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*Kunibert Raffer*

# The WTO's First Years – The New Regime's Effects on the South

The institutionalised change built into the WTO regime means, of course, that any final assessment of its effects will still have to wait. But the implementation of the Final Act as well as a flurry of initiatives since the establishment of the World Trade Organisation (WTO) on 1 January 1995 allow a first assessment of the effects of the Uruguay Round. Analysing the texts of the Final Act already showed that the interests of Industrialised Countries (ICs) were pushed through, e.g. by lop-sided liberalisation, while issues important to Southern Countries (SCs) remained sidelined (cf. Raffer 1995). The brief history of the WTO clearly confirms this analysis. The first stage of implementation of the Agreement on Textiles and Clothing provides a prime example of this asymmetry, showing how easily ICs are willing to infringe on the very idea of liberalisation and free markets whenever this is perceived to be in their interest. The "help" actually granted – some might say: denied – to net-food importing SCs illustrates how the new regime's one-sided character increases SC-dependence.

This paper will review and evaluate the main results of the WTO regime on the South so far. Issues of North-North relations are left aside, even though they are going to affect SCs in the end as well. Thus the FAIR-Act, which by the way increased farm incomes above what they would have been otherwise and sets the stage for the new battle between the EU and the US (Hofreither 1997), is not discussed. The paper focuses on those main evolutions having strong effects on SCs

— Textiles and Clothing
— help to net food importing SCs
— the first experiences with the dispute settlement mechanism,
— the impact of the WTO regime on preferential trade agreements favouring SCs, which will be illustrated at the example of the renegotiation of Lomé,
— preshipment inspection,
— co-operation of the WTO with the Bretton Woods twins
— Trade Related Investment Measures (TRIMs).

It is still too early to judge developments in the fields of environmental and social standards, although first actions to tackle them can be documented. Some countries noted with concern that the EU's GSP system, e.g., contains eligibility criteria relating benefits to environmental protection, labour conditions or the fight against drugs (WTO 1997f: 10). The argument that this is a voluntary scheme to support such efforts seems extremely shaky, as no such exemption to the MFN clause exists. It remains to be seen whether the EU will be challenged under the dispute settlement procedures and with what result.

Finally, the paper discusses the self-declared role of the WTO, its self-perception as an agent of neoliberalism. This perspective helps to understand its effects on the South.

## 1. Textiles and Clothing

The Cotton Textile Agreements of the early 1960s already stipulated that restrictions, declared necessary to facilitate adjustment of IC-economies, would be temporary. The "desire" of protectionist ICs to provide growing opportunities for SC-exports was officially stated. Each MFA was a "temporary" measure, followed by the next MFA, equally temporary but with stricter restrictions (cf. Raffer 1997a). The stipulation to phase out restrictions against SC-exports of textiles and clothing is thus nothing new, but simply more of the same. As the first results of "liberalisation" under WTO auspices show there is little justification to assume that ICs will not again renege on their contractual obligations.

The new schedule abolishing trade restrictions in textiles and clothing is so backloaded that UNCTAD (1995a: 12) expected "a modest dimension of trade opportunities" to become "perceptible" in 2002 at best. Major restraining countries can fulfil their obligations under the Agreement in the first two stages without touching MFA quotas. Fully in line with the treaty, integration programmes for stage one listed products that had not been subject to restrictions anyway. Statistically unclear information was provided or dubious practices were applied to boost percentage figures. Nevertheless some ICs fell short of the 16 per cent obligation as UNCTAD (1995a: 12 f) pointed out. But the Textiles Monitoring Body finally found everything all right, officially declaring that at least 16 per cent of the total volume had been liberalised as agreed. It observed, however, that with one exception – one product imported by Canada – none of the "liberalised" products had been restricted before (WTO 1996a: 96). The first stage did not lead to trade liberalisation. As percentages are stipulated in volume terms the US will liberalise less than 30 per cent of the value of its 1990 imports until the end of the transition period (UNCTAD 1995a). Nevertheless the US invoked Article 6 (transitional safeguards) on 24 occasions in the first half of 1995 alone (WTO 1996a: 96). In two instances, when the Textiles Monitoring Body found no serious damage to US industry "but had not reached consensus on whether there was actual threat thereof, the US kept the unilateral restraints ... in place" (ibid.). It must be expected that the US will interpret its national law unilaterally without caring about the Textile Agreement. Bilateral arrangements, such as on export licences or quota flexibility provisions, are fully legal (WTO 1996a: 97). Thus the hoped for protection against bilateral pressure is not necessarily granted.

India rightly took the logical step of linking its own tariff concessions to progress according to schedule by the North. Other SCs would be well advised to follow this lead. Those ICs most protectionist with regard to textiles disliked



this move. In July and August 1997 the US, the EU, Canada, Switzerland, Australia, and New Zealand requested consultations on quantitative restrictions on imports of agricultural, textile and industrial products (WTO 1997e: 3).

Before the first WTO Ministerial Conference in Singapore a number of textile exporting SCs complained over the implementation of the Agreement to the Council on Trade in Goods. Pakistan listed ten major concerns, also on behalf of the ASEAN countries, India, Hong Kong, and Korea, including the following (WTO 1996b: 3):

— With one (!) exception [see above] the first phase covered only products that had not been subject to MFA restrictions. It was therefore commercially useless to exporters.
— Major importers had changed rules of origin to create uncertainty for trade in this sector or invoked a large number of safeguards, although they should be used sparingly according to the Agreement.
— The Textiles Monitoring Body (TMB), which supervises implementation, "should be improved through greater transparency and ensuring impartiality in decision making" (ibid.). In Singapore SCs expressed concern "that, to retain the confidence of all members, there was a particular need to make the TMB's work more transparent, notably in explaining the reasons behind its decisions, and to ensure its members really participate in their personal capacities rather than as representatives of their countries so as to ensure impartiality" (WTO 1997a: 23).

