# International Trade and the Conclusions of the Uruguay Round: a Liberal Critique

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# International Trade and the Conclusions of the Uruguay Round: A Liberal Critique

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## Abstract

After looking at the political compromises embodied in the GATT, it is argued that the Uruguay Round represents continuity, not a radical break, with the major features of post-war trade rule-making: like the original GATT, it is a "mixed systems" compromise between national policy discretion and multilateral constraints, with the balance tipping in favour of the former.

The final section of the discussion presents and contrasts three liberal perspectives on international economic order to shed further light on the contemporary trading system, including the Uruguay Round agreements. It is argued that a "liberalism from above", in political science-based liberal institutionalism and in legal-economic rule-making approaches, would in some respects differ from a "liberalism from below", containing German neoliberal and Hayekian perspectives in political economy and law. These differences touch on the relative importance of national and international levels of policy- and rule-making, and the interaction between the two levels.

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*The great political virtue of multilateralism, far exceeding in importance its economic virtues, is that it makes it economically possible for most countries, even if small, poor and weak, to live in freedom and with chances of prosperity without having to come to special terms with some Great Power.*
Jacob Viner

*The outlook is bad, however, if nations strive after international order while at home they continue to pursue a policy contrary to what is required for it. _______ Is it not starting to build the house with the roof if we subscribe to a falsely understood internationalism, and should not the foundations come first?*
Wilhelm Röpke

## Introduction

After seven years of tortuous, crisis-ridden negotiations the Uruguay Round of the General Agreement on Tariffs and Trade [GATT] was brought to a conclusion in Geneva in mid-December 1993 and signed by the GATT's contracting parties [member-states] in Marrakesh in April 1994. *Prima facie* the results of the Round, embodied in a legal text running to 26,000 pages, represent a veritable and breathtaking success for the survival and flourishing of a rule-based multilateral trade order. Studies carried out by the GATT Secretariat, the World Bank and the OECD estimate that the market-opening measures of the Round could add between $213bn and $247bn to world GDP after ten years, roughly

amounting to 1-1.2% of world GDP.[2]

The foremost objective of this discussion is to evaluate some of the main traits of modern international trade policy, notably the "liberal" content of the Uruguay Round agreements [given that it has been widely advertised as a success for economic liberalism[3]].

The argument commences by setting international trade policy and the Uruguay Round in their proximate historical context: the establishment -- almost by default -- and subsequent evolution of the GATT, including the numerous political compromises involved at the outset and *en route*; and the rise of the New Protectionism that, by the 1980s, threatened to endanger the gains secured by previous GATT agreements. This section thus provides some background on the motivating forces behind the launch of, and the subsequent negotiations during, the Uruguay Round.

The following section reviews and evaluates the main agreements of the Uruguay Round. The third section seeks to shed further light on the contemporary international trading system with the help of a number of liberal perspectives. It concentrates on

[2] Philip Evans and James Walsh, *The EIU Guide to the New GATT* [London: The Economist Intelligence Unit, 1994], p. 3; "The GATT deal" [various articles], *Financial Times*, December 16 1993; "Le GATT enfin", *Le Monde: Dossiers et Documents*, February 1994.

[3] On such optimism surrounding the Uruguay Round conclusions, see Peter D. Sutherland, "Global trade -- the next challenge", *Aussenwirtschaft* 49,1 [1994], p. 7; "Greater wealth of nations", *Financial Times*, December 16 1993.

elements of German and Austrian neoliberal traditions in political economy and law, little known in Anglo-Saxon circles. Finally, it is argued that these approaches furnish in some respects a markedly different critique of international trade, including the Uruguay Round conclusions, than what could be expected either from legal-economic international rule-making perspectives or from liberal institutionalism in international political economy.

## 1. Post-war international trade: the balancing act of liberal institutionalism "from above" and mercantilism "from below"

The main pillars of the post-1945 international economic order -- the Bretton Woods agreements which led to the setting up of the International Monetary Fund and the International Bank for Reconstruction and Development, and the GATT for international trade -- were pragmatic political compromises, intended to reinstitute a *measure of* openness in cross-border economic transactions, but circumscribing such openness in order to allow governments the maximum of autonomy to pursue Keynesian and welfarist policies at home. It is this extraordinary attempt to reconcile "Smith abroad", in the form of liberal international relations for trade and payments, and "Keynes at home", in the form of government interventionism, that John Ruggie characterises as the "compromise of embedded liberalism".[4]

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[4] John Gerard Ruggie, "International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order", *International Organisation* 36,2 [Spring 1982], pp. 209-231. For

Nevertheless, it is difficult to see what is so liberal, in the colloquial European as opposed to the American sense, about the compromise of embedded liberalism.[5]

In a typically illuminating article, Jacob Viner encapsulates the prevailing consensus on the negotiations for an International Trade Organisation [ITO] in 1947: "There are few free traders in the present day world, no one pays any attention to their views, and no person in authority advocates anywhere free trade."[6] The remaining in place of the provisional GATT rules in 1947, *faute de mieux* after the failure of the ITO, should be seen as a compromise with a number of illiberal components. The first three guiding multilateral principles of free trade in the GATT Charter -- Most Favoured Nation status [Article I], the joint reduction of tariff barriers on a non-discriminatory basis [Article II] and "national treatment" [Article III][7] -- are immediately followed

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a similar account see Barry Eichengreen and Peter B. Kenen, "Managing the world economy under the Bretton Woods system: an overview", in Peter B. Kenen ed., *Managing the World Economy: Fifty Years After Bretton Woods* [Washington D.C.: Institute for International Economics, 1994].

[5] Perhaps the obfuscating connotation of "liberal" in American parlance [what is "social democratic" in European parlance] has led to the choice of this unfortunate term.

[6] Jacob Viner, "Conflicts of Principle in Drafting a Trade Charter", *Foreign Affairs* XXV [July 1947], p. 613.

[7] The Most Favoured Nation principle requires non-discrimination among signatories, that is to say, the equality of treatment by one country of competing imports from different countries is laid down in the application of tariffs and other agreed rules. Equality of treatment between countries is *sine qua non* for the effective working of the law of comparative costs, so that imports come from the lowest price sources and exports go to the most eager markets. The "national treatment" principle of Article III is another form of non-discrimination, this time not as between competing foreign products [Most Favoured Nation

by a litany of qualifications on and escape avenues from such universal constraints.

Exceptions to the MFN, non-discrimination and national treatment principles are to be found in the "grandfather rights" of the GATT Protocol of 1947, exempting from GATT rules legislation in a country which preceded the signing of the GATT by the country in question; the use of import quotas under Article XI[2] for agriculture and fisheries, and for balance of payments reasons under Articles XII, XIII and XV, despite the general rejection of quantitative barriers to trade [Article XI]; general exceptions on grounds of the primacy of national public policy [Article XX] and national security [Article XXI]; customs unions and free trade areas [Article XXIV]; and waivers from GATT commitments with the approval of a two thirds majority of the GATT contracting parties [Article XXV]. There were a number of excluded and semi-excluded sectors, notably agriculture, services, textiles and clothing, shipping and civil aviation, all judged to be too politically sensitive to be subjected to international rule-bound constraints. Part IV of the GATT, introduced as an amendment to the Charter in 1965, allows developing countries to depart from MFN and unconditional reciprocity, for example by changing a tariff without the agreement of the other contracting parties [Article XXXVI]. Developing countries have had frequent recourse to infant industry protection and the use of quotas to protect their

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status], but between domestic products and foreign products for treatment under a nation's tax and other laws. [See Evans and Walsh, op. cit., pp. 9-10.]

balance of payments under Article XVIII.[8]

It should be clear as daylight from the above checklist that the GATT is not a blueprint for free trade *per se,* rather a delicate balance between the supply of protection by governments for producer groups and the stability of the international trading order. Universal rules apply in order to provide an aperture for trade expansion and prevent systemic breakdown.[9]

The GATT can also be viewed as a tacit compromise between the developed and developing countries, with the former agreeing to wide-scale developing country protection [under Part IV of the GATT] in return for their own protection against cheaper goods from the South, thus spreading rent-seeking among producer groups in both the North and the South. It follows that the asymmetrical influence of import-competing producer groups lobbying governments for protection within nation-states, as postulated by public choice theory, finds expression at the heart of GATT arrangements.[10] The granting of widespread GATT exemptions to the

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[8] Evans and Walsh, *op. cit.*, pp. 130-133; John Jackson, *The World Trading System: Law and Policy of International Economic Relations* [Cambridge Mass.: MIT Press, 1989], pp. 42-43.

