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INTERNATIONAL FINANCE SECTION

DEPARTMENT OF ECONOMICS AND SOCIOLOGY

PRINCETON UNIVERSITY

Princeton, New Jersey

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In the language of one of its member countries, "GATT" is a naughty word. In other languages, too, the word is frequently pronounced with certain accents of distaste. But for the most part the word and the institution it represents, for all their significance to world trade, are not well known either here or abroad. In the next few months, however, a lively interest will develop in the GATT and its works. For during these months, after six years of experience, the General Agreement is to be renegotiated by its thirty-four signatories. The instrument which emerges will then be debated in most of the parliaments of the free world, with results that are not easy to predict.

In the United States, the Congressional debate is likely to take place late next spring. The American position on the GATT is so critical that it will determine whether or not the Agreement will remain in effect for any nations. Implicit in this American decision is a larger choice; will the United States continue to pursue the general pattern of trade relations with the rest of the world which has evolved as the "reciprocal trade agreements" program, or will it alter that pattern drastically?

What we shall try to do in this essay is to set the stage for the negotiations and debates that are shortly to begin: to place the GATT in its proper relation to this nation's foreign trade policy, to weigh the GATT's achievements, and to assess its future.

The GATT is a trade agreement—the General Agreement on Tariffs and Trade—brought into being in 1948. Every major trading nation on our side of the Iron Curtain is associated with it. Even Japan has been brought into a working relation with other signatories to the Agreement, though in a form which is something less than full adherence. As far as the United States is concerned, the GATT is its principal international trade contract. Insofar as international agreements constrict this nation's behavior, these pacts are for the most part embodied in the rules of the General Agreement. As we shall presently see, this is not the case with respect to many other nations of the free world, most of whom are bound in their conduct to one another by various other international contracts as well. Another way of orienting the GATT's position in world trade is to observe that it has been more important as an

instrument governing trade relations between the United States and the rest of the world than as an instrument governing the relations of the rest of the world *inter se.*

I. THE GATT'S ORIGINS

It is difficult to evaluate the GATT without dwelling for a moment on its early origins; and impossible to explore its early origins without going back to Mr. Smoot and Mr. Hawley. If there was a single event which set the stage for the American policy which is embodied in the General Agreement, it was the enactment in 1930 of the legislative monstrosity known as the Smoot-Hawley Tariff. This statute has attracted superlative abuse not alone because it set American tariffs so high, but also because the rates were set with such a single-minded concern for the wishes of specific producer groups as to shock the sense of fitness and propriety of many of those who were exposed to the process. While there were some underlying patterns in the resulting rates, they were not patterns which the authors of the act were clearly seeking. The rates in the act were, in effect, largely an expression of the relative power of lobby groups.

The late Senator Vandenberg's oft-quoted words on the process by which the Smoot-Hawley act came into being expressed the sentiment of many other members of the Congress: "Tariff rate-making in Congress," he said, "is an atrocity. It lacks any element of economic science or validity." Congressmen who participated in the ten-month process of negotiation and drafting which preceded the enactment of the law still look back upon it as something of a legislative nightmare. They were simply overwhelmed in the process. Not only were they besieged by constituents they could not deny, but they were asked to pass judgment on the wisdom of thousands of different rates defined in the esoteric jargon of hundreds of different trades.

The Smoot-Hawley Tariff has often been charged with more than its proper share of the economic ills that followed it. Certainly, it was not a prime cause of the subsequent economic collapse. But the ten months of personal unhappiness which most Congressmen had experienced, followed by the four years of national misery thereafter, left a deep scar. For many years after 1930, there was a large and influential body in the Congress which was determined that the tariff-making power should not revert to the legislature. Accordingly, when in 1934 the executive proposed to the Congress that our tariff should be lowered gradually in implementation of reciprocal trade agreements, the Congress was content to delegate the necessary powers to the executive branch,

after promulgating certain limits and objectives which would govern the exercise of the delegated powers.

From 1934 until the war's outbreak in 1939, the United States entered into bilateral trade agreements with a score of countries. In each agreement the United States undertook to lower certain of its tariffs in which the other country had a particular interest in return for similar reductions on the part of the other country. During this period, however, the American negotiators found, more and more, that trade barriers other than tariffs had to be dealt with as well; there was little point, they discovered, in securing the reduction of a tariff on the part of another nation only to be confronted by some other deterrent to imports such as a quota restriction or a discriminatory internal tax. In time, therefore, the scope and complexity of the bilateral agreements grew, covering more and more of the devices which constituted impediments to international trade.

Yet these bilateral agreements quickly reached the limits of their efficacy. There were many trade problems, our negotiators discovered, which could not be dealt with successfully in such contracts. For example, some nations felt it necessary to maintain extensive quota systems simply as a counter threat against others using the same system. In situations of this sort, the lure of American tariff reductions was not enough in the eyes of any *one* of the trade-beleaguered nations to justify the risks which would accompany the elimination of quota restrictions. While nations could be persuaded to mitigate their quota systems on a few carefully chosen products, no nation would agree to a major reduction in the scope of its system unless its principal trading partners also were bound to undertake similar extensive relaxations. Yet no bilateral agreement with the United States could serve as a vehicle to achieve such a result.

If other nations would not agree to make any major reforms in their trading practices as part of a bilateral agreement, neither would the United States. For example, many nations felt that the trade concession they most wanted from the United States was an overhauling of our objectionable system of customs valuation. But even if the President had the authority to do so, the United States could not have been expected to agree to any such general reform as part of a bilateral trade agreement with any nation since no one nation's trade with this country was sufficiently important to justify a step of such general application.

The bilateral agreement proved also to have its limitations as a means of reducing tariffs. Twelve years before the institution of the trade agreements program, the United States Tariff Act of 1922 had incorporated the recommendation of a special bipartisan Tariff Commission that, in general, the United States should apply a single nondiscrimina-

tory tariff rate on any specified import, whatever its country of origin. This policy of unconditional most-favored-nation treatment, because of the solid justification which lay behind it, was carried over into the trade agreements program. It meant, in effect, that if we reduced our tariff on, for example, bicycles, in an agreement with Great Britain, the benefit of the reduction extended to similar bicycles from other sources.