These concerns were shared by a number of other SCs. Apparently it was necessary that the Singapore Ministerial Decision admonished the TMB to "make findings and recommendations whenever called upon to do so under the Agreement" (WTO 1997a: 9) as well. This does not suggest proper legal relief for all member states.

ICs see the situation differently: "The EC underlined the political and economic difficulties in this sector, adding that its level of ambition would have to take into account market opportunities provided to EC exporters." (ibid.) This view is fully shared by the US. Domestic laws of some major Northern importers have linked their own liberalisation measures with a further opening of Southern textile and clothing markets, something not allowed by the Agreement. In the case of the US Southern importers are thus forced to remove all non-tariff trade barriers within three years (UNCTAD 1995a: 23) – quite a contrast to the transition period of 10 years considered hard to implement by the North themselves after decades of increasingly strict protection. As the Arrangement stipulates liberalisation by importers without further conditions according to the agreed scheme, it was broken on coming into existence.

SC-exporters pointed out that "their tariff schedules conformed with commitments agreed in the Uruguay Round, and that no complaint had been made in the relevant WTO bodies" (WTO 1997a: 23). This statement was not contradicted by ICs, which can only mean that it is fully valid.

Reviewing the EU's trade policies and practices the Trade Policy Review Body noted with regard to textiles (WTO 1997f):

> A number of participants regretted the high incidence of anti-dumping, the concentration of recent actions on textile products and the use of anti-circumvention provisions; the combination of high tariff protection and quota limitations for textiles with extensive use of anti-dumping actions added further uncertainty in access to an already protected market.

The EU's representative simply claimed that anti-dumping measures were "intended to restore fair trade and were in conformity with the WTO" (ibid.). He denied any specific targetting of sectors or exporters: "While special regard was given to developing countries the Commission could only accept constructive solutions which remedied injurious dumping." Regarding Textiles and Clothing and the considerable backloading of restrictive items he noted that the sector was in the process of re-integration into the GATT, and that the EU's schedule was wholly consistent with its obligations. The EU would review its Stage 1 integration in line with the recommendations of the Textiles Monitoring Body.

Assuming for the sake of the argument that Article 9 of the Agreement on Textiles and Clothing will be obeyed and restrictions will end – an assumption not encouraged by its short history and the substantial backloading – even then ICs would have enjoyed "necessary" protection in one small part of their economies for up to about seven decades, while SCs are required to open all sectors of their economies much more radically and much more quickly to "free" trade. ICs cannot adjust one small sector to "free" trade as quickly as they want and with the help of the Bretton Woods Institutions (BWIs) make SCs adjust. The fact that the US has not been able to adjust one relatively small sector of its economy since 1935 must be recalled. Even measures openly called "GATT-inconsistent non-MFA restrictions" are allowed 10 years of phasing out (UNCTAD 1995a). This must be kept in mind if one evaluates special provisions for SCs, such as "longer" implementation periods in the Agreement on Agriculture.

If adjustment is so difficult a process that the richest and economically best developed countries need decades for one small part of their economies, how can they *bona fide* insist on SCs adjusting with such speed? If the social effects of liberalisation in the sector textiles and clothing are unacceptable, why should the consequences of present Structural Adjustment speedily opening whole economies be acceptable? If remedies against potential increases in imports and potential market disruption make sense in one part of the world, why are similar clauses not part and parcel of Structural Adjustment programmes by the BWIs as well as of policies of the Countries in Transition? Comparing these two types of adjustment Raffer (1997a) proposed Structural Adjustment of SCs to emulate IC-adjustment in Textiles and Clothing: escape clauses stipulating that, say, liberalisation of imports has to be stopped contingent on defined increases in unemployment or that budget cuts of social spending have to be reduced contingent on increases in child mortality. The concepts of "minimum viable production" or of "cumulative market disruption" could be used. Based on the argument if the cup is full one more drop can cause it to overflow ICs have used this concept to be able to restrict imports of any products irrespective of the quantity actually imported. Seen technically, any SC facing balance of payments problems could apply this concept immediately by restricting those additional imports which are the last drops of water. Following the example of ICs one could think of applying restrictions only to IC-exports, exempting South-South trade. The example of ICs in the first stage of liberalisation in textiles and clothing suggests a first stage of Structural Adjustment, where sectors subject to no restrictions could be liberalised, or the government could stop intervening in branches where it has not intervened anyway. Unless one wants one law for the rich and another one for the poor that proposal should meet general approval by ICs.



In contrast to Textiles and Clothing where "liberalisation" cannot proceed slowly enough, information technology products are to be liberalised quickly. Starting 1 July 1997 ("first cut") duties will be completely eliminated by 1 January 2000 (WTO 1997b: 3). Such speed is easily explained by the fact that Japan, the US, and the EU are the largest exporters accounting for nearly half of global exports. Their exports were 1.5 times the amount of those by the next seven top ten exporters in 1995, and information technology exports have grown significantly faster than world merchandise exports.