[9] Manfred E. Streit and Stefan Voigt, "The economics of conflict resolution in international trade", in *Conflict Resolution in International Trade,* Daniel Friedmann and Ernst-Joachim Mestmäcker eds. [Baden-Baden: Nomos, 1993], pp. 48, 60.

[10] Hans Willgerodt, "Interdependenzen nationaler Handels- und Wirtschaftspolitiken: Anforderungen an das GATT", *Beihefte der Konjunkturpolitik: Zeitschrift für angewandte Wirtschaftsforschung* 34 [1988], p. 20. On a public choice perspective of rent-seeking, see Anne O. Krueger, "The political economy of the rent-seeking society", *American Economic Review* LIV [1974], pp. 291-303; Mancur Olson, *The Rise and Decline of Nations: Economic Growth, Stagflation and Social Rigidities* [New

developing world in the 1950s and 1960s, intended to facilitate the economic planning of newly independent nation-states, represented a major dent in the liberal intent of the GATT. The proliferation of preferential agreements, embodied in the Generalised System of Preferences, further served to downgrade the practical application of the non-discrimination principle. As the post-war period progressed, it was becoming evident that what rule-integrity there was in the GATT was being eaten away by the exercise of discretionary power by both developed and developing country governments.[11]

Given such leeway for the intrusion of national politics in national and international economic affairs, there can be no clear separation between "liberal" foreign economic policy and "interventionist" domestic policy: the latter has primacy, spills over to the international level and distorts comparative costs.[12] The balance of payments is perhaps the most glaring example of the primacy of national prerogatives over international constraints. The various GATT [and Bretton Woods] get-out clauses are intended to "protect" national payments in crisis, in the belief that the calamity is indiscriminately hurled down from the heavens on innocent and unsuspecting governments. As both Wilhelm Röpke and Jacob Viner point out, however, payments deficits are

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Haven: Yale University Press, 1982].

[11] Jan Tumlir, "International economic order and democratic constitutionalism", *Ordo* 34 [1983], p. 75; Jan Tumlir, *Protectionism: Trade Policy in Democratic Societies* [Washington D.C.: American Enterprise Institute, 1985], p. 30.

[12] Willgerodt, *op. cit.*, p. 13.

habitually sparked "from below" through inflationary monetary and full employment policies, with the concomitant temptation to correct the external balance and "repress" the resulting inflation by imposing quantitative import restrictions and exchange controls.[13]

The above interpretation may seem somewhat cynical to a number of international idealists. Many of them would presumably accept the Mafia-like portrayal of national protectionism that public choice theory presents[14], but still display a touching faith in the efficacy of international organisations and rule-bases to limit the damage and advance the cause of economic liberalism. This is another, not to be overlooked, aspect of the post-war compromise: the institutional use of a "liberalism from above" to attack the "mercantilism from below".[15]

Such an attitude has, in the last couple of decades, been evident in the combat against the New Protectionism. Although the GATT has been undoubtedly successful in reducing tariffs, governments

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[13] Viner, *op. cit.*, p. 619; Wilhelm Röpke, International Order and Economic Integration [Dordrecht/Holland: Reidel, 1959], pp. 194-217. The *locus classicus* on "repressed inflation" is Jacques Rueff's *L'Ordre Social* [Paris: Medicis, 1966]. Also see Wilhelm Röpke, "Offene und zurückgestaute Inflation", *Kyklos* 1,1 [1947]; Wilhelm Röpke, "Repressed inflation", *Kyklos* 1,3 [1947].

[14] With the caveat that public choice perspectives cannot be accepted as monocausal explanations of complex political processes -- a warning to economists only too eager to play kindergarten political science!

[15] Of which Lionel [later Lord] Robbins, a member of the British negotiating team at Bretton Woods and a leading liberal economist in his own right, was a forceful early proponent. See Lord Robbins, *Autobiography of an Economist* [London: Macmillan St. Martin's Press, 1971], p. 196.

have increasingly resorted to non-tariff barriers to protect domestic industries from, among other things, the rising costs of social adjustment that result from the phenomenal growth in international trade and other forms of interdependence. Voluntary Export Restraints [VERs], Orderly Market Arrangements [OMAs], anti-dumping actions and the like have passed into the modern trade policy vernacular. These instruments of "managed trade" are less transparent than tariffs and cause more damage than the latter to the MFN and national treatment principles. Unlike tariffs they are bilateral in nature, targeting specific sectors and firms in other countries. They are also quantitative forms of protection, administered in complex and detailed fashion, seeking to construct market outcomes with specific indicators of price and market share. The New Protectionism may be "new" in the use and coordination of both commercial and domestic policy instruments [eg. subsidies, exemptions from antitrust] in a more complex and interdependent world, but its bilateral, results-oriented intent has mercantilist precedents, most recently in the gamut of quotas, bilateral clearing agreements, countertrade and exchange controls from 1931 to the end of the 1950s.[16]

Research shows that producer groups in the E.U. and the U.S., in sectors such as textiles, footwear, coal, steel, agriculture and

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[16] On the New Protectionism see Robert Gilpin, *The Political Economy of International Relations* [Princeton: Princeton University Press, 1986], pp. 204-209; Nicholas Bayne, "In the balance: the Uruguay Round of international trade negotiations", *Government and Opposition* 26,3 [Summer 1991], p. 305; Jagdish Bhagwati, *Protectionism* [Cambridge/Mass.: MIT Press, 1988]. On the precedents for the New Protectionism in the 1930s and in the aftermath of the war, see Röpke, *op. cit.*, pp. 159-162.

electronics, have preferred their governments to use non-tariff instruments over tariffs as means of protection, just as politicians and bureaucrats have, with respect to the same sectors, preferred the use of power in bilateral negotiations to the constraints of multilateral rules and dispute settlement mechanisms. To compound matters, established exporting firms can have a vested interest in the construction of VERs, OMAs and the like, with the prospect of artificially higher prices and profit margins in the restricted market of the importing country, and cartel-like defences against potential competitors in the exporting country. The rent-seeking and cartel-building of the producer groups concerned, aided and abetted by governments at both ends, cannot but impair the openness and transparency of the political process and have a corrosive effect on the domestic law of trading countries -- antitrust regimes being a notable casualty.[17]

A number of economists have shown that such quantitative forms of protection are more damaging to the trading system than tariff protection.[18] It has been estimated that managed trade affected

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[17] Tumlir, *Protectionism, op. cit.*, pp. 40-41, 48-49.

[18] The earlier neoclassical works on trade made the distinction between market-conforming protection -- tariffs that had an impact on the protected sectors and firms without doing serious damage to the price mechanism or to overall flows of international trade -- and market-nonconforming protection -- bilateral, quantitative restrictions that seriously distorted the price mechanism and international trade in general, particularly after 1931. See Gottfried Haberler, *Theory of International Trade* [London: William Hodge, 1950]; Wilhelm Röpke, *International Economic Disintegration* [London: William Hodge, 1942]. On a more recent modern argument related to the New Protectionism, see Kent Jones, "Voluntary export restraints: political economy, history and the role of the GATT", *Journal of World Trade* 23,3 [1989],

nearly a half of total trade by 1980; and it had clearly got to the stage when the perceived threat to the very survival of the GATT was becoming acute.[19] After the relative failure of the Tokyo Round to deal with non-tariff barriers, the New Protectionism became one of the central objectives to tackle in the context of the Uruguay Round.

