine the legitimacy of the WTO. There is a clear need to bolster the legal enforceability of WTO rulings and the powers of its dispute resolution panels if it is not to have its authority undermined.

EU-SA Negotiations

The protracted and tortuous trade negotiations between South Africa and the European Union were set to have been concluded shortly after the Cardiff summit in the United Kingdom in June this year. Despite this commitment, South Africa has felt the edge of protectionism. Talks were bogged down due to the protectionist instincts of Frans Fischler, EU Commissioner for Agriculture, and the clamour of Portugal and Spain over port and sherry. This has occurred despite the European Union's efforts to reform the CAP. The powerful agricultural lobby in Brussels and the potential strength of the agricultural vote in EU member states hinder reform of the policy. The subsidised support which the farming community of Europe enjoys under the CAP renders them reluctant to initiate reforms which could enhance trade with the EU for many developing countries. Both the USA and Cairns group (of which South Africa, Australia and Canada, amongst others, are members) have indicated that they will undoubtedly lodge complaints of protectionism against the EU at the upcoming global trade talks in the year 2000.

A Critical Reform Agenda

Whilst WTO rules render reversion to protectionism both more difficult and more expensive, the eruption

of numerous disputes between the US and EU in the past year, despite WTO brokerage, signals that a rethink of some of the dispute resolution procedures and anti-protectionism provisions is long overdue. As long as retaliatory unilateral action remains a route which member states can resort to by slapping import duties on each others' products in the name of anti-dumping; the system will be in need of reform. Anti-dumping measures have become fashionable reactions with country after country imposing retaliatory import duties on foreign goods. This action needs to be eradicated by eroding the legitimacy and respectability which anti-dumping measures currently enjoy under the existing rules of the WTO which do not outlaw the discretionary and rampant use of anti-dumping measures. Free trade will only flourish if this crucial precondition is met.

The increasingly interdependent world is learning to adapt its institutions, the treaties on which they are founded and the rules by which they operate to the challenges of the next millennium. Such amendments cannot leave the burden of proof issues and the related matter of how dumping-induced injury is to be determined, by the wayside. If these interrelated questions fail to receive adequate attention, the overall reforms will be in vain. In addition, members of the WTO, the EU and the US in particular, must be encouraged to

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surrender their zeal for unilateral reprisals via anti-dumping measures in the broader interests of international trade law. The multilateral trade regime will suffer severely if it continues to espouse the virtues of free trade whilst the faultlines of protectionist thinking undermine its credibility and integrity.

Whilst the argument is frequently offered that anti-dumping measures curb predatory pricing, there are other mechanisms available that could have the same effect, without encumbering global trade in the process by imposing what amounts to a tax on trade. The best alternative is to enhance the global competition regime by codifying anti-trust rules with an international jurisdiction. Such a treaty must be ratified with speed to ensure that anti-dumping and other competition issues rest securely on a sound international legal footing. This would render the protectionist impulse unjustifiable and illegal as new rules would exist to curb any predatory pricing or similarly harmful actions by offending states. The EU Competition Commission and the US Anti-Trust unit in the Department of Justice have already established co-operative linkages that can be formalised and expanded at an international level.

Growing protectionism and the need for a global anti-trust regime are but two of the challenges that should

top the WTO's agenda. A reform of the institutional and operational features of the WTO's dispute resolution panels must enhance these efforts to curb the growing wave of protectionism. The stuttering SA-EU trade negotiations and the US-EU banana and beef disputes are symptomatic of the broader policy questions that are at stake. **Renato Ruggiero**, the Director-General of the WTO, believes that the existing institutional provisions of the WTO are adequate to deal with these challenges. Apparently the WTO rules contain the seeds of the 'banana row' solution. If this had been the case, however, and if states had felt that the WTO's dispute resolution panels and the verdicts which they reached satisfied their desire for justice to be done in the realm of international trade, states would not feel compelled to resort to threats of unilateral action in retaliation for the actions of other states.

This picture of growing protectionism at the global level contrasts starkly with regional commitments to liberalisation. The desire for increased liberalisation lay at the heart of President Clinton's efforts to secure fast track trade negotiating authority from Congress which might have facilitated the gradual expansion of the North American Free Trade Agreement (NAFTA). Regional organisations as diverse as the Southern African Development Community (SADC), the Latin American *Mercado Comune del Sur/de Sul* (MERCOSUR/L) and the Asia Pacific Economic Community (APEC) are pursuing the agreed targets for tariff eradication. There is a danger, however, that the protectionist impetus that seems to be growing at a global level could creep into these organisations and hinder progress towards freer, more open, economies and trade regimes. After talks at the beginning of November, APEC member states referred their deadlocked negotiations on further and consistent trade liberalisation to the WTO for resolution. The WTO might see an increase in such regional discord across regional groupings as the prospect of closed regionalism grows in tandem with the reawakening of protectionism in a different guise. Even in SADC there are distinct difficulties with the lists of sensitive items which some member states are aiming to limit to 10% of their total tariff reduction offers. Whilst this trend is understandable, given the need for industrial development in the Southern African region, it is not

excusable as it adds fuel to the fire that rages at an international level threatening the gains made by liberalising trade. The expansion in protectionist thinking hardly needs any assistance. Despite the initial dissensus about the 'Washington consensus', it is still indisputable that trade liberalisation occurs to the benefit of all those involved, especially if it serves to strengthen and build a regional market as the experience of the EU has shown.

The WTO cannot afford to ignore these issues if it is to continue in its capacity as guardian of a free trade system. The recent currency crises have already jeopardised the conventional perception of the virtues of the free flow of capital and liberalisation. The WTO will have to act decisively to prevent a stalemate from developing that would see a resurgence of protectionism jeopardise the decades of gains from trade liberalisation. The institutional rules of the WTO's dispute resolution panels and the legal force of their decisions require critical analysis and reform leading up to the commencement of global trade talks *circa* 2000. Without such radical policy and institutional reform, within the ambit of international trade law, the credibility of the gains from trade liberalisation will suffer a significant setback and the never dormant forces of protectionism will threaten what is left of the 'Washington consensus' on the virtue of open economies.

Scenarios

Two possible scenarios exist: the solution of critical institutional reform of the WTO, in accordance with the arguments set out above, or an ostrich-like response from the global guardians of free trade that would result in a further increase in anti-dumping cases, the retreat of trade liberalisation and the reawakening of protectionism and closed regionalism. In the latter scenario, the regional trading blocks fall prey to uncompetitive practises, continue to liberalise internally but close off their internal markets to external trading partners. This would allow the phenomenon of closed regionalism to gain ground. Given the increase in anti-dumping cases in the jurisdictions of the EU, the US and before the WTO, the second scenario is cause for great concern and highlights the need for a pre-emptive strike at the challenge to the credibility of the WTO as one of the main pillars of international political stability.