## 2. Net Food Importing SCs

Higher food prices expected due to reduced export subsidies prompted ICs to promise relief to net food importing SCs. Help had to be stipulated before signing the Agreement on Agriculture. Its Article 16 demands measures in favour of net importing SCs and LLDCs as provided for within the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries (NFIDCs). This Decision recognises "negative effects in terms of the availability of adequate supplies of basic foodstuffs from external sources on reasonable terms and conditions, including short term difficulties in financing normal levels of commercial imports of basic foodstuffs." Facing increased import bills at a time of scarce convertible currency these countries were thought to be very adversely affected. The upsurge of agrarian prices starting in the very year the Final Act was signed illustrated the problem.

The WTO produced a list of NFIDCs. But being listed does not "confer automatic benefits since ... donors and international organizations concerned would have a role to play" (Committee 1996: para 10). Unlike negative effects benefits do not result automatically from the treaty but are subject to unspecified conditions.

The Decision sees the solution for net importers experiencing difficulties financing commercial imports in getting money "in the context of adjustment programmes". Doing so increases the strong dependence of debtor countries on the BWIs. Financing expensive food imports by increased borrowing is not necessarily good advice to debt ridden countries already unable to service debts on time and amassing huge arrears. New multilateral loans for consumption, necessarily increasing the debt overhang, will certainly not alleviate this problem.

The WTO approached the IMF and the IBRD to discuss improved conditions of access to existing facilities, a softening of conditionality, new facilities for net food importers, and "ways in which the WTO could assist the IMF and the World Bank to be more forthcoming in these matters" (Committee 1996: para 17). Such assistance was not welcome. Although SCs expressed their disappointment regarding the accessibility of existing facilities the BWIs simply referred to the range of available facilities, denying the necessity of new, Uruguay Round related ones. Obviously, low conditionality finance is considered unnecessary. As nothing changed no relief was given.

In contrast to the Decision's wording, difficulties of most food importers will not be short term problems, comparable to a phase of illiquidity quickly overcome. *Ceteris paribus*, higher food import prices are likely to create a permanent additional demand for foreign exchange, compounded by impacts of lop-sided liberalisation. This non-transitory effect calls for other measures than relatively short term multilateral loans. Compensatory measures could be financed by ICs from the large overall gains from trade liberalisation and the reduction of expensive agrarian subsidies to compensate some losers of the Uruguay Round.

A Food Import Facility could be established easily at the WTO, as proposed by Raffer (1997), working as a contractual insurance scheme without conditionality, like the original Stabex in Lomé I. Conditionality must not creep in eventually as it did with Stabex and the IMF's Compensatory Financing Facility. Knowing that transfers are temporary should be an incentive to use them properly. As a measure against abuse of funds, recipients themselves could monitor their use in the way the US allowed self-monitoring by recipients under its Marshall Plan. This successful precedent should be copied (Raffer/Singer 1996: 197 f.) both in this case as well as for development co-operation in general.

Furthermore, differential treatment regarding export credits and consideration by ICs to improve agricultural productivity and infrastructure by aid were agreed on. It must be questioned whether these are really going to reduce their own export outlets in net-importing SCs by subsidising competing agricultural production there. Article 10.4 of the Agreement on Agriculture meant to avoid that food aid may be used to circumvent export subsidy commitments, indicates a clear concern for retaining export markets. The permission to subsidise the destruction of food ("definitive permanent disposal" of livestock) pursuant to para. 9 (b) of Annex 2 indicates a clear interest in managing the market. SCs would thus be well advised to make good use of exemptions such as for the purpose of food security or the provision of foodstuffs at subsidised prices (the latter is considered to be in conformity with para. 4 of Annex 2 by the text). The general problem apart, how such programmes can be implemented with "no, or at most minimal, trade distorting effects or effects on production" (Annex 2: para. 1), debt ridden SCs are unlikely to be able to finance such schemes on a level sufficient to safeguard food security. Nor are the BWIs likely to allow such policies by their clients.



The Committee (1996) on Agriculture recommended efforts to establish a level of food aid sufficient to meet the legitimate needs of SCs during the reform programme, when renegotiating the Food Aid Convention. The Singapore Ministerial Conference adopted recommendations. At present the only trace that can be found are "provisions ... for account to be taken, *inter alia*, of the recommendations of the Singapore Ministerial Conference regarding food-aid levels and concessionality guidelines" (WTO 1998a: 85) within the renegotiation of the Food Aid Convention. It remains to be seen to how much economic content (i.e. help) that will boil down to.

## 3. Dispute Settlement: First Experiences

A new, equitable and efficient dispute settlement procedure was one important argument in favour of the WTO. In exchange for a better functioning WTO-arbitration the US had promised to use this procedure instead of unilateral measures implemented in violation of GATT, such as Super 301. The US had justified its repeated breaches of contract by complaining about the long procedures of GATT arbitration as well as its non-binding nature.

But the very wording of the Understanding on Rules and Procedures Covering the Settlement of Disputes gave already raise for concern. Raffer (1995) drew attention to its Article 3.7, which explicitly established the probability of success, not the impartial rule of law, as the guiding principle: "Before bringing a case, a Member shall exercise its judgement as to whether action under these procedures would be fruitful. The aim of the dispute settlement mechanism is to secure a positive solution to the dispute." The fact that the authorisation to suspend concessions against the violating member – rather than suspension of concessions and obligations by all other members – is the last resort, or that compensation for damage inflicted by breach of contract is voluntary further fuelled concern that big players would be allowed to go on bending rules with impunity.