From the above analysis it can be gleaned that, at the *point de départ* of the Uruguay Round in 1986, there were at least three defining characteristics of the international trading system: first, a broadly "social democratic" compromise that accorded primacy to government intervention in mixed national economies, with inevitable spillover effects at the international level; second, an emphasis on international institutions and rules to carry the flag of "freer" trade; and third, a New Protectionism that was seen as having the potential of bringing the whole house of cards down. All these features should be borne in mind in any political economy evaluation of the Uruguay Round's negotiations and conclusions.

## 2a. The Uruguay Round: an overview

The broad scope and great ambitions of the Uruguay Round not only included the coverage of new sectors [agriculture, services, textiles] and new issue-areas [intellectual property rights, trade-related investment measures, for example], but also

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pp. 125-140.

[19] Gilpin, *op. cit.*, p. 195.

attempted to streamline GATT rules and make them more effective in limiting the discretion of governments to pursue trade policies injurious to multilateral principles. For the GATT system had become unmanageably complex and replete with contradictory modes of operation. Aside from the GATT of 1947 and the accumulation of trade law added to it by successive negotiating rounds, there were the numerous "side agreements" of the Tokyo Round in, for example, anti-dumping, public procurement, subsidies, countervailing duties, civil aircraft and dairy products, as well as the Multi-Fibre Agreement in textiles and clothing, each with different signatories, rules and dispute settlement mechanisms. With increasing interdependence, more and more areas of national "domestic" policy were encroaching on international trade. Governments were engaging in "forum shopping" between the various codes and agreements of the GATT, ducking and weaving to avoid multilateral constraints, particularly when it came to the adjudication of disputes -- there were overlapping jurisdictions and serious legal ambiguities between the dispute settlement mechanisms of the Tokyo Round side agreements and that of the actual GATT. This new *géométrie variable* further diluted the basic structure of rights and obligations of the GATT, particularly the MFN principle. The Uruguay Round can therefore be seen as an exercise in incorporating new areas of what used to be considered "domestic" policy into multilateral rules, placing them all under a single GATT roof and attempting to iron out the distortions and conflicts between different rules -- for example by applying an integrated dispute settlement mechanism to the different areas

covered and thus preventing countries from "forum shopping".[20]

## Tariffs

In keeping with the record of previous GATT rounds, tariffs are to be substantially reduced: a 38% reduction has been agreed on the pre-Uruguay Round tariff average of 6.4% in the developed countries. Tariffs are to be eliminated for pharmaceuticals, construction equipment, medical equipment and paper.[21]

## Agriculture

Agriculture, representing over 10% of international trade, was the most thorny issue-area of negotiations, with major U.S.-E.U. differences evident throughout that threatened to scupper the Uruguay Round as a whole. Only at the very end of 1993 was a bilateral bargain struck between the U.S. and the E.U., and subsequently "multilateralised" into an overall GATT agreement on agriculture.[22]

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[20] Victoria Curzon Price, "New institutional developments in GATT", *Minnesota Journal of Global Trade* 1,1 [Fall 1992], p. 105.

[21] Evans and Walsh, *op. cit.*, pp. 72-73, 94.

[22] On the tortured and highly complicated negotiations *en route* to an agricultural agreement, see *The GATT and Trade in Agricultural Products*, Harvard Business School case no. N9-792-090 [Cambridge Mass.: Harvard Business School, 1993]. There were also a number of interviews conducted with French, German and E.U. policy-makers in 1993, regarding the E.U.'s approach to the GATT negotiations in agriculture, as part of an ongoing research project involving the author and led by Professor Douglas Webber of INSEAD, France.

The agricultural negotiations focused on three areas: market access, domestic price support and export competition. With some exceptions, all non-tariff measures are to be converted into tariffs and the resulting tariff levels reduced by 36% over six years for developed countries and 24% for developing countries over ten years. Some domestic subsidies that were not deemed to be trade-distorting have been placed in a "green box", essentially left to the discretion of the contracting parties. Those domestic supports that were considered trade-distorting have been placed in an "amber box", which comes under GATT rules, with a 20% reduction in support. Export subsidies, the main bone of contention between the E.U. -- particularly the French -- and the U.S. are to be reduced by 36% in terms of budgetary outlays, and 21% in terms of quantities of subsidised exports, over a six year period. Minimum import access to national markets is to be increased to 5%. There is going to be a partial opening of the Japanese and South Korean rice markets. Developing countries are to have a longer period [ten years] to implement the agreements.[23]

This agreement is by no means an unqualified success for multilateralism. Other interested parties, especially the Cairns Group of leading agricultural exporters, which includes Australia, Argentina, New Zealand and Canada, found it very difficult to break the bilateral stranglehold of the U.S. and the E.U.in the negotiations. There are some aspects of the agreement which have more of a whiff of managed trade than free trade.

[23] Evans and Walsh, *op. cit.*, pp. 19-20, 22, 66, 101.

Especially the staged *quantitative* reductions in the volume of subsidised exports [by 21%] can be read as the multilateralisation of what was at base a voluntary export restraint negotiated between the U.S. and the E.U.. Artificially high baseline prices are set for the binding of tariffs, and some of the targeted tariff ceilings provide more protection than the quotas they replace. A number of more sceptical observers regard the accord as a U.S. and E.U. attempt to stabilise a duopoly on world agricultural markets.[24]

Nevertheless, there are silver linings in the cloud. The GATT agreement represents a start, albeit a modest one, in bringing a "difficult" sector, notoriously rigged by government interventions, into the multilateral rule base, with the possibility of further liberalisations to come. Of the $213bn predicted gain to world GDP resulting from the Uruguay Round agreements, $190bn will flow from the liberalisation of agricultural trade, according to a World Bank/OECD study. With world prices projected to rise, net exporters will gain most, particularly North America, Western Europe and Latin America, with losses among net importing countries in Africa and Asia. Nevertheless, with a gradually more open trading environment, there is the longer-term prospect of greater gains for LDC exporters.[25]

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[24] Interviews; also see "Raising the forecasts above mere guesswork", *Financial Times*, April 4 1995.

[25] Evans and Walsh, *op. cit.*, pp. 3, 69-70; interviews.

Services

The final agreement in services leaves much to be desired from a multilateral, liberalising standpoint, mainly due to the reluctance of the U.S. to open many of its service markets on a non-discriminatory basis. The General Agreement on Trade in Services [GATS] provides framework rules for market access and national treatment in rapidly growing sectors -- trade in services is growing even faster than trade in merchandise goods, with the ratio of merchandise trade to commercial services falling from 5:1 in 1982 to less than 4:1 in 1992. The developed countries stand to gain most, with increased access to hitherto highly protected developing country markets.[26]

The U.S. was willing to accord MFN status to some countries, including those in the E.U., but not others, including Japan and a number of developing countries, with whose market-opening offers it was dissatisfied. Thus special provisions are written in for financial services, telecommunications and air transport, departing from GATT principles by the practice of *selective* reciprocity: countries hitherto excluded from MFN status will only be granted MFN access to the U.S. market if they make market-opening offers to the satisfaction of the U.S. authorities. This reservation on the part of the U.S. may, however, be dropped in mid-1995 for financial services if a

[26] Evans and Walsh, *op. cit.*, pp. 88, 90; Harry G. Broadman, "GATS: the Uruguay Round accord on international trade and investment in services", *The World Economy* 17,3 [May 1994], p. 255.

number of adequately attractive market-opening offers by other countries are forthcoming. The recently concluded U.S.-Japan agreement on the opening of the Japanese financial services market raises hopes that this will indeed be the case. Other sectors were left out. There was no agreement on audiovisual services due to U.S.-E.U. differences. And the U.S. was not prepared to liberalise its protected maritime transport sector.[27]