Committed to such a policy, our bilateral negotiators were constantly faced with the problem of how to reserve their bargaining power for later negotiations. The glove tariff, for instance, affects both Japan and France because each is interested in exporting gloves to the United States. In negotiations with France, therefore, it would behoove our negotiators so to define the tariff reduction extended to France as to exclude the type of glove in which Japan might have an interest. Over a period of years, this type of consideration led to the introduction of hundreds of distinctions in our tariff structure which had not been made in the original Smoot-Hawley Tariff Act. Therefore, while the bilateral agreements were instrumental in bringing down the American tariff structure, they did so at the cost of confounding confusion.*

But the principal drawback of the bilateral trade agreement program, as distinguished from a multilateral arrangement such as the GATT, was more subtle than either of these difficulties. It was the problem which infects every bilateral agreement among sovereign nations: the difficulty of dealing with a breach of the agreement. Faced with some grievance which might violate a bilateral trade agreement, a signatory nation's first problem was to determine what the agreement really meant. This was not always easy since it was true of international trade pacts—as it was of other forms of international agreements—that the political compulsion to obtain signatures upon a piece of paper oftentimes was more important than the economic compulsion that the paper should contain a basis of real understanding. Accordingly, clarity or sharpness of concept often had to be abandoned to mask the absence of a meeting of the minds. At times, therefore, there was room for genuine uncertainty as to the meaning of some provision, even when the provision was central to the agreement. And when the undertaking was bilateral, a dispute over the meaning of a provision would ordinarily lead to stalemate.

As difficult as determining the meaning of an ambiguous provision of a bilateral trade agreement in event of a suspected breach was the

* See, e.g., Commission on Foreign Economic Policy (Randall Commission), *Staff Papers*, Washington, February 1954, p. 334. This document and the Commission's *Report to the President and the Congress*, Washington, January 1954, present the most recent governmental review of United States foreign trade policy.

difficulty of determining the relevant facts. Adequate information was not always in the possession of the would-be complainant. Yet the other signatory to the agreement, if confronted with a request for additional facts, could procrastinate, misunderstand, or evade until all interest in the problem had dissipated.

But even when the meaning of the agreement and the facts were clear, nations were commonly loathe to raise a question of breach of contract in diplomatic channels. For any two countries with a significant volume of trade between them also tended to have a good many other irons in the fire; at any given moment, a variety of political, military, and financial issues were likely to be at one stage or another of negotiation between them. Before any official of either nation was authorized by his own government to raise a trade issue in the same diplomatic channels that were carrying the burdens of these other negotiations, he had to hurdle the succession of barriers that his own confreres would inevitably seek to throw in his path.

Finally, even when a nation was prepared to raise the question of breach of contract in diplomatic channels and even when the facts of the breach were crystal-clear, a bilateral trade agreement might prove of little utility. For any nation, confronted with a charge of violating a bilateral agreement, could usually find grounds for asserting that the other party came to the argument with soiled hands. By common consent, therefore, nations often tended to disregard infractions of the agreement to avoid mutual embarrassment. Something lower than the least common denominator of conduct of the two nations usually prevailed.

Considerations of this sort were in the minds of British and American representatives when, in 1943, they began to develop in earnest their ideas for international trade in an uncertain post-war world. In their planning, joined in the later stages by representatives of many other countries, they turned away from bilateral agreements to agreements of a multilateral nature. Finally, in 1948, an elaborate blueprint emerged.

An International Trade Organization was to be created, third leg of a tripod which was to support the international economic relations of the principal nations of the world; the other two institutions, the International Monetary Fund and the International Bank for Reconstruction and Development, had by this time come into being. The ITO was to deal not alone with trade policy as the term was commonly understood—that is, with the problems of tariffs, quotas, customs practices and so forth—but it was also to provide an international investment code, to deal with the control of harmful cartels in international trade, and to prescribe standards and procedures for the negotiation of international commodity agreements.

The character of the ITO was determined not only by the lessons of pre-war experience but also by the prevailing political spirit of the period in which it was developed. During this period—1943 to 1948—the forces of economic protectionism and of regionalism were at low ebb among the important trading nations of the world. To be sure, nations were engrossed in trying to make their national economies work and, in their efforts, were commonly employing national measures of the "beggar-my-neighbor" sort. To be sure, political groupings such as the British Commonwealth and the French Union maintained their identity and their special economic ties during the period. It is also true that some new regional entities came into being in those years, such as the Emergency Economic Commission for Europe. Yet it is fair to say that, during this period, these nationalistic and regional forces—centrifugal and divisive forces in the formation of any system of world trade and payments—were weaker on the whole than they had been during the preceding three decades.

There was a brief period in 1948 when the American Congress might have been willing to agree to the creation of the ITO. But more pressing problems intervened. The European Recovery Program, for example, was demanding the first attention of the Administration and the Congress. A year passed, then two. During this period, there was a lopsided battle to present the new Organization to a barely-interested American public. On the one side were arrayed many groups which had a special concern about one or another of the hundred-odd Articles contained in the Organization's Charter. Some of these groups had genuine ideological or intellectual difficulties with one provision or another of the Charter, while others were simply fearful that American adherence to the ITO would mean the continuation of the policy of reducing tariffs. On the other side, attempting to offset these groups, were the formal, inhibited presentations of an Administration trying vainly to explain a strange, complex, and highly technical agreement. Whatever the merits of the dispute, the outcome was almost inevitable. In December 1950, the Administration withdrew its support of the Charter and the rest of the world followed suit.*

Meanwhile, almost unnoticed, the stop-gap, temporary, and "provisional" General Agreement on Tariffs and Trade had come into being. This was not an organization in the sense of the ITO, but was rather an agreement administered through periodic meetings of the signatory states. Its purpose was simply to carry out a part of the substance of the Charter of the ITO—the part which dealt with trade

* See William Diebold, Jr., *The End of the ITO*, published in this essay series in October 1952, for an interpretation of why the United States failed to ratify the Charter.

policy in its narrower and more familiar sense—during the year or two in which the ITO charter was to go through the slow process of ratification. Some nations had adhered to the Agreement through consent of their executive; others through ratification by their legislature. As far as the United States was concerned, the GATT was an executive agreement, with the Administration contending that its participation was based upon the oft-renewed Presidential authority in the Trade Agreements Act and upon the President's more general powers to conduct foreign affairs.