Experience has fully justified skepticism. Conducting its review on the US in November 1996 the WTO's Trade Policy Review Body expressed "a general dissatisfaction with the continued unilateralism inherent in 'Section 301' legislation" (WTO 1996c: 16), questioning in particular the WTO consistency of the Helms-Burton Act (penalising third country's investments in Cuba) and the Iran-Libya Trade Sanctions Act. The US "saw Section 301 as a means for communication of exporters' concerns" (ibid.), continuing to resort to it (cf. WTO 1998a: 79). Apparently the promise of replacing (Super) 301 by WTO dispute settlement was not kept. The WTO's (ibid.: 22) statement that "bilateral approaches to trade have been brought under multilateral control" is contradicted by the very same source some pages later.

The Helms-Burton Act (officially: "Cuban Liberty and Democratic Solidarity Act") illustrates the WTO's limits with utmost clarity. The US threatened that "the WTO panel process would not lead to a resolution of the dispute, instead it would pose serious risks for the new organization" (WTO 1996d: 2). Following US "advice" to "explore other avenues" (ibid.) the complaining EC "requested" the panel to suspend its work in April 1997. While Helms-Burton is a clear violation of US obligations under the WTO one could as well call the EC's move illegal pursuant to Article 3.7 due to its evident unfruitfulness. In any case, the present solution means that Helms-Burton will not be applied to the EU. When Massachusetts followed suit, passing a similar law, the EU and Japan took the case up again although other members were affected again as well. The US "expressed regret" (WTO 1998b: 7), but did not block the establishment of the panel – possibly so because of US export business interests opposing Massachusetts's law and similar bills as well.

It must be recalled that the US created a committee to secure "that the dispute settlement process ... works as we expect it to work" (Senti 1998). Should three cases be solved in a way deemed unsatisfactory by the US any member of Congress has the right to demand that the US leave the WTO. By far the leading complainant with 34 per cent of cases by 19 August 1997, the US insists on choosing whether to comply itself with decisions or not.

Panels requested by a member can simply be refused. US tax treatment of Foreign Sales Corporations subsidises exports in a way considered a breach of contract by the EU. After unsuccessful consultations the Europeans requested a panel: "This request was denied at the DSB meeting on 23 July 1998, because of US opposition" (WTO 1998a: 117). The EU, however, reiterated its request, and the panel was established on 22 September 1998. The US is not the only member whose opposition counts. The panel requested by the Americans on granting copyright and neighbouring rights by the EU was denied on 22 January 1998 "because of EC opposition and [the demand] has not been renewed as of 31 July 1998" (ibid.).

Less powerful members, such as SCs, are much more likely to comply with rulings, particularly if advised to do so by the WTO in co-operation with the Bretton Woods Institutions (BWIs). Senti (1998) even argues that existing power relations make small members extremely reluctant to use the dispute settlement mechanism, citing threats of boycott against Swiss banks by New York and California as potential violations that might have been challenged by a stronger member. This might also be a consideration for SCs thinking of challenging the EU's GSP.

Rather than creating a level playing field WTO dispute settlement is likely to provide new opportunities to exert pressure on weaker members based on or under the cloak of legal arguments. Of the first 100 cases SCs filed 31 and were subject to 37 complaints. Quantitatively the procedure has mostly been used between ICs so far. But cases such as the Indonesian "national car" or Brazil's aircraft industry – an industry subsidised in one way or the other by all producing



countries – show that the mechanism is well used by ICs against competing SC-producers.

In the case of textiles and clothing complaints have to be presented to the Textiles Monitoring Body – on whose functioning concern was already expressed – before invoking the WTO's dispute settlement mechanism. As this Body is required to take all decisions by consensus (members appointed by countries involved in the unresolved issue are exempted) this is likely to prevent effective and speedy resolutions of disputes in this field where speedy solutions are not in the interest of the North. UNCTAD (1995a: 25) feared that this may result in a repetition of bilateral deals practised under the MFA and weaken multilateral discipline.

Basically WTO arbitration seems to be now where the GATT already was. Senti (1998) points out that there were eight cases of arbitration under GATT where the US and the EEC rejected decisions, but only one case of a small country (Cuba).

## 4. Preferential Trade Arrangements: Cleansing Concessions of the Past

The new WTO regime shaped by the EU and the US is apparently used to cleanse trade relations from disliked historical obligations. Lomé, a treaty including far-reaching trade concessions, whose renegotiation is being prepared, is particularly well suited as an illustration.

Pushed by fear of nascent Third World power in the 1970s – "anxiety" in the European Commission's (1996: 9) more diplomatic language – Lomé I granted many privileges to ACP countries which the EU has been keenly rolling back over the years. Before Lomé I associated countries had to grant preferential treatment of European exports – "reverse preferences". Due to ACP and US pressure Lomé I had to discontinue this practice, as agreed with the US in the informal "Casey-Soames" understanding. While in line with the principle of unilateral preferences for SCs generally accepted in 1973 and legalised by the GATT, this was not what Brussels had wanted. WTO-conformity is now the means to re-establish reverse preferences, which the Europeans had wished.