Textiles and clothing

Much of the trade in textiles and clothing has been governed for over 30 years by a combination of tariffs and quotas. The patchwork of bilateral quotas in the sector has come under the framework of the Multi-Fibre Arrangement [MFA] since 1974. The Uruguay Round concluded with a commitment to bring textiles and clothing into the GATT: all MFA quotas are to be phased out over a ten year period and replaced by tariffs. There is a twist to the agreement in the form of a safeguards clause, demanded by the E.U., which aims to protect markets against flooding by cheap imports. In contrast to the general GATT safeguards provision in Article XIX, which enables countries to resort to tariff protection on a *non-discriminatory* basis when a surge of imports threatens to cause "serious injury" to a domestic industry, this

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[27] Evans and Walsh, *op. cit.*, pp. 94-95, 109; Broadman, *op. cit.*, pp. 287-288; Brian Hindley, "Two cheers for the Uruguay Round", *Trade Policy Review* 1994 [London: Centre for Policy Studies], p. 19; "Services: slender success in attacking barriers", *Financial Times*, December 16 1993; "Unfinished business of the Uruguay Round: GATT negotiations on four key service sectors have quietly restarted", *Financial Times*, August 16 1994; "A U.S.-Japan trade deal", *Financial Times*, January 13 1995.

safeguards measure can be applied selectively, that is, on a country-by-country basis. Those countries which are established major exporters in these industries, such as South Korea and Hong Kong, as well as the newer, low-cost exporters like Bangladesh and China, should gain most from the phasing out of the MFA.[28]

## Trade-related investment measures

A trade-related investment measure [TRIM] is an attempt by a national government to place conditions on a company that wishes to operate within its borders. It was the U.S. that pushed for the inclusion of TRIMs on the Uruguay Round agenda, supported by Japan and, in a more lukewarm fashion, by the E.U.. Developing countries were largely opposed, arguing that this represented an intrusion into their sovereign powers and a limitation of their discretion to use discriminatory industrial policy tools to foster economic development.

The final agreement presented the U.S. with a partial victory. TRIMs that are inconsistent with Article III [national treatment], such as domestic content requirements and trade balancing, are banned, as are those inconsistent with Article XI [quantitative restrictions], such as import restrictions, export requirements and controls on the use of foreign exchange for the purchase of imports. The TRIMs agreement is primarily aimed at investment restrictions in developing countries. It also reflects

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[28] Evans and Walsh, *op. cit.*, pp. 24-27, 83.

a U.S.-E.U. compromise, with the most important TRIMs used in developed countries, such as subsidies and grants, excluded from the remit of the agreement.[29]

Trade-related intellectual property rights

The agenda on trade-related aspects of intellectual property rights [TRIPs] covered patents, trademarks and copyright, as well as trade in counterfeit goods. A number of industries, prominently including pharmaceuticals, computer software and designer clothing, had brought pressure to bear on the U.S. government as well as those in the E.U. to get developing countries to tighten their protection of intellectual property rights.

The final TRIPs agreement at the end of the Uruguay Round demands that members apply national treatment and MFN principles to the protection of intellectual property rights [IPRs], with developing countries and the ex-planned economies of Eastern Europe given four years to come into line. Under some circumstances there is the possibility of developing countries having an extra six year breathing space. Pharmaceuticals and agrochemicals are singled out as "new" areas for IPR protection in developing countries.[30]

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[29] On the TRIMs agreement see Evans and Walsh, *op. cit.*, pp. 32-36.

[30] Evans and Walsh, *op. cit.*, pp. 37-41.

In contrast to other Uruguay Round agreements, such as the GATS in services, the TRIPs agreement is fairly strong, in considerable part due to the effectiveness of Section 301 of the U.S. Trade Act: the U.S. has frequently used the latter instrument as a punitive measure against countries with weak IPR regimes. Thus developing countries were forced to choose between escalating bilateral action by the U.S. or a strong multilateral regime that would place greater constraints on such U.S. measures.[31]

Subsidies and countervailing duties

Subsidies represent a major non-tariff barrier to trade. Part of the original GATT compromise between domestic autonomy and multilateral constraints was to make a distinction between export and domestic subsidies, and between primary and non-primary product subsidies. Thus export subsidies on merchandise goods were prohibited under Article XVI, whereas agricultural export subsidies were not.

The final agreement on the subsidisation of non-farm goods has a "red box" of prohibited subsidies, including those directly related to export performance and others given for the use of domestic goods in preference to imported goods. It is interesting to note that there is no such red box for agricultural subsidies [dealt with above]. Developing countries and the ex-planned economies have a seven year transition period for compliance,

[31] Hindley, *op. cit.*, pp. 20-21.

compared to three years for developed countries. As with agriculture, some types of subsidy are excluded from the agreement, that is, placed in a "green box". These include fundamental, "pre-competitive" research and development activities and regional aid policies. This reflects another U.S.-E.U. compromise with a protectionist bias: the use of pre-competitive R&D subsidies is favoured by the Clinton administration as part of its technology policy package[32]; and the E.U. and its member-states use a wide variety of regional subsidies for industrial promotion, a number of which have a trade-distorting effect [for example, "sweeteners" used to attract foreign direct investment to a particular location].

Countervailing duty legislation particularly concerns the U.S.. Such duties are supposed to be used when subsidised exports from another country cause injury to a domestic industry. The GATT rules governing the investigation of a subsidy with a view to the imposition of a countervailing duty have been marginally tightened up, without making a serious dent into present U.S.

[32] Policy-makers often argue that subsidisation of basic, as opposed to applied, R&D is not competition-distorting, given that it is some distance removed from industrial and commercial applications. Hence the rationale for E.U. supported R&D collaborations in electronics and equivalent programmes in the U.S.. From an economic point of view, however, it is difficult to maintain the distinction between pre-competitive and competitive efforts, given that firms do not invest in R&D without speculating on results which could improve their competitive position. See Manfred E. Streit, "European industrial policy: an economic and constitutional challenge", *Staatswissenschaften und Staatspraxis* 4,3 [1993], p. 401.

legislation.[33]

Dispute settlement

The reform of the GATT's dispute settlement procedure is central to the implementation of the Uruguay Round agreements and the workability of the new World Trade Organisation. The perceived weakness of the former procedure lay in the principle of consensus. The setting up of panels of investigation, and the actual decisions of constituted panels, could be blocked by the party complained against. The U.S. and the E.U. ignored, blocked or dragged their feet in a number of high-profile cases. With respect to the U.S., the GATT dispute settlement mechanism was bypassed through the unilateral resort to the Super 301 provisions of the 1988 Omnibus Trade and Competitiveness Act. By avoiding the panel procedure, governments were showing a tendency to adopt "power-oriented" rather than "rule-oriented" solutions to trade conflicts.