Though feeble at birth, the GATT functioned vigorously. Meeting for the first time in Geneva in 1948, the nineteen countries then signatory to the Agreement held an unprecedented multilateral tariff negotiation. In effect, each nation negotiated simultaneously with each of its trading partners on the tariffs of most importance to their trade; the results of these separate negotiations were simultaneously concluded and incorporated into a single document. Thereafter, the GATT signatories held two additional tariff-negotiating sessions: one at Annecy, France in 1949, and one at Torquay, England in 1950-1951.

In addition to these negotiations, and with much less publicity, the GATT's contracting parties were meeting in regular session at least once a year to deal with the many other subjects, apart from tariff negotiations, which make up the bulk of the Agreement. In these sessions they elaborated the meaning of their various rules, sponsored supplementary agreements for the reduction of trade barriers, and heard complaints by one contracting party against another. These eight regular sessions, completed between 1948 and 1953, created a pattern of operations unique in international trade history.

II. THE GATT'S PERFORMANCE

It is not easy to appraise the GATT's work over the past six years. There have been notable successes and notable failures. Some of its failures can be traced back to the inadequacy of the Agreement's provisions; some to the unwillingness or inability of nations to carry out provisions which, in themselves, seemed unexceptionable.

Tariff Reductions

As far as tariff negotiations are concerned, the General Agreement does not contain any provisions which compel such negotiations to be held. To be sure, the GATT does provide—in accordance with American policy—that the tariffs of each member country are generally to be applied on a nondiscriminatory basis to goods from all other signatory countries. And it also provides that *if* tariff reductions take place,

they are to be made on a basis which will tend to reduce, and eventually to eliminate, any preferential tariff systems that a nation might have maintained when it joined the GATT. But more important than these rules is the fact that the General Agreement provides the framework, the sponsoring body, and the mechanism for developing the detailed ground rules for such negotiations. The Geneva tariff session of 1948, the Annecy session of 1949, and the Torquay session of 1950-1951 probably would not have taken place in the absence of such a framework.

To be sure, if the GATT had not existed, the United States might have continued to negotiate tariff reductions on the bilateral pattern which it had followed before the war. But it is doubtful if negotiations of a bilateral nature would have resulted in the added reduction in American tariff levels which occurred between 1948 and 1953.* This added reduction, which perforce bit into more sensitive segments of the American tariff structure than the earlier reductions had done, could only have been achieved in the exceptionally favorable circumstances which a multilateral negotiation provides for such reductions. Some of the more important reductions, such as that in the wool tariff, required courageous political decisions, taken in the interest of the nation as a whole and in the face of strong antagonistic domestic interests. This kind of decision probably could not have been made in connection with a bilateral negotiation with any single country; it became a possibility only when it developed as a pivotal issue in our negotiations with the whole of the British Commonwealth.

By the same token, it is doubtful if other nations would have gone so far in the reduction of their own tariffs in the GATT's absence. While some of them might have been persuaded through bilateral agreements to reduce rates on products in which the United States had a primary interest, there probably would have been less tariff reduction by other nations in favor of one another if the General Agreement had not provided the negotiating framework. From the American point of view—concerned as we have been during the past six years with the revival of trade throughout the free world as a means of enhancing its strength—this must be counted as a major plus mark for the GATT.

Quantitative Import Restrictions

The Agreement's effect upon the quantitative import restrictions, or import quota systems, maintained by most of the participating nations has not been nearly so evident. In principle, the GATT goes far. It sets out a general prohibition on quantitative restrictions on imports,

* For a recent official attempt to measure the extent to which American tariffs have been reduced, see U.S. Tariff Commission, *Effects of Trade Agreement Concessions on U.S. Tariff Levels Based on Imports in 1952*, Washington, September 1953.

whether discriminatory or not. Then, in reluctant acquiescence to the multitude of demands made by the various signatories, it carves out a variety of major exceptions to this general rule.

One of the principal exceptions, made largely at American urging, has to do with domestic agricultural income-support programs. The general rule here is that if nations decide to curtail their domestic production or marketing of an agricultural product to any degree in order to support farm income, they may curtail imports in equal degree. The GATT does not, however, give license to any nation to curtail such imports simply because that nation is pegging the price of an agricultural commodity above world prices for the commodity; the right to restrict imports exists only where domestic production or marketing also is being restricted. Accordingly, many of our American price-support programs would not qualify as the type which justifies import restrictions under the Agreement.

The rule against quantitative restrictions also contains a major exception in favor of nations with so-called balance-of-payment difficulties. The scope of this broad exception reflects the fact that, at the time of the GATT's negotiation in 1948, virtually every trading nation in the world except the United States was experiencing a shortage of foreign exchange. Confronted with this seemingly chronic difficulty, most countries had taken to rationing the foreign purchases of their citizens, using import licenses to enforce their rationing schemes.

The GATT's provisions dealing with these balance-of-payment import restrictions were the outcome of a desperate hauling and pulling among the few haves and the many have-nots of the period. Inevitably, the provisions were lengthy, bewildering, and complex. But when all the verbiage is parsed, the provisions come to this: while quantitative restrictions are prohibited in general, nations with very low foreign exchange reserves may do much as they like in the rationing of their scarce exchange. The only obligation of such restricting nations is to relax import restrictions as their position improves, to consult about the measures on request, and to avoid commercial damage where they can.

The GATT might have embodied two other general lines of policy with respect to balance-of-payment import restrictions. First, it might have prohibited such restrictions out of hand. A respectable body of opinion—mostly American opinion—would argue that no nation *need* have balance-of-payment difficulties. Threatened with a drain on their exchange reserves, nations can avoid import restrictions by pursuing a firm deflationary policy within their domestic economies. This may require heavy taxation and high interest rates; it may create unemployment; but in theory it can be done. This being so, it is maintained,

import restrictions ought not to be countenanced. This argument is buttressed by still another contention: that nations have balance-of-payment difficulties only when they are attempting to peg their currency at a rate higher than its "real value." If a nation did not attempt to maintain its currency at such a high level, it is asserted, the inflow of its foreign currency earnings would tend to equal the outflow and the nation's so-called "difficulties" would disappear.

For our present purposes, it is fruitless to debate the economic and political merits of this position. The controlling fact is that not more than three or four nations in the world would have subscribed to it in 1948. No international agreement negotiated at that time could have contained a watertight ban on import quotas.