Under WTO rules Free Trade Areas (FTAs) – presently proposed by the EU as the alternative to the Lomé system and serving European export interests better (Frisch 1996: 68) – must include substantially all trade. Although it is not quite clear what that precisely means ACP countries would have to liberalise considerably to comply, thus granting EU-members substantial advantages. Declaring its strong economic interest the Commission (1998: 18) hopes that European firms "themselves under the pressure of globalization" would benefit greatly. SADC countries for instance would have to liberalise to an extent, which even the Commission (ibid.: 13, English in the orig.) thinks "politically ... certainly not defendable and would even run counter to the principle of asymmetric liberalisation, as conceived by the Commission".

Naturally, the Commission (1998: 28) does not consider liberalising its system of agrarian protection. Sensitive products, such as rice, will remain as protected as before, regardless of ACP-export potential. Rightly, the Commission does not foresee noteworthy impacts of FTAs on its Common Agricultural Policy. Splitting up the ACP group (formed against European perceptions in the 1970s) into FTAs would allow fulfilling the demand of including substantially all trade while accommodating the EU's protectionist interests more easily. Each FTA could liberalise sensitive products not exported by developing members, while remaining restrictive precisely where a SC could actually export. By contrast, one FTA for the whole ACP-group would not allow such fine-tuning to exclude competitive exporters – any product could only be liberalised for all ACP members.

The Commission (1996: 34) notes that Lomé needs a WTO waiver unlikely to be achieved for any new convention, emphasising the need "to achieve respect for the relevant WTO rules" while "securing to the extent possible the benefits provided through the commodity protocols". The precise meaning can be guessed from a passage on the challenges of Caribbean countries, which includes "the move away from trade protection (bananas, sugar, rice etc.) to open, competitive trade" (ibid.: 32a).

The WTO ruling on bananas may signal the beginning of the unwinding of all commodity protocols. Producers fear that maintaining their market shares on duty free preferences alone – temporarily covered by a WTO waiver – would at least be very difficult. It remains to be seen whether the main scope of the banana protocol, to secure present treatment, will be able to survive much longer. Preferential access to the European market for sugar and rum at prices much higher than world levels are unlikely to survive WTO scrutiny. The unique but costly arrangement of guaranteed prices connected to intra-EU levels and of guaranteed purchases of sugar can be abolished elegantly because goal posts were moved from outside the playing field of new Lomé negotiations, avoiding e.g. the political embarrassment of denouncing the Sugar Protocol pursuant to Art. 10. Referring to the *Green Paper* in a report on EU-Barbados co-operation the *Courier* (No. 164, July–August 1997: 29) speaks of the necessity to discontinue preferences on sugar and rum, which are "the most important benefit of the Lomé Convention". Contending that these privileges postpone adjustment, Barbados's Prime Minister has already accepted change.

The EU did not try to protect the Lomé model during the WTO negotiations. It did neither demand special rules governing North-South co-operation, nor apparently try to get a proper waiver for a future Lomé V. Nor did it oppose the banana panel as fiercely as it apparently could have done. The results happen to be in the EU's interest. Re-establishing the initial perceptions of the EU, finally undoing disliked remnants of the past with the help of the WTO, present evolutions must be welcome. Naturally, the need for WTO-conformity is not limited to Lomé. It also applies to other treaties with SCs. The WTO thus reduces the possibilities of granting trade concessions in the future, and thus of preferential treatment of SCs.



## 5. Preshipment Inspection: A Small Victory of the Market Mechanism

The Agreement on Preshipment Inspection was of particular importance to SCs, but met stiff resistance, especially from the US and the UK. US exporters urged their government to withdraw trade privileges from SCs using international, private inspection companies to check fraud. UK exporters, too, complained bitterly about price comparisons made by these private consultants (Lapper 1987). The GATT (1992: 32) mentioned preshipment inspection under the heading *Non-Tariff Trade Barriers*, defining it as "the use of private firms to check shipment and invoicing details where countries cannot do it adequately themselves".

Checks on quantity and quality of products delivered are essential for the functioning of any market system, as the market model rests on informed purchasers. But an Agreement explicitly allowing even SCs to follow routine trading procedures, inspecting what they buy, apparently carried things too far. Considering that SCs unable to check have routinely been overcharged – Yeats (1990) proved for African countries up to 120(!) per cent for relatively homogeneous, simple products (iron and steel) – the right to check should be beyond discussion. It would doubtlessly be, if ICs were actually interested in market principles. Instead, the competence and efficiency of private business, the unchallenged darling of all ICs unless private business works for SCs, was put into doubt.

SCs applying preshipment inspection report positive experiences. Ghana for instance could save foreign exchange and increase customs revenues by 33 and 38 per cent, to $ 32 million and $ 110 million respectively in 1996 (WTO 1997d: 20). A number of WTO-members, such as the US, the EU, but also Korea, expressed concern. The US complained that "many PSI inspectors ... lacked the necessary language skills, which led to misunderstandings and confusion" (ibid.). Assuming that these inspectors were hardly unable to communicate properly in their own languages, this deserves quoting. The US would hardly use any other but its own official language when processing imports, but complains when other countries act in the same way.

Meanwhile the situation seems to have calmed down. The Independent Entity to resolve disputes became operational on 1 May 1996. "As of July 1998, no application for a case had been received" (WTO 1998a: 95). It appears that this small victory of the South could be preserved.

## 6. Co-operation with the BWIs

Co-operation with the IMF was already stipulated in Article XV of GATT 1947, but the WTO has strengthened co-operation with both Fund and IBRD. While the formal relationship with the Fund derived primarily from the provisions of balance of payments restrictions under GATT 1948, "formal relations between the WTO, the IMF and the World Bank now encompass a larger range of issues" (WTO 1998a: 134). On 9 December 1996 an agreement between the WTO and the IMF was signed in Singapore as "the basis ... to achieve greater coherence in global economic policy by cooperating with the IMF as well as with the World Bank" (WTO 1997a: 24). The WTO expected "that work will start soon to address issues related to better coherence in global economic policy making, an area where the WTO, the IMF the World Bank each have a distinctive role" (ibid.).