The final agreement turns the consensus principle around: a panel will be automatically established unless, by consensus, the Dispute Settlement Body decides not to set one up. Similarly, panel reports will be automatically adopted unless a consensus rejects them. There is recourse to an Appellate Body, but its findings have to be accepted unless rejected by consensus. Strict time limits apply for compliance with panel decisions, countries

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[33] On the Uruguay Round negotiations and agreements on subsidies and countervailing duties, see Evans and Walsh, *op. cit.*, pp. 42-45.

affected having the right to claim compensation or impose commensurate trade sanctions. Hence it should be much more difficult for offending parties to block the whole process. In addition members are barred from making unilateral decisions as to the violation of their rights under the GATT. This represents a full-frontal attack of the U.S.'s Super 301, with the intention of returning it to the original aims of its predecessor, Section 301 of the 1974 Trade Act -- the pursuit of trade remedies through the GATT system. However, Super 301 still applies to those substantial areas excluded from GATT agreements, including financial services, telecommunications and audiovisual services.[34]

## Safeguard and dumping measures

The safeguards provision in Article XIX is tightened up somewhat and retains its non-discriminatory character. There are also time limits imposed on the operation of safeguard measures. But the latter pale in comparison with other import relief measures carried out by governments. Safeguards were hardly resorted to in the 1980s, while there was greater use of a gamut of bilateral, non-tariff barrier instruments of protection, notably escape clauses, countervailing duties and anti-dumping actions. The latter accounted for 90% of all import relief measures

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[34] Evans and Walsh, *op. cit.*, pp. 2, 46-48; Curzon Price, *op. cit.*, pp. 90-95. On the artful legal nuances of Section 301 in U.S. trade law, see Jackson, *op. cit.*, pp. 103-107; Jagdish Bhagwati, *The World Trading System at Risk* [London: Harvester Wheatsheaf, 1991], pp. 126-140.

undertaken by contracting parties in 1988.[35]

Most dumping law involves the determination of an exporter selling abroad at a price lower than that at home."Predatory dumping" involves an exporter specifically aiming to damage an import-competing firm in a foreign market by dumping products in that market as a way of gaining a monopoly position. Article VI of the GATT authorises the application of an anti-dumping duty when dumping is proven and domestic industries are injured by it. The problem arises when anti-dumping authorities, with the backing of national laws, are able to bias their calculations so as to "prove" dumping, injury, and the causal link between the two, without any dumping or injury having taken place. The calculations can be so arbitrary that the positive finding of anti-dumping is almost a foregone conclusion. It is the U.S. and the E.U. who are the main culprits, followed by Australia and Canada.

It takes little imagination to see that anti-dumping actions are more effective than tariffs as protectionist instruments. They can precisely target the competitive threat and remove it through the imposition of prohibitive dumping duties. The investigation of dumping in the E.U. and the U.S. is hardly transparent and highly amenable to lobbying by protection-seeking producer groups. Moreover, the threat of an anti-dumping investigation tends to push exporters in one of two directions. First, it pressurises the negotiation of a voluntary export restraint to

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[35] Evans and Walsh, *op. cit.*, pp. 50, 54.

reduce the volume of imports, either by restricting total quantities or through a "price undertaking" [setting price ceilings or floors].[36] The second response is to transfer production facilities to the country taking the anti-dumping action.[37]

The Uruguay Round agreement on anti-dumping is very weak, essentially reinforcing the precedent set by the Tokyo Round code on anti-dumping. The latter legitimated this form of contingent protection in the GATT, establishing a floor, not a ceiling, for protectionist permissiveness. The U.S.'s primary objective in the relevant Uruguay Round negotiations was to protect its domestic anti-dumping laws from GATT encroachment. The U.S. and the E.U. expanded the overall scope for restrictive actions by bargaining one trade restriction for another. The final agreement essentially leaves the main planks of U.S. and E.U. anti-dumping laws and policy actions intact, without imposing effective constraints on the methodology of calculating costs, prices, dumping margins, injury, and the causal link between dumping and

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[36] The E.U.'s record is worth considering. Dumping is found in almost 95% of cases initiated by the Commission. Almost 80% of E.U. anti-dumping cases have been terminated either by duties or price or quantity undertakings. Average anti-dumping duties are very high [about 20%]. Imports subject to them tend to fall rapidly. Anti-dumping cases are bunched in a narrow range of sectors -- textiles and apparel, steel and raw chemicals -- and concentrated on a small number of developing and newly industrialising countries. Anti-dumping actions against Eastern European countries have increased. See Patrick Messerlin, "Why such blindness? European Union trade policy at the crossroads", *Trade Policy Review* 1994 [London: Centre for Policy Studies], pp. 41-43.

[37] On the principles, motivations and trends of anti-dumping policy, see Evans and Walsh, *op. cit.*, pp. 49-51; Hindley, *op. cit.*, pp. 25-27.

injury. Price undertakings are barely touched. The WTO's new dispute settlement mechanism has review only of procedural matters and has no power to overturn anti-dumping measures.[38]

This agreement is *the* gaping hole in the Uruguay Round. It entrenches a GATT-legal use of contingent protection which countries may well increasingly exploit, partly because other avenues of protection have been foreclosed. Indeed the E.U., on France's initiative, has strengthened its anti-dumping and anti-subsidy proceedings after the conclusion of the Uruguay Round.[39] Gary Horlick goes so far as to say that such distorted anti-dumping rules, planted so firmly into the GATT, authorise "any member to ignore at its discretion the basic GATT rules of tariff-binding, most favoured nation and national treatment."[40]

Voluntary export restraints

Voluntary export restraints [VERs], a central feature of the New Protectionism, have been proliferating: as of March 1989 there were 173 VERs in operation, 63 of them involving Japan. The Uruguay Round agreement, *prima facie*, goes some way towards

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[38] Evans and Walsh, *op. cit.*, pp. 51-54; Streit and Voigt, op. cit., pp. 68-70; J. Michael Finger, "That old GATT magic no more casts its spell [how the Uruguay Round failed]", *Journal of World Trade* 25,2 [April 1991], p. 21; Gary N. Horlick, "How the GATT became protectionist: an analysis of the Uruguay Round Draft Final Anti-dumping Code", *Journal of World Trade* 27,1 [February 1993], p. 5.

[39] Paul Waer and Edwin Vermulst, "E.C. anti-dumping law and practice after the Uruguay Round: a new lease of life?", *Journal of World Trade* 28, 2 [April 1994], p. 5.

[40] Horlick, *op. cit.*, pp. 16-17.

tackling the problem. Government-negotiated VERs or orderly marketing arrangements are to be removed within four years. Nevertheless, each member is allowed to keep one VER until 1999, the E.U. nominating its automobile VER with Japan. Non-governmental VERs [effectively those negotiated between firms] are not covered. Given the loopholes of the agreement on anti-dumping, however, it is questionable as to whether the abolition of VERs will have a net liberalising effect.[41]

The remaining agreements

Other agreements in the GATT 1994 include those on technical barriers to trade, a review mechanism of individual member-states' trade policies, the tightening of the balance of payments provision used by developing countries to restrict imports when faced with a payments crisis [Article XVIII], and the abolition of waivers from GATT obligations [Article XXV], albeit with a number of exceptions. There are also plurilateral agreements on public procurement and civil aircraft which encompass a number of developed countries.[42]

Another major weakness of the GATT 1994 is its rather superficial treatment of free trade areas and customs unions. Regional agreements have mushroomed in recent years: 85 were in existence in autumn 1993, 28 of them created since 1992. Although the

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[41] Evans and Walsh, *op. cit.*, pp. 55, 92; Hindley, *op. cit.*, p. 24, 27.

[42] Evans and Walsh, *op. cit.*, pp. 57-63.

rather vague provisions of GATT's Article XXIV exhort regional areas not to be trade-distorting [or "diverting"[43]] with respect to third countries, there can be serious contradictions between regionalism and multilateralism. Not only can tariff and non-tariff barriers applied by a regional area be trade-distorting, but there exists the temptation to deal with sensitive and complex trade policy issues in exclusive clubs, such as the E.U. and the NAFTA, rather than in the cumbersome machinery of a multilateral régime, either when the latter is felt to be too weak and ineffective, or when its constraints are felt to be too onerous.[44]

The relevant Uruguay Round agreement does not tighten up Article XXIV and excludes all rules of origin calculations which cover preferential trade arrangements. Rules of origin in E.U. and NAFTA legislation contain a number of protectionist elements. For example, Mexican textiles are given preferential access to the U.S. and Canadian markets on condition that nearly all the inputs originate within the free trade area. The E.U. has brought in strict rules of origin regarding integrated circuits to force

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[43] On the fundamental issue of trade diversion versus trade creation by regional trade areas [particularly customs unions] in the international system, see Jacob Viner, *The Customs Union Issue* [New York: Carnegie Endowment for International Peace, 1950]; James Meade, "The removal of trade barriers: the regional versus the universal approach", *Economica* [May 1951]; Wilhelm Röpke, *International Order and Economic Integration, op. cit.*, pp. 223-243, 259-270.