But still another course was left for the GATT, if its signatories had so chosen. Instead of attempting to lay down any rules of general applicability in the use of balance-of-payment import restrictions, the member states might have sought to reserve broad powers to judge each case on its merits. They might have agreed to study the internal policies of any nation with balance-of-payment restrictions, to examine its exchange rate structure, and to analyze the pattern of the restrictions it employed. Such an international clinic might then have the power to prescribe on all such matters and, having prescribed, to forgive such restrictions as seemed necessary for the ailing nation.

This second approach, however, would have been no more negotiable than the first. The ailing nations would have refused to subject themselves to the sometimes unpalatable prescriptions of any international clinic. The few healthy ones would have refused to accept the responsibilities of the physician. For these responsibilities would have compelled the prescribing nations, either explicitly or by unavoidable implication, to draw distinctions between justifiable and unjustifiable import restrictions and would have imperilled the objective of condemning all such restrictions.

Moreover, it seemed redundant at the time to place the GATT signatories in the position of examining the internal polices and exchange rate policies of individual states. The International Monetary Fund was already in the position of exercising some jurisdiction in this field and, in deserving cases, could extend credits to any nation in temporary balance-of-payment difficulties. Besides, the United States carried a weighted vote in the Fund, representing about a third of the total vote in that body, whereas it voted as only one among a score of nations in the GATT. It was felt, therefore, that the scope of the GATT's balance-of-payment discussions ought to be confined to such narrowly circumscribed issues as whether a nation was relaxing its restrictions as far

as its reserves permitted, whether it was taking adequate measures to minimize commercial damage, and like questions.

This hobbling of the GATT's activities left a large hole in the structure of international economic cooperation. While most nations felt in 1948 that they had to harbor their scarce dollars by imposing stringent import quotas against dollar goods, many felt that they could afford to increase their purchases with one another. The problem, as these dollar-short countries saw it, was to find the means for a broad-scale freeing of quotas among themselves. The European nations, therefore, vigorously attacked the problem in another group, the Organization for European Economic Cooperation. Since its creation, the OEEC has done a great deal to liberalize the movement of goods among its members in Western Europe. By obtaining agreement among these countries on the more-or-less simultaneous relaxation of import quotas and on the modification of domestic policies which were making such quotas necessary, it has made possible a larger volume of intra-European trade without creating new payments problems commensurate with the increased trade. By and large, the OEEC record in this area has been impressive.

Yet the OEEC's activities, salutary though they were, offered a challenge to the principles of GATT because they tended to encourage discrimination by the Western European nations in favor of one another. What is more, a Western European nation, such as Belgium, which felt it could afford to admit North American goods more liberally than its European neighbors, was constantly being admonished by the latter not to continue that policy. For the policy meant, in effect, that the other countries could not sell as much to Belgian citizens and could not afford to buy as much from Belgium.

Nevertheless, it was in the OEEC, rather than in the GATT, that there clearly emerged the complex motivations which create "balance-of-payment" import restrictions and the shades of grey among different restrictions. In this forum, where the rules were less "doctrinaire" and the government representatives more "practical," the justification for maintaining restrictions commonly ran in terms more nearly approximating the facts; here one finds frequent allusion by nations to the need to avoid "social or economic disturbance," the need to offset the bargaining power of other nations' export cartels, and like reasons, as justifications for maintaining import restrictions. By common consent, therefore, European nations tended to avoid airing their complaints on quantitative restrictions in the GATT forum, where the prevailing philosophy was less to their liking than that of the OEEC.

Yet one must not conclude that the General Agreement's performance with respect to balance-of-payment import restrictions was empty or

lacking in promise. For one thing, the periodic consultation procedures sponsored by the GATT, which at first seemed a weak reed on which to lean so ponderous a purpose as the reduction of quantitative restrictions, proved to be a mild stimulant in moving nations in the direction of such reductions. At various times in the course of these consultations the United States urged nations to relax their restrictions against dollar goods in the light of improved reserves. And in some cases the relaxation seems to have been expedited or made more extensive as a result of such exhortations. Belgium, Holland, and Germany, in particular, appear to have fashioned their relaxations to assuage these pressures. It also may well be, when the history of Canadian, United Kingdom, and South African import relaxations is written, that the GATT will be shown to have figured heavily in these as well.*

In fact, whether or not because of the General Agreement—certainly not in spite of it—other nations have moved far toward the United States position that balance-of-payment import restrictions tend to defeat their own purposes in the long run.

The GATT approach to quantitative import restrictions has proved to have one major advantage which in the end may outweigh other considerations. As we observed earlier, any alternative approach might have trapped the contracting parties into drawing dubious distinctions between "good" and "bad" balance-of-payment import restrictions, and the principle that balance-of-payment restrictions were abnormal and temporary expedients might have been lost. Instead, the principle has survived the past six years and has gained more acceptance and more adherence.

In sum, the GATT has neither surrendered the field nor carried the day in mitigating the use of quantitative restrictions. Fortuitously, it has succeeded in surviving the post-war period of general balance-of-payment difficulties without surrendering the principle that such restrictions were to be allowed only as exceptions to a general rule and that the rule itself should be applied as soon as circumstances permitted. Only in recent months has it appeared that such circumstances might at last actually be at hand.

Quantitative Export Restrictions

The progress made through the GATT in mitigating the use of export restrictions has been more disappointing than its performance as regards import restrictions.

In periods of shortage, nations commonly impose restrictions on the

* The International Monetary Fund also must be credited with some of the success in this field. Indeed, the close working relation between the Fund and the GATT has been a model for coordinated efforts among related international agencies.

export of scarce commodities. The Agreement recognizes a contracting party's right to impose such restrictions "temporarily" in order to relieve critical shortages, provided that such restrictions are nondiscriminatory in their application; but even this rule is diluted further by a temporary exception which seems to allow discriminatory restrictions provided they are consistent with the somewhat abstract principle that "all contracting parties are entitled to an equitable share of the international supply" of scarce commodities.

In practice, a combination of provisions of this sort renders any general rule meaningless. The provisions are not clear enough, by themselves, to argue for a nation's exporting more of a scarce material than the nation's domestic industries want to relinquish. Nor are they clear enough to provide a basis of judgment as to the appropriateness of the division of any given export pie among recipient nations.