Stressing "the desirability of external liberalisation and domestic deregulation" (WTO 1998a: 23). Trade Policy Reviews second to embed the Washington Consensus firmly in SCs – "a virtual global consensus on the fundamentals of trade policy reinforces economic and political liberalization and lessens the risk of reversion to the old ways" (WTO 1996d: 6). The process of market opening could be "kept on track", even in East Asian crisis economies:

> most countries in Asia have accepted, either unilaterally, as part of IMF-sponsored adjustment programmes, or as a result of recent sectoral negotiations in the WTO and in APEC, substantial liberalization – and commitments to further liberalization – of their trade and investment policies. (WTO 1998a: 27)

Not without pride the WTO adds that Indonesia, the country most severely affected by the crisis, liberalised most. If the whole WTO-IMF package is implemented as planned Indonesia "will have one of the most liberal trade policy regimes of all developing countries" (ibid.). If the WTO is right about the "virtual elimination of non-tariff barriers to trade", though, it would also be more liberal than virtually any IC.

Indonesia could have increased its average applied tariff by 25 per cent without breaching its WTO obligations but did – convinced by whatever means – not do so. The steep fall of the rupiah, which increased imports costs drastically, may be one reason why higher tariffs might have been considered unnecessary. Though "not extensively used" in South East Asia selective tariff increases by some Asian countries remaining within the gap between bound and applied tariffs, thus "within the flexibility allowed by bindings under the WTO agreements", nevertheless "give cause for concern to the extent they may distort the pattern of production and trade" (WTO 1998a: 28) In contrast to IC-policies regarding Textiles and Clothing, using one's contractual rights raises the WTO's concern if done by SCs (cf. also ibid.: 23). Similar concern on potential distortion by the Agreement on Textile and Clothing was not expressed by the WTO, nor with regard to the rather long phasing out period of GATT-inconsistent restrictions.

Like the BWIs the WTO exercises pressure for liberalisation and deregulation asymmetrically. This is no surprise, as it is naturally easier to do so vis-à-vis weaker countries unable to pose serious risks for the new organisation. Fears of increased pressure on SCs resulting from the new co-operation between the WTO and the BWIs, which had been expressed before the WTO was established, have not become unfounded. Co-operation seems to work asymmetrically too. When the WTO spoke out in favour of relief for net food importing SCs



its view was simply disregarded by the BWIs, while co-operation in favour of stronger liberalisation and deregulation of SCs works much better.

Co-operation worked quite well, on the other hand, in the case of India. The IMF informed the Committee on Balance of Payments Restrictions that India had no longer balance of payments problems, which was quite useful for the US and the EU complaining about India's import restrictions (WTO 1997f: 3). The EU expressed its special satisfaction because India had "frontloaded" the phase-out period of restrictions, i.e. done exactly the opposite of what the EU does under the Agreement on Textiles and Clothing.

## 7. Trade Related Investment Measures (TRIMs) – The Indonesian Car

These rules contain substantial restrictions on SCs, enforcing the obligation of national treatment of foreign investors in the field of goods. They deprive SCs of important policy options, such as the use of national laws as bargaining chips in negotiations with transnational enterprises, or fostering their own infant industries by demanding domestic inputs in production. TRIMs are not clearly defined, but the annex of the Agreement explicitly prohibits any local input requirements, restricting a transnational's access to foreign exchange in percentages of inflows attributable to it, or export restrictions.

The South is deprived of important policy options still available to successful "tiger" economies, as the IBRD (1993: 33) summarised in its study on the "Asian miracle". Noting increasing pressure on SCs to refrain from interventions violating international trading rules such as GATT it concluded "export subsidies and directed credits linked to exports ... are incompatible with a changing world trade environment". Empirically successful options for development are now ruled out for "latecomers". The Bank supports this, feeling anyway that the elaborate intervention systems of Japan, South Korea or Taiwan should not be copied by other SCs.

As could be expected, Indonesia's domestic car programme became a prominent case under TRIMs. On 12 June 1997 the Dispute Settlement Body established a single panel to deal with complaints by the EU and Japan. On 30 June the US joined. The dispute concerned three sets of measures (cf. WTO 1998: 109):

- the 1993 Incentive System conferring import duty relief and sales tax reductions for car parts and components contingent on the satisfaction of local content requirements
- "Pioneer" (or National Car) company status, also based on local content requirements, entitling to exemptions from import duties and to sales tax exemptions
- the National Car Programme's provision of "Pioneer" benefits for cars manufactured in a foreign country by Indonesian nationals that meet certain local content requirements.

The complaints were not restricted to the TRIMs Agreement. Indonesia's policy was challenged under other provisions as well. Japan and the EU argued that these measures were also inconsistent with the GATT 1994, and the Agreement on Subsidies and Countervailing Measures (WTO 1997d: 6). Indonesia had to accept the obvious – local content restrictions are one of the very few explicitly named and outlawed measures – admitting that the TRIMs Agreement was violated. The Indonesian car example is also a fine illustration of the co-operation between the WTO and the BWIs. Although it disagreed with some conclusions of the panel the country did not appeal "in the light of its IMF commitments and the subsequent termination of its National Car Programme" (WTO 1998c: 8) – another good illustration of WTO-BWI co-operation.