[44] Evans and Walsh, *op. cit.*, pp. 2, 59, 129; John H. Jackson, "Regional trade blocs and the GATT", *The World Economy* 16,2 [March 1993], pp. 124, 130.

East Asian manufacturers to set up production in the E.U..[45] There is every prospect that these trade-distorting measures will escalate in *lieu* of adequate multilateral controls.

## The World Trade Organisation

The establishment of the World Trade Organisation [WTO] in 1995 transforms the GATT, a provisional set of agreements, into an international institution on a par with the World Bank and the International Monetary Fund. The WTO, although not entailing a considerable increase of staff *pro tem*, is headed by a Ministerial Conference, beneath which is a General Council to discharge the functions of the Dispute Settlement Body, the Trade Policy Review Body and subsidiary councils set up by the GATT 1994 [for goods, services and IPR]. The bodies established to administer the plurilateral agreements operate within the general WTO framework.[46]

To be eligible for membership of the WTO, governments have to accept the GATT 1994 [on goods], GATS, the TRIPs agreement, the Dispute Settlement Understanding and the Trade Policy Review Mechanism as a "single undertaking", that is, *en bloc*. Membership cannot be *à la carte*. The intention is to provide some measure of common multilateral rights and obligations. The GATT 1947 is legally distinct from the WTO. *In theory* it would therefore be possible to remain a contracting party to the GATT 1947 while

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[45] Evans and Walsh, *op. cit.*, pp. 56-57.

[46] Evans and Walsh, *op. cit.*, pp. 124-126.

rejecting membership, and with it the constraints, of the WTO. But this is highly unlikely: by not joining the WTO, countries would not have legal protection against trade policy actions taken by WTO members.[47]

The WTO will not only have to cover the implementation of the Uruguay Round agreements and further negotiations on issues hitherto covered, but also tackle a number of relatively "new" issues, including environmental policy, labour and human rights, regionalisation, and investment and competition policies.[48] Given the increasing inter-meshing of international production and international trade, with a major part of the latter consisting of intra-firm trade in the context of the mobility of financial capital, skills, technology and production, there have been calls to integrate public policy concerning the multinational enterprise into GATT trade rules. Sir Leon Brittan, the E.U. Trade Commissioner, has been a notable proponent of this approach on both the investment and competition policy fronts. A "GATT for investment" would presumably build on the GATS, TRIPs and TRIMs agreements, all of which cover trade-related investment, with the aim of lowering the obstacles to the freedom of cross-border investment by reducing the scope for host government controls.[49]

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[47] Hindley, *op. cit.*, pp. 14-15; Curzon Price, *op. cit.*, pp. 106-108; John H. Jackson, "Managing the world trading system: the World Trade Organisation and the post-Uruguay Round GATT agenda", pp. 135-136, 139, in Peter B. Kenen ed., *Managing the World Economy: Fifty Years After Bretton Woods, op. cit.*.

[48] Evans and Walsh, *op. cit.*, pp. 126-129.

[49] "Multinationals seek investment treaty", *Financial Times*, May 5 1994; "Brittan calls for rethink on U.S. relations", *Financial Times*, February 1 1995. Also see DeAnne Julius,

An allied question is the relationship between international trade law and national competition laws, which would subsume restrictive business practices and cartels, mergers and acquisitions, national discrimination against foreign-owned companies, extraterritoriality and cooperation between national antitrust authorities. A major area of concern is the inconsistency between trade policy, for example on dumping, VERs, and other governmental as well as private restraints on competition, on the one hand, and competition policy rules, on the other hand.[50]

## 2b. The Uruguay Round: an evaluation

It should be evident from the above survey that the conclusions of the Uruguay Round by no means represent an unqualified victory for multilateralism. The optimism displayed by a number of commentators in the immediate aftermath of the Round was, therefore, somewhat overblown. The cautionary maxim of Talleyrand comes to mind: *Surtout pas trop de zèle!*. It is accurate to point

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"International direct investment: strengthening the policy regime", pp. 278-284, in Peter Kenen ed., *Managing the World Economy*, *op. cit.*.

[50] Ernst-Ulrich Petersmann, "Why do governments need the Uruguay Round, NAFTA and the EEA", *Aussenwirtschaft* 49,1 [1994], pp. 47-49; Edwin A. Vermulst, "A European practitioner's view of the GATT system: should competition law violations distorting international trade be subject to GATT panels?", *Journal of World Trade* 27, 2 [April 1993], pp. 55-56, 58, 63. Also see the special issue of *Aussenwirtschaft* 49,II/III [1994] on international competition rules in the GATT/WTO system; and Ulrich Immenga, "Ein Kodex für den Handelsfrieden: Gründsätze eines internationalen Wettbewerbsrechts, die die Vertragsstaaten des GATT in jeweils nationales Recht umsetzen sollten", *Frankfurter Allgemeine Zeitung*, February 26 1994.

out that the new WTO and its battery of agreements and policy instruments make for some change in the institutional topography of international trade rules. There are important market-opening successes: tariff reductions, the new rules on agriculture, services and textiles, the new measures on TRIMs, the abolition of VERs, the establishment of the dispute settlement mechanism. But in nearly all of these negotiating arenas there are substantial qualifications to be made that considerably undermine multilateral principles: the phased quantitative limits to the reduction of subsidised agricultural exports; the selective reciprocity elements and outright exceptions to the GATS; the exclusion of trade-distorting investment measures undertaken by developed countries in the TRIMs agreement; the acceptance of basic R&D subsidies and regional aids in the subsidies agreement; the rules of origin exemption in the accord on regional trade areas. To cap it all, the anti-dumping agreement, far from tackling one of the main problems of the New Protectionism in the form of national anti-dumping policies, establishes a GATT-legal floor for their future use with protectionist objectives in mind. And the experience with trade policy in 1994 must have been somewhat sobering for the more lyrical GATT optimists: the E.U. fortified its anti-dumping measures; the U.S. continued to use bilateral, results-oriented negotiating tactics to increase market access in Japan; and the U.S. Congress's price for the ratification of the Uruguay Round accords was the setting up of a U.S.judicial panel to keep track of the WTO's new dispute

settlement procedures.[51]

Far from being tantamount to a radical break with previous post-war trade practice, the Uruguay Round agreements are more indicative of continuity with the "rules of the game" put in place immediately after the Second World War. It will be recalled that, in section 1 of this discussion, three defining characteristics of the post-war international trading system were pointed out. The Uruguay Round is illustrative of each. First, it does represent a serious attempt to deal with the systemic problems posed by the New Protectionism. Second, it is part and parcel of a "liberalism from above" approach: the employment of wider and deeper international rules to contain nation-state illiberalism and, furthermore, infuse national public policies with greater liberal content. And third, it reinforces rather than dilutes the "mixed system" post-war compromise between government intervention at the national level and a measure of multilateral constraint, with the balance tipping in favour of the former. The anti-dumping clauses in the GATT 1994 are supremely indicative of the primacy of national policy discretion over international liberal norms, as is U.S. and E.U. implementing legislation excluding the "direct applicability" of the Uruguay Round agreements by domestic courts and individual citizens.[52] What Jacob Viner said of the Havana Charter in 1947

[51] *The World Economy*, 17,3 [May 1994], pp. 424-425; 17, 4 [July 1994], p. 633; "U.S. reviews sanctions to boost trade with Japan", *Financial Times*, February 14 1994; "Shoot-out at the D.C. Corral", *Financial Times*, February 12/13 1994.