As a result, during the periods of shortage between 1948 and 1953, little resort was had to the GATT's provisions on export restrictions. Scarce materials were commonly swapped among nations as a part of their bilateral trade agreements. Where international allocations of materials were agreed on multilaterally, this was done through special organizations created for the purpose, such as the International Materials Conference in Washington. There is nothing to suggest that the General Agreement's export restriction provisions would be any more effective in a future emergency than they have been in the past.

Other Substantive Work

Although space here does not permit a summarization of all the other activities of the GATT, there is one area of such work which deserves mention: the simplification of customs formalities.*

The subject of customs formalities is peculiarly unappealing. It does not attract the professional economist, for it presents no challenge to intellect or principle. Nor does it attract the publicist, for it presents no sharp issue or clear-cut fact around which public interest can be mobilized. By default, therefore, policies in the field of customs formalities have tended to repose in the hands of domestic producers anxious to complicate the process of importing; of customs brokers and lawyers who earn their bread and butter by their understanding of these complexities; and of government employees whose status derives in part from the *mystique* of the machinery over which they preside.

* A carefully catalogued official description of the various activities of the GATT may be found in the secretariat's periodic publications. See especially: *The Attack on Trade Barriers*, Geneva, August 1949; *Liberating World Trade*, Geneva, June 1950; *GATT in Action*, Geneva, January 1952; *International Trade 1952*, Geneva, June 1953; *International Trade 1953*, Geneva, June 1954.

For the United States the result has been a near-hopeless mess. For example, our procedures for placing an appraisal on imported goods for tariff assessment purposes are so complex that the backlog of cases in process of appraisement at any time in recent years usually has been the equivalent of at least a year's entries. What is more, the rules on appraisement are so complex and confused and at times so capricious in their application that they invite and attract endless litigation. There have been improvements in these procedures of late but none which fundamentally affects their character.

While the United States leads the field among the major trading nations in the objectionable character of its customs formalities, a number of other countries do not lag far behind. Latin American customs formalities outdo our own in some respects, especially in costliness and complexity; the practices of Canada and Great Britain approach ours in many ways; and nations like France and Italy, if they should ever begin to enforce their regulations, might surpass the United States in the use of restrictive formalities.

The GATT itself devotes several articles to "Valuation for Customs Purposes" and "Formalities Connected with Importation and Exportation." But these contain few solid commitments. Moreover, these commitments, like most others in the Agreement, are qualified by a so-called Protocol of Provisional Application. This Protocol, written in 1948 in deference to the fact that the legislation of this country and various other nations is not in all respects consistent with the GATT, allows the inconsistencies to remain for the present and permits the nations concerned to continue any offending practices required by such legislation.

Nevertheless, the contracting parties to the General Agreement have ventured a few hesitant steps beyond the GATT provisions themselves. They have formulated a Code of Standard Practices for the guidance of governments applying quantitative restrictions, a code which suggests the means of improving some administrative aspects of such restrictions. They have successfully sponsored the negotiation of a draft convention to facilitate the importation of commercial samples, and they have recommended simplified practices in the use of consular invoices. In time, they may be expected to get into the critical questions of customs valuation and customs classification. If they do, the international airing will provide counter-pressures to the ceaseless pressures of domestic industry and the entrenched conservatism of customs brokers, lawyers, and officials. Progress in this field could outdo in long-run importance the tariff reductions so far achieved in the GATT framework.

Maintaining the Rules

International agreements rarely deal with the contingency of "violations"; when they do, there is usually an overlay of euphemistic verbiage which may be deceptive to the hasty reader. The GATT is no exception. Nowhere does one find reference to the "violation" of the Agreement by a contracting party. According to Article XXIII, an issue is joined only if a contracting party "should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired." Nor need the contracting party allege that the nullification or impairment is due to a violation of the rules by any other party; any measure by another contracting party or, indeed, "the existence of any other situation"—whether or not it conflicts with the terms of the Agreement—may provide a sufficient basis for initiating a consultation between the affected parties. If no satisfactory adjustment of the problem is made, the contracting parties to the Agreement, acting collectively, may make recommendations to the disputants "or give a ruling on the matter, as appropriate." If all else fails, the contracting parties collectively may authorize an aggrieved member to retaliate by withdrawing a concession from the offending member. Since "withdrawing a concession," in the topsy-turvy semantics of the tariff negotiators, usually means penalizing one's own consumers by raising an import barrier, this dubious privilege may not always be used. But if it is, then the sinning and punished nation may withdraw from the entire Agreement on sixty days' notice.

With these provisions as a backdrop, many nations have been developing the habit of testing each proposed national act of trade restriction, before it is put into effect, for its conformity with GATT rules. Where a proposal has conflicted with those rules, there has usually been some effort within the government concerned to avoid the conflict. Where the domestic pressures have not been severe or the domestic objective not of real political or economic importance, the project has often been modified or dropped; where the domestic pressures would not be denied, a genuine attempt has usually been made to put a good face on the offending action. The number of instances in which projects of trade restrictions have been modified by various nations to conform with the General Agreement or have been dropped altogether because of their nonconformity would be fairly impressive, in the writer's view, if they could be compiled. Taken all together, they would suggest a measure of discipline and forbearance by the major trading nations which probably has no equal in modern trade history.

Nonetheless, measures contrary to the GATT's provisions have commonly been applied. In some such instances, however, bilateral discus-

sions between an aggrieved and aggressor nation, based on the Agreement's provisions, have been enough to correct such measures. Here again, there is no complete public record of the cases in which redress has been obtained by any nation; but a partial compilation does exist of cases in which the United States has obtained a remedy through bilateral complaints based on one or another GATT provision. One such case involved the imposition by another nation of a 9 percent sales tax on imported lumber, a tax from which domestic lumber was exempted; after our government complained, the tax was applied to domestic lumber as well. In another case, an embargo on potato imports applied by another country was lifted as a result of an American complaint. A third case involved the efforts of the United Kingdom to wean its population away from smoking pure Virginia cigarettes by requiring a 5 percent admixture of Oriental tobaccos. After several protests by the United States, based on provisions of the GATT, the prohibition on the manufacture of unblended Virginia tobacco cigarettes was lifted. A score of other cases of this sort exist—unspectacular for the most part, frequently inconsequential in the volume of trade they involve, yet impressive in total. It is hard to say whether the United States would have gotten the same redress in these cases in the absence of the General Agreement, but the writer is inclined to think not.