The decision was to be expected, as the treaty is very clear in that case. Infant industry protection, once considered necessary by ICs for their own nascent industries, is now strongly reduced for SCs at comparable stages of industrial development. "Japan said it understood Indonesia's desire to build its national car but believed this could be carried out in conformity with the WTO" (WTO 1997c: 3) – a statement one might qualify as cynical under the circumstances.

## 8. The WTO's Self-Description and Neoliberalism

Arguing that liberalisation and deregulation would increase welfare the WTO puts particular emphasis on trade. To back up its arguments it often compares growth rates of GDPs or GNPs with growth rates of exports, arguing e.g. that "Trade growth has consistently outpaced overall economic growth for at least 250 years, except for a comparatively brief period from 1913 to 1950" (WTO 1998: 33). It fails to mention that two different concepts of measurement are compared. While GDP/GNP is measured on a net-base (accumulated values added), exports are measured gross, i.e. import contents are not deducted. By just shipping one product around the globe from one country to another (exporting it several times) export growth is boosted by double (multiple) counting. Export growth is therefore likely to be usually above GNP/GDP growth where intermediate inputs bought from other producers are netted out.

The WTO has repeatedly presented itself as a means to help and advance "necessary" reforms. But it has seldom been as outspoken as in its *Annual Report 1998*:

> Finally – and perhaps most importantly – the WTO can help provide the response to the central government challenge of our new global age: the fact that governments answer mainly to national constituencies, while increasingly the economic system must answer to global needs. The experience of the WTO, and the way it works via binding commitments reached by consensus, gives some guidance as to how these systemic gaps might be bridged. (WTO 1998: 4)



The WTO declares itself explicitly as an instrument to overrule democratic decisions and to roll back democracy. Measures against the will of constituencies are to be whipped through by entering international contracts. By accepting WTO obligations administrations can undo the electorate's democratic control. Citing international rules they had themselves made, negotiated and signed before, politicians can argue that national laws and decisions have to comply. The self-description of the WTO's shows it as another instrument of present neo-liberal policies. The desire to by-pass and overrule democratically elected parliaments by binding international commitments is one important feature of neo-liberalism.

The North American Free Trade Agreement (NAFTA) is another, arguably even better, example. Its investor-to-state dispute resolution confers the right to sue governments for damages before an international panel of arbitrators, not at national courts, thus treating them like sovereign entities. As the case Ethyl vs. Canada has shown, which forced Canada to abolish a law protecting the environment, law making for environmental reasons, but also in other fields, such as social standards, has been severely impaired by international treaty. After Ethyl overturned the Canadian law other suits – all in the field of environmental protection – were immediately considered by multinationals as IPS reported (*Terraviva*, 4 September 1998). The Multilateral Agreement on Investment, secretly negotiated under OECD auspices for quite some time, but now off the agenda after public protest, planned to confer this right to firms as well. If it had succeeded it would have reduced parliamentary powers substantially. Essentially, this instrument is but a further developed stage of WTO dispute settlement.

Recently, international treaties regarding trade or investments all operate with the same mechanisms: national treatment for multinationals, restrictions on performance requirements, ensuring that host states will not restrict certain investment-related financial transactions, such as transfers of profits, and dispute resolution, i.e. binding arbitration procedures to settle investment-related disputes between states and investors, putting investors even above democratically enacted laws. The potential effects of this kind of arbitration on the environment and social standards cast doubts on the concern for these issues expressed by ICs on other occasions.

The application of the Agreement on Sanitary and Phytosanitary Measures is another contribution by the WTO to rolling back democracy. GATT (1992: 32) cited the "reduction of the adverse effects of sanitary and phytosanitary regulations" as one main goal of the Uruguay Round. The need for scientific justification of measures demanded by the Agreement might have worked out in two ways, depending on the rigour required for scientific justification. In practice it has evolved as a mechanism to open markets even against the wishes of the public, and to shift risk onto consumers. Thus the EU ban on hormone treated meats was judged to be a violation of the WTO regime as the proof of damage caused to human health was insufficient. As long as no hard evidence exists, markets have to remain open. If a drug such as Contergan (that impaired the health of new-born babies severely) were brought on the market today, present practice would not allow precautionary bans. One may even doubt whether scientific evidence would be considered conclusive enough by a WTO panel after the first babies born without arms, because of problems of proving causality without any doubt. In the US this situation might be mitigated by rather specific laws on damage compensation. Law suits often involving prohibitively high sums may act as a certain disincentive and safety mechanism. But this countervailing mechanism does not exist in most countries, nor internationally. In addition, clear and unequivocal declarations and labelling, allowing consumers to decide whether they actually want to buy, say, hormone meat remain unlikely.

Hormone treated meats are not the only case. The idea of challenging the ban of BSE beef at the WTO surfaced. Canada requested consultation regarding imports of asbestos products banned in Europe because of its cancerogenic effects (WTO 1998b: 7). Although it may be too early to say with definite clarity in which way the WTO will evolve, the first cases suggest that the WTO agreement might expose consumers to greater risk without providing full information on the risks involved.

The Maastricht criteria and fines for members not fulfilling them in the future are another piece in the neoliberal mosaic. The European Union has locked-in present neoliberal policies, practically excluding Keynesian policies for the foreseeable future. For the first time in history an institutional penalty on Keynesian policies was agreed on. Anti-Keynesianism was successfully institutionalised, making it next to impossible for future democratically elected governments to change economic policy, even though unemployment is one of the major problems of practically all EU members.