[52] Petersmann, *op. cit.*, p. 47.

is, *mutatis mutandis*, applicable to the Uruguay Round: "Where rules of some degree of precision are proposed, they are invariably qualified by exceptions and escape clauses necessary to make them generally acceptable, but easily capable of becoming more important than the rules to which they are attached."[53]

The negotiating processes and the final outcomes of the Uruguay Round point to the fact that many governments -- the U.S. and the E.U. in particular -- continue to regard the GATT as a tool of diplomacy for the playing out of power games and, at best, a mechanism of negotiation and conciliation. What tends to suffer in this mercantilist conception is the "rule-integrity" of the GATT: the impartial application of international trade rules to constrain national protectionism, not least to protect smaller and weaker countries from the whims of larger and more powerful countries [see the Viner quote at the head of the article].[54]

From a liberal standpoint, what can be said of the Uruguay Round conclusions is that without them the GATT would have been mortally wounded and there would have been, in all likelihood, escalating trade conflicts between the U.S., the E.U. and Japan.[55] Another welcome trend for liberals is the sea-change in the policy stances of a number of developing countries: having

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[53] Viner, "Conflicts of principle in drafting a trade charter", *op. cit.*, p. 627.

[54] John Jackson makes the distinction between power and rule-oriented diplomacy in the GATT. See Jackson, *The World Trading System*, *op. cit.*, p. 93.

[55] Hindley, *op. cit.*, p. 9.

started the Uruguay Round opposed to the opening of their markets in services, and to concessions on TRIPs and TRIMs, they, along with a number of the ex-planned economies, have placed their faith in strengthened multilateral rules and put the spotlight on the protectionist policies of the U.S. and the E.U.. All this despite the relatively small "static" gains for the developing world flowing from the market-opening measures of the Uruguay Round. In addition, given the increasing multipolarity of the world economy, it is probably going to be more difficult for the E.U. and the U.S. to impose bilaterally agreed positions, with a protectionist bias, on the other WTO members.[56]

## 3. Liberal perspectives on international trade and the Uruguay Round

All economic liberals would agree that freer trade is to be welcomed and encouraged, not only to increase global economic welfare but also to preserve and enhance individual liberties in "open" societies. There is, however, no single liberal perspective on how to achieve this goal. The rest of this discussion focuses on three different, although not necessarily mutually exclusive, approaches. The first two are relatively familiar to Anglo-Saxon students of the political economy of international trade: political science-based "liberal institutionalism"; and what this author would term "international legalism". The third approach, paying attention to the national

[56] Ernst-Ulrich Petersmann, "Towards a new multilateral trading system and a new trade organisation? The final phase of the Uruguay Round", *Aussenwirtschaft* 45, IV [1990], p. 407.

foundations of liberal international economic order and advocating what could be termed an "internationalism from below", would be more familiar to German and Hayekian neoliberals. A consideration and contrast of these liberal perspectives should shed further light on how to evaluate international trade in general and the Uruguay Round in particular.

### 3.a Liberal institutionalism and international legalism: liberalism "from above"

For liberal institutionalists the GATT is important, for it has become a key part of an international trade "regime" -- the principles, norms, rules and decision-making procedures around which actors' expectations converge[57]. Given the propensity of nation-states to protect import-competing producer groups and gain economic benefits at the expense of other nation-states by recourse to various protectionist policies, unilateral liberalisations are unlikely, according to this standpoint. The GATT has succeeded precisely because it has provided institutionalised multilateral mechanisms to resist "beggar-thy-neighbour" protectionism and gradually open up trading channels.[58]

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[57] For a fuller definition of international regimes, see Stephen D. Krasner, "Structural causes and regime consequences: regimes as intervening variables", *International Organisation* 36,2 [1982], p. 186.

[58] Very representative of this perspective is Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* [Princeton: Princeton University Press, 1984], especially pp. 147-149, 187-190, 210-214 on the GATT. Also see Robert O. Keohane and Joseph S. Nye Jnr., "Two cheers for multilateralism", *Foreign Policy* 60 [1985], pp. 148-167.

Many liberal institutionalists emphasise the permissive structure of the GATT and the flexibility of its rule base. This orientation allows governments to pursue interventionist policies at home and at the same time commit themselves to market-opening measures in multilateral fora. Too tight a rule base at the international level would only endanger regime survival, for then the leading players would be more tempted to free themselves of the GATT constraint and pursue unilateral, bilateral and regional strategies.[59] Thus such "mixed systems" thinking -- the combination of international liberalism and national illiberalism -- is not only used to justify the "compromise of embedded liberalism" in the immediate aftermath of the Second World War, but also underpins a liberal institutionalist *Weltanschauung*.[60]

This particular version of post-war history would accord pride of place to international organisations and regimes in structuring trade and payments, moulding national economic policies and fostering international cooperation.[61] From such a perspective, the Uruguay Round agreements could be interpreted in two different ways: either welcomed as a continuation of the "compromise of embedded liberalism", developing a balancing act between government policy discretion and multilateral

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[59] Ruggie, *op. cit.*, p. 384.

[60] Which raises the question: what is so liberal [in the classical European, not the American, sense] about liberal institutionalism?

[61] See Barry Eichengreen and Peter B. Kenen, *op. cit.*, pp. 3-4, 52-54, and Robert O. Keohane's "Comment" in the same volume [Peter B. Kenen ed., *Managing the World Economy*, *op. cit.*].

constraints; or criticised for going too far in eating into national policy prerogatives, with the attendant danger that powerful nation-states will extricate themselves from inflexible multilateral rules and pursue other strategies.[62] In light of the evaluation of the Uruguay Round presented in this discussion, the latter scenario should not be taken all that seriously, for national policy discretion is built into the GATT 1994 and related agreements.

The second perspective -- "international legalism" for want of a better term -- is more the preserve of international lawyers and economists than political scientists. Here there is an unqualified commitment to the free trade principle and not much patience with the protectionist policies followed by nation-states. Far from the mixed systems synthesis of liberal institutionalists and their advocacy of flexible multilateral rules, such liberal-minded international lawyers and economists seek to widen and deepen the multilateral rule base and its legal enforcement mechanisms in order to provide further constraints on national protectionism. Thus the objective is not only to protect the liberty and property rights of producers, consumers and traders at the international level, but also counteract the power of protectionist interest groups within nation-states. An expanded framework of international law is thought necessary to

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[62] For an elaboration of the latter viewpoint, see James M. Lutz, "GATT reform or regime maintenance: differing solutions to world trade problems", *Journal of World Trade* 25,2 [April 1991], pp. 114-119; Kenneth A. Oye, "Comment", in Peter B. Kenen ed., *Managing the World Economy*, *op. cit.*, pp. 156-157.

rein in the discretionary power of national governments.[63] Following this approach, the Uruguay Round agreements could be interpreted either as a success, furnishing extra multilateral constraints to circumscribe national arbitrariness in trade policy, or a disappointment in not going far enough.

Despite evident differences, liberal institutionalism and international legalism share a commitment to a liberalism "from above", entailing the employment of organisations and rules at the international level, to achieve their goal of freer trade. Hence the calls for greater competences to be invested with international organisations, and new mechanisms to "organise" cooperation between them, in order to "manage" the global economy.[64]

### 3b. Liberalism "from below": a question of domestic economic order

A number of liberal economists and lawyers from the German and Hayekian traditions would have problems with both the perspectives presented above, given that the latter focus on the

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[63] Petersmann, "Why do governments need the Uruguay Round agreements, NAFTA and the EEA?", *op. cit.*, pp. 34, 38-39. For similar arguments see Jackson, *The World Trading System, op. cit.*, pp. 85-88; Jagdish Bhagwati, "Multilateralism at risk: the GATT is dead. Long live the GATT", *The World Economy* 13, 2 [June 1990].