Of course, bilateral consultations have not always been enough to bring about a remedy for a breach of the Agreement. The next stage, therefore, has been that of formal complaint to the signatory countries as a group by one nation against the conduct of another. In some ways, the handling of these cases has been the GATT's most spectacular contribution to international comity. One such case involved a complaint by Chile to the effect that Australia was subsidizing artificial fertilizer production so heavily that Chile was losing the benefit of tariff concessions granted by Australia on the natural product. Although the contracting parties felt that no violation of the Agreement was involved, they recommended that Australia modify its subsidy plan—and Australia complied. A complaint by Norway against Germany produced a similar result. In this case, it was alleged that Germany was manipulating its sardine tariff to favor the Portuguese-type sardine and to discourage imports of the competing but biologically different Norwegian product. While no formal violation of the Agreement was involved, Germany changed its practices to comply with the contracting parties' recommendations.

The United Kingdom's purchase tax system, aimed at discouraging luxury goods consumption in the early post-war period, also was the subject of a complaint. In this case the charge was that imports were automatically taxed as if they were luxuries, even when they were

similar to domestic tax-free articles. An Act of Parliament was needed to remedy the situation, but the remedy was obtained.

Perhaps the nastiest and most difficult dispute to which the GATT lent its good offices was one involving Pakistan and India. On the one hand, Pakistan was attempting to discriminate against India in a system of export taxes on jute; on the other, India was attempting to gouge Pakistan in the sale of coal. Because of the explosive political situation between the two countries, none of the great powers was willing to arbitrate. A GATT committee, however, was able to function in a way that sovereigns were not. Each of the disputants was persuaded to call off his measures of economic aggression, and political tensions between the two countries dropped visibly.

While there have been a number of other cases with happy outcomes of this sort, it would be a mistake to leave the impression that the General Agreement had at last provided a mechanism by which nations could be brought to observe the provisions of international trade pacts. On the contrary, violations of the Agreement have commonly occurred in which no redress has been sought or, when sought, been obtained.

The motivations on the part of countries for not seeking redress of breaches of the rules are fairly complex. Partly, of course, it has been the fear of the would-be complainant that he might incur the displeasure of the state complained against. This fear was especially evident in the earlier years of the General Agreement. Its gradual mitigation over the years may explain why the number of complaints dealt with in GATT sessions has recently tended to increase. Partly, too, some nations have felt that the threat of retaliation through normal diplomatic channels might be more effective than a complaint to the contracting parties; such threats are still commonly made, without regard to the applicability of GATT rules. Moreover, some nations would prefer not to give added currency and validity to some of the Agreement's rules by launching a complaint under them, lest some day the rule be turned upon themselves.

Apart from the complaints which are never brought, there are the complaints which, though brought, have led to no redress. Such cases have not been frequent but there are two classic instances which merit notice. One involves Brazil. For about six years, France and others have complained that Brazil is imposing discriminatory internal taxes on certain imports, such as cognac, in violation of the GATT. The only action taken by the Brazilian Congress since inauguration of the complaint has been to extend the scope of the discrimination. The only consolation France has had for its complaint has been for its representatives periodically to receive eloquent reassurances of the esteem and goodwill of the Brazilian delegation to the GATT. The indifference

of Brazil and of a number of other Latin American nations to their GATT undertakings has been a source of weakness for the General Agreement.

The other case of this kind involves the United States, as a result of its imposition in 1951 of import quotas on dairy products. These restrictions, which grew out of certain sections of the Defense Production Act of 1950, were flatly in conflict with the GATT's provisions and drew a storm of protest from the butter and cheese exporting nations of the world.

Each year thereafter, the executive branch of the U.S. Government, while fending off foreign complainants with one hand, sought with the other to persuade the Congress to undo its action. Last year, the executive achieved a pyrrhic victory. The offending law was allowed to lapse, but only on condition that the executive continue by other means the restrictions which had first been applied under the law. This has been done; the butter and cheese restrictions have been continued in slightly altered form and the injured foreign nations have sought fruitlessly to obtain a remedy against the continued American restrictions.

There is nothing rash in the conclusion that the General Agreement and its enforcement methods have helped measurably in the development of rules of the game among trading nations. This does not mean that the Agreement has necessarily brought economic peace to areas where economic warfare was consciously desired. GATT or no GATT, nations which had the desire to engage in economic warfare with one another during the period would have done so; witness the deterioration of our trade relations with Czechoslovakia, one of the original signers. But the converse is not equally true; nations with a reasonable desire to avoid trade warfare with their neighbors might nonetheless have been at each other's throats in the absence of standards of international behavior such as the GATT. For governments are under constant pressure from their domestic interests to take measures which injure the trade of their neighbors. Where there is no code for distinguishing the actions that are justified from those that are not, a lapse from grace is easy. And once the cycle of recrimination and counter-retaliation begins, no self-imposed standard of reasonable conduct can long be maintained.

III. THE GATT'S FUTURE

With six years of experience behind them, the contracting parties have decided that the time has come for a reconsideration and renegotiation of the Agreement's provisions. The process of international discussion and debate has already begun and will culminate in formal

international negotiations late this fall. Pressures will exist in many countries to alter the present document in various significant respects.

To appreciate the nature of these pressures, one must recall that the GATT's origins were rooted in the wartime planning and the wartime attitudes of the United Kingdom and the United States. At that time and in the post-war period immediately following, the forces of regionalism, though far from defunct, were nevertheless at low ebb. And, except perhaps in the newly-created sovereign nations of the Far East, economic protectionism was also in temporary eclipse. In the year 1948, when the General Agreement was signed, the multilateral approach to trade problems which it embodied was at its post-war high-water mark.

This does not mean that the economic philosophies of the principal trading nations were especially close in the years in which the GATT was negotiated. On the contrary, from an economic point of view, the United States and the United Kingdom, for example, were much further apart in philosophy than they are today; the Labor Government in the United Kingdom believed firmly in the necessity and benignity of its system of wartime and post-war controls while the U.S. Government, for all the shades of difference between Democrats and Republicans, wished to drop its control as rapidly as possible. Yet, in 1948, the two nations were determined to find common ground in dealing with their joint political and economic problems; and, in the end, although they were perilously close to irreconcilable positions from time to time, they successfully negotiated such agreements as the GATT.