The technique of binding future governments and of resctricting democratic change can be seen in all treaties of this new generation. Long periods between withdrawal and termination of all contractual obligations make change extremely difficult. The MAI foresaw 15 years, which means that nations would be bound for several election periods. Several future governments would be restricted in their possibilities to revise investment policies. They would have to continue to abide by the agreement even if there existed strong evidence of destructive impacts. If any of these governments signed the treaty again, the process would have to start anew, making discontinuing these obligations virtually impossible.

This anti-democracy bias also shows at other, less important examples. The Mexican government suppressed an open and fair discussion on the NAFTA treaty. In the US fast track legislation was used, which reduces the influence of legislators considerably. The necessary new laws after her accession were whipped through Parliament so quickly in Austria that representatives publicly confessed that they did not even have the time to read what they voted for. Democracy is rolled back and the state is reduced far beyond what liberals in the 1930s considered legitimate.

As the example of Lomé has shown, regional treaties can prepare the ground for further concessions from countries, which could eventually become part of new WTO treaties. The WTO (1998: 29) sees a positive role of regional agreements as mechanisms to "'lock in' and even extend the multilateral liberalization achieved in the Uruguay Round". This is already happening. Both the EU's base for negotiations on the future of Lomé and the US *African Growth and Opportunity Act* pose demands going beyond WTO obligations and those of the IMF. The Commission (1998a: 21) wants to bring environmental and social standards, which were largely kept out of the Final Act, into post-Lomé. Further reciprocal liberalisation in services is demanded (ibid.: 27). Because of differences in the competitivity of service industries the results are foreseeable. The EU even prepared the field for making ACP countries accept unspecified future multilateral treaties. The Multilateral Agreement on Investment, not negotiated by ACP-countries and still on the agenda at that time, would have fit the description perfectly. In spite of diplomatic language ("examining the opportunity", Commission 1998a: 29, "consider applying" in the English version) one cannot help thinking of blank cheques the ACP-side is supposed to sign.



Liberalising and deregulating at any cost seem to be the WTO's agenda. Therefore it calls for more liberalisation and deregulation, which had provoked the Asian crash, favourably commenting on APEC's agreement on "a 'fast track' trade liberalization programme" (WTO 1998: 29). While heavy criticism of the bail-out of speculators was widespread and heard from conservatives as well, the WTO remained absolutely silent. It commented particularly favourably on the "landmark agreement on financial services" (WTO 1997f), also signed by Asian countries hit by the crisis, even though it has to acknowledge that "China (which, with a non-convertible currency largely isolated from speculative attack)" (WTO 1998: 26) is doing comparatively very well.

As the example of Textiles and Clothing proves, the WTO shows more understanding for less quick liberalisation, when this is in the powerful North's interest. If liberalisation itself were actually the aim, this would be inexplicable. However, if one assumes that neoliberal policies, which are policies of redistribution in favour of the rich (cf. for detailed arguments Raffer 1999), are the main agenda, this would immediately make sense.

## 9. Conclusion

Analysing the WTO's first years strengthens concern that the new regime will further compound the disadvantages of SCs. As preshipment inspection shows, SCs did not always lose. But the WTO cannot be expected to guard all members' interests in the same, fair way. It lacks the necessary authority to make powerful members comply, but can be used perfectly as a legal justification for actions against less powerful members.

Concerning the practice of its treaties even the WTO (1995: 22) apparently doubts whether clauses in favour of SCs will be obeyed, warning that agreeing to strengthen multilateral rules and disciplines is not enough: "A willingness to abide by those rule and disciplines, and to adapt them to changing circumstances is also necessary to a credible system."

## Abstracts

*Die bisherigen Entwicklungen bei Textilien und Bekleidung, erste Erfahrungen der Nettonahrungsimporteure des Südens, sowie mit dem Streitschlichtungsverfahren, die praktischen Effekte der WTO hinsichtlich Handelspräferenzen, oder ihre Zusammenarbeit mit den Bretton Woods Institutionen zeigen deutliche, negative Auswirkungen auf den Süden. Die Frage der Inspektion vor Verschiffung ist eine Ausnahme – sowohl der Marktmechanismus als auch berechtigte Interessen des Südens konnten bislang durchgesetzt werden. Die Erfahrung der allerersten Jahre der WTO haben die Sorge gesteigert, daß Entwicklungsinteressen weiter marginalisiert werden und die Benachteiligung des Südens verstärkt wird. Die Selbstsicht der WTO als antidemokratisches Instrument des Neoliberalismus zersteut solche Befürchtungen nicht.*

*Evolutions in the fields of Textiles and Clothing, first experiences of net-food-importing Southern countries, and with dispute settlement, the WTO's practical impact on preferential trade arrangements, or its co-operation with the Bretton Woods institutions show perceptible negative effects on the South. Pre-shipment inspection remains the one field where the market mechanism and justified demands of the South have prevailed so far. The experience of the very first years of the WTO have strengthened concerns that developmental interests will be further sidelined and that disadvantages of Southern countries will grow. The WTO's self-perception as an anti-democratic instrument of neoliberalism does not dispell such fears.*

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*Kunibert Raffer, Institut für Wirtschaftswissenschaften der Universität Wien, Hohenstaufengasse 9, A-1010 Wien*