[64] See C. Fred Bergsten, "Managing the world economy of the future", and Peter B. Kenen, "Summing up and looking ahead", in Peter B. Kenen, *Managing the World Economy*, *op. cit.*; Sutherland, *op. cit.*, pp. 15-16; and the various reports on the World Economic Forum in Davos in the *Financial Times*, January 30 1995.

international level, in preference to the national level, to achieve freer trade objectives. There is a related and elemental difference: most modern Anglo-Saxon approaches rarely think in terms of societal *orders*, whereas the German and Hayekian traditions presented below place the question of economic, political and legal order at the very heart of their analysis, in so doing following the classical tradition of the Scottish Enlightenment. Their theories of international order are predicated very much on the preconditions of *national* order.[65]

It is Wilhelm Röpke, the most prominent of the German neoliberals[66] writing on international economic affairs, who questions the conventional emphasis on international law and

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[65] German and Hayekian approaches are "classical" inasmuch as they, in common with Adam Smith and his contemporaries, focus on the foundations of national order. Only in the inter-war period did prominent liberal economists like Lionel Robbins advocate international authorities to defend free trade and prevent systemic breakdown. See Tumlir, "International economic order and democratic constitutionalism", *op. cit.*, p. 73. Some post-war perspectives, including liberal institutionalism and game-theoretic analyses of international trade, are less "classical" insofar as they focus on the international level of analysis at the expense of what happens within nation-states. Public choice perspectives, on the other hand, point to intra-national as opposed to inter-national processes as the cause of trade policy outcomes. See Viktor Vanberg, "A constitutional political economy perspective on international trade", *Ordo* 43 [1992], p. 378.

[66] The German neoliberal tradition of economics, law and political economy comprises a number of components: the "ordoliberal" Freiburg School of economic-legal constitutionalism; the Cologne School of "social market economy"; the sociologist Alexander Rüstow; and the economist Wilhelm Röpke. All were closely linked to Ludwig Erhard, the father of West Germany's "economic miracle". See Alan Peacock and Hans Willgerodt eds., *Germany's Social Market Economy: Origins and Evolution*, and *German Neoliberals and the Social Market Economy* [London: TPRC/Macmillan, 1989]; Razeen Sally, "The social market and liberal order: theory and policy implications", *Government and Opposition* 29,4 [Autumn 1994].

regimes.[67] To Röpke, it is a minimum of constitutional order, from "within and beneath" in nation-states -- the separation of the *imperium* of state authority from the *dominium* of the economic sphere, open markets, stable money and the rule of law -- that furnishes the foundations of international economic order. "Internationalism, like charity, begins at home"; without domestic liberal order, no international liberal order worth its name is feasible. Proceeding the other way around, characteristic of both the international idealism of the inter-war period as well as international policy practice in the post-war years, is a falsely understood internationalism -- "trying to make an omelette without breaking the eggs". There is an inherent danger of overload on international organisations, complete with political compromises that dilute liberal principles, bureaucratic expansionism and "this conferencitis, with its inaction and illusions, its waste of time, money and talent, more rampant than ever today."[68]

Röpke is acutely aware of the brittle nature of international arrangements which, in the absence of world political-legal authority and social integration, are denuded without the "framework conditions" [the polity, legal framework, social cohesion] that enable a market economy to function within nation-

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[67] For such an interpretation of Röpke's work, see Gerard Curzon, "International economic order: contribution of ordoliberals", in Alan Peacock and Hans Willgerodt eds., *German Neoliberals and the Social Market Economy*, *op. cit.*.

[68] Wilhelm Röpke, *International Order and Economic Integration*, *op. cit.*, pp. 12, 15, 17-19; Wilhelm Röpke, *Economic Order and International Law*, Recueil des Cours of the Academy of International Law [Leyden: A.W. Sijthoff, 1955], pp. 231-232.

states. To him it is the rise of the public Leviathans, with their welfare states, inflationary policies and concentrations of political and economic power, that spills over into the international economy with balance of payments disequilibria and the market-nonconforming interventions of "managed trade" [quotas, exchange controls, bilateral clearing arrangements and the like].[69] Not only is this a dismissal of the mixed systems thinking so dear to liberal institutionalism, it is also deeply pessimistic of the viability of international regimes as a substitute for, rather than a complement to, economic liberalism within nation-states.

After emphasising the national prerequisites for international order -- anti-inflationary monetary policies, currency convertibility and markets open to trade and capital flows -- Röpke goes on to advocate inter-state understandings [or regimes] to ensure mutual trust and a sense of security and continuity. These are the working substitutes for [non-existent] world government that enable multilateral trade and payments transactions within nation-states to be replicated in the international economy.[70]

Not surprisingly, Röpke's interpretation of economic history differs markedly from that of the liberal institutionalists. The

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[69] Röpke, *Economic Order and International Law*, *op. cit.*, pp. 211, 233, 254-255; Röpke, *International Order and Economic Integration*, *op. cit.*, pp. 94-103.

[70] Röpke, *International Order and Economic Integration*, *op. cit.*, pp. 72-73.

post-1945 international economy is driven by the contradictory forces of, on the one hand, market-led integration through the re-establishment of currency convertibility and capital mobility, as well as the removal of [especially quantitative] barriers to trade, and, on the other hand, disintegration caused by the invasion of the political sphere into the economic sphere at the national level. Unlike the liberal institutionalists, Röpke does not primarily attribute liberalisation and superior economic performance to mechanisms of international cooperation; rather to the unilateral policy liberalisation measures undertaken by certain countries, such as Britain in the nineteenth century and the Erhard reforms in West Germany from 1948 onwards, unleashing "spontaneous" market forces and setting an example for others to follow. International regimes, such as the Marshall Plan, the European Payments Union and the GATT, play a useful supporting role, but are not of first order importance.[71] It is perhaps apposite to note here that Röpke's emphasis on unilateral action is in harmony with classical trade theory, advocating free trade policies to reap welfare gains, even in a generally protectionist world. This in contrast to liberal institutionalism's emphasis on the contingency of inter-state reciprocity for liberalising

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[71] Röpke, *International Order and Economic Integration, op. cit.*, pp. 168, 224-228; Wilhelm Röpke, *Die Lehre von der Wirtschaft* [Bern: Paul Haupt, 1994], pp. 318-324. For a corroborating argument with respect to the Marshall Plan and the European Payments Union, see Herbert Giersch, Karl-Heinz Paqué and Holger Schmieding, *The Fading Miracle: Four Decades of Market Economy in Germany* [Cambridge: Cambridge University Press, 1992], pp. 95-124.

action.[72]

Röpke is not the only German neoliberal preoccupied with the question of [political] economic order. It is Walter Eucken, the father of "ordoliberalism", who specifies the constitutive and regulative principles of liberal economic order within nation-states. The state is charged with maintaining the supply-side institutional framework, but it should not intervene in the price-signalling and product-flow mechanisms of the competitive economic process. A requisite *Ordnungspolitik* [policy of order] of the state includes the maintenance of open markets, private property, liability, the freedom of contract and association, and the "primacy of currency policy" to assure monetary stability.[73]

As Hans Willgerodt argues, the illiberalism of international order lies in the lack of adherence to these constitutive principles of national liberal order: open markets, the freedom

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[72] For a related argument on reciprocity versus unilateralism, see Tumlir, "International economic order and democratic constitutionalism", *op. cit.*, p. 75. For a refreshing and very useful argument on the scope for unilateral market-conforming initiatives in U.S. foreign economic policy, see Robert Paarlberg, *Leadership Abroad Begins at Home: U.S. Foreign Economic Policy After the Cold War* [Washington D.C.: Brookings, 1995].

[73] Walter Eucken, *Grundsätze der Wirtschaftspolitik* [Tübingen: J.C.B. Mohr, 1990], pp. 254-289; Walter Eucken, *This Unsuccessful Age -- or the Pains of Economic Progress* [London: William Hodge, 1951], pp. 95-96; Manfred Streit, "Economic order, private law and public policy: the Freiburg School of law and economics in perspective", *Journal of Institutional and Theoretical Economics* [