But the points of view of the principal negotiating nations have now shifted. And these shifts presage the shape of the new GATT.

Recent Shifts in the United States Position

The first factor to be taken into account in appraising the present United States position is the changing political position of groups which favor added protection against foreign competition. In the United States, a first-rate test of protectionist strength is provided by the periodic legislative battle to renew the Trade Agreements Act. Since 1945, the Act has been renewed six times. The net effect of the various amendments introduced in the course of the six renewals has been to create a more equivocal Act, far less certain in purpose and power. A "peril-point" provision has been devised, aimed at ensuring that no tariff reductions would be made which might conceivably injure a domestic industry; an "escape-clause" provision has been placed in the statute, so that errors in judgment on this point might be remedied after the fact; more recently, a defense-industry clause has been adopted, designed to provide special safeguards for industries which might be "needed for projected national defense requirements." After a long initial

period of stubborn resistance by the executive branch, these steps have had their inevitable effect; they have altered the philosophical underpinnings of the reciprocal trade program and blunted its sense of direction. The philosophy on which the Act was initially based—that tariff reductions might prove of advantage to the United States if accompanied by like action on the part of other nations—is now scarcely discernible either in the text or in the administration of the Act.

There have been periods recently when it appeared that this trend toward protectionism in the United States might be arrested or reversed. In the summer of 1953, at the President's urging, the Congress authorized the creation of a Commission on Foreign Economic Policy, charged with the review and formulation of a foreign economic policy—including a foreign trade policy—for the United States. The make-up of the Commission was somewhat unusual, consisting of a mixture of Congressmen, Senators, and men drawn from private life, and including politically active Republicans and Democrats. After several months of travail, the Commission produced a report which, so far as trade policy was concerned, more or less endorsed the policies of gradual and selective tariff reduction which theretofore had been pursued.

To be sure, its views on the GATT seemed to have certain unfriendly overtones. On that subject it said:

> "The organizational provisions of the General Agreement on Tariffs and Trade should be renegotiated with a view to confining the functions of the contracting parties to sponsoring multilateral trade negotiations, recommending broad trade policies for individual consideration by the legislative or other appropriate authorities in the various countries, and providing a forum for consultation regarding trade disputes. The organizational provisions renegotiated in accordance with this recommendation should be submitted to the Congress for approval either as a treaty or by joint resolution."

Despite the ominous implications of the recommendation, however, the President's proposals to the Congress in March 1954, which purportedly were based largely on the Commission's Report, said of the GATT:

> "I shall act promptly upon this [the Commission's] recommendation. At the same time, I shall suggest to other contracting parties revisions of the substantive provisions of the Agreement to provide a simpler, stronger instrument contributing more effectively to the development of a workable system of world trade."

But at this writing, sober realism compels the judgment that the American executive will face heavy resistance if he should throw the support of the United States either to the GATT as an institution or to the principles it represents. The President's extensive program of

trade liberalization, announced by him in March 1954, was not taken up by the 83d Congress. Indeed, scarcely two months after he had announced his program, the President felt compelled in effect to withdraw it for the time being from Congressional consideration.

The fact that American trade policy seems to be drifting may dominate the GATT's renegotiation this fall. Insofar as philosophy and purpose can now be glimpsed in the sometimes turgid provisions of the General Agreement, they are a reflection of the American philosophy and purpose that dominated its original negotiation. In the current negotiation, however, this purpose may be less apparent. If that proves to be the case, the renegotiated GATT is likely to be less certain in general direction than its predecessor.

In at least one major field, that of agricultural trade policy, the pressures within the United States may force it in the direction of greater economic nationalism. Since 1945, the American agricultural economy has been more and more isolated from world markets as an inevitable concomitant of our domestic programs for maintaining minimum prices on farm commodities. The bitter dispute over American dairy product restrictions, noted earlier, was a reflection of this trend. The crystallization of the trend is to be found in an amendment to the Trade Agreements Act adopted in 1951. This provision expressly states that no conflicting trade agreement provision should prevent the application of import restrictions to agricultural products, whenever such restrictions would otherwise be called for under Section 22 of the Agricultural Adjustment Act.

The agricultural price support laws enacted by the 83d Congress give some slight promise of greater price flexibility and lower trade barriers for these commodities, but this is largely a promise for the distant future. For the present, the existence of staggering agricultural surpluses can only intensify domestic pressures to maintain and strengthen American import restrictions on these commodities. As a result, the United States may well be placed in the position of seeking more freedom than the GATT now provides to impose import restrictions on agricultural products. Since, as a nation, we are far from insensitive to the fact that we are badly in need of overseas markets for many of our agricultural products, our negotiators may try to obtain the adoption of a set of rules which—for us—represents the best of two possible worlds. In short, while seeking the greatest possible freedom to impose import restrictions, we may well also demand greater freedom in the use of export subsidies on agricultural products.

The role of the United States in the forthcoming renegotiation of the GATT is likely to be shaped also by factors even more general and pervasive than the increased strength of protectionist groups in this

country. One such factor is the shift in the balance of power between the legislative and executive branches of the government.

In every Administration, the executive and legislative arms of our government grope toward some uneasy compromise on the issue of which branch shall dominate in the conduct of our foreign affairs. The recent trend in the American Government has been to give greater weight to the views of the legislative branch. Whatever the merits or drawbacks of such a trend may be in general, one of its inevitable effects is to weaken an agreement such as the GATT. For the GATT is the instrument through which the President administers his power to modify the protection granted to particular interest groups. This is a power which the Congress is in no position to exercise, and cannot reasonably be expected to exercise, on a basis reflecting our broadest national interests. The Agreement would not have been possible in anything like its present form if the Congress, in a spasm of enlightened revulsion, had not delegated that power to the President. In measure as the Congress qualifies or withdraws that earlier delegation as part of a general move to curb the executive in the field of foreign affairs, continued United States participation in an effective GATT stands in increasing peril.

Recent Forces in Other Nations

But the problems for the General Agreement do not all have their locus in the United States. On the continent of Europe, the GATT must conjure with a rejuvenated spirit of regionalism. The possibility of creating a permanent preferential trading area in that part of the world has never been dead. The smaller nations, such as the Netherlands and Denmark, are attracted to the idea from time to time out of the desperation of small nations which must live largely by foreign trade. Chafing at the GATT's seemingly snail-like pace in lowering trade barriers, these nations are constantly drawn to the possibility of obtaining larger markets through regional arrangements. The larger nations, such as France, have also flirted with the concept, as a way of barring the hard competition of North America from the area. These cravings for a preferential trading area will be strengthened, rather than weakened, by the demise of the European Defense Community.

There will be a host of other difficulties, many of them of a sort familiar to American trade negotiators. Other nations which have found the GATT to be particularly galling in one respect or another are likely to seize the opening offered by United States demands to advance their own special proposals. The underdeveloped nations may renew their perennial struggle to be freed of any limitations on the use of "infant industry" restrictions. Norway and New Zealand may renew

their demands for a clearer recognition of the full employment objective in international trade policies. Schemes for preferential arrangements in Latin America or the Far East, which always abound, are also likely to be advanced. The ability of the United States successfully to resist these efforts may be reduced by a concern for the adoption of some of its own weakening amendments.

If there is a bright spot in the global picture, from which the GATT may be expected to derive greater strength, it is in the developing position of the United Kingdom. In 1948, when the Agreement was negotiated, the United Kingdom had a domestic economic philosophy quite alien to that of the United States. Although it was anxious to solve its economic problems on a basis compatible with the concept of multilateral cooperation, it also had a firm belief in the efficacy of national and international controls as a means of solving these problems. Since then, as the nature of its problems has changed and as political power has shifted from the Labor to the Conservative Party, influential views in the United Kingdom have also shifted. Today, the United Kingdom seems eager to dismantle its system of foreign trade and exchange controls as rapidly as it dares. The United Kingdom now seems prepared to urge and to adopt the concepts of an open trading system which underlie the GATT.

While this would suggest an increased degree of United Kingdom support for the General Agreement, it is important to qualify this observation in some major respects. Large elements in the United Kingdom would like, if they could, to reestablish a preferential trading area in the British Commonwealth. The idea has less virility than in times past largely because most of the Dominions now show little enthusiasm for it; they would prefer not to hinder the import of United States goods, for example, for the benefit of United Kingdom competitors. The idea of a preferential system, however, could easily be revived in the United Kingdom if the Dominions should show an increased interest in it.

The United Kingdom's recent determined progress in liquidating its extensive system of exchange restrictions also needs a cautioning word of comment. The United Kingdom has at least three major interests in moving away from trade and exchange restraints. The first is to be able to obtain its industrial materials from the cheapest possible source in order to be able to reduce its internal costs and to increase the competitiveness of its exports on world markets. The second is to be able to rebuild its invisible income through the maintenance of commodity and capital markets, the sale of brokerage and insurance services, and similar measures. The third is to be able to persuade other nations to remove their restrictions as well so that the United Kingdom

—trading with a convertible pound sterling—will not find its goods barred from the markets of other nations.

But there is no strong doctrinaire support within the United Kingdom for the elimination of all import restrictions or the removal of all forms of import discrimination. Unless the initiative comes from elsewhere, therefore, the United Kingdom may well rest content with the adoption of policies very far short of those envisaged in the original GATT. The United Kingdom might, for example, maintain a liberal policy in raw material imports and industrial goods, such as it has lately been developing, without extending the policy very far into the sector of consumer goods. This policy could be supplemented by financial measures making the pound sterling convertible to the extent necessary to recapture some of the United Kingdom's lost earnings as banker, broker, and middleman. And it might rely upon bilateral pressure, rather than multilateral rules, to ensure entry for its goods in foreign markets.

There is some possibility, nevertheless, that the United Kingdom may decide, in this fall's negotiations, to take the view that the use of balance-of-payment import restrictions should be much more rigidly circumscribed by international rules than the present GATT prescribes; that, in fact, nations resorting to such restrictions should be required to account to the other nations not only for the nature of the restrictions themselves but also for the internal policies which may have given rise to the restrictions.

If that should occur, there is a quixotic possibility that the United States, which has heretofore been in the lead in advocating an approach of this sort, may be compelled to use its influence to defeat the proposal. For the proposal will run counter to a dominating principle which may brood tangibly over the American delegation this fall—the principle that the executive should not expose the internal affairs of the United States to the critical eye of international organizations without the express consent of Congress.

The Longer-Run Prospects

In this era of the controlled release of thermonuclear energy, Lord Keynes' classic remark about the long run seems especially appropriate. But if one can afford to look far ahead, the longer-run prospects for international cooperation on the GATT model seem much brighter than those in the immediate future. The external compulsions for maintaining some kind of rules of the game among nations in international trade relations are growing fast.

For the United States the compulsions will grow perhaps more rapidly than for many other countries. For this nation is now launched

on a phase of its existence in which its dependence on imported raw materials is becoming more than incidental and is even beginning to grow critical. What is more, overseas markets are likely to grow in relative importance for American industry. The most rapid rate of material growth for the future is likely to be in the underdeveloped areas of the world, especially Canada and Latin America. And there is every reason to believe that this growth will create larger potential markets for exporters of industrial goods and that access to these markets, therefore, is likely to become a matter of growing concern to the American producer.

Factors of this sort suggest that the function played by the GATT will take on a growing importance for the United States and that we will exert increasing pressure for the maintenance and strengthening of some such instrument.

There is an even more compelling reason, however, which argues for the eventual strengthening of the GATT approach. We have pointed out earlier that the weakening of the General Agreement is, in some measure, a detailed aspect of the weakening of larger political ties among the nations of the free world. For the moment, such issues as the treatment of Communist China, the approach to India and Indonesia, the rearming of Germany, and similar issues, have strained relations among the principal free world nations.

It is close to inconceivable, however, that any such weakening of ties in the free world can long endure. Unless the Soviet bloc takes advantage of such weakness in a rapid and overwhelming series of *coups*, the common danger it presents is likely to force all that remains of the free world back into a tight political grouping. But, for the short run at any rate, the danger is real that our political alliances may become so weak as to provide an inadequate underpinning for such institutions as the GATT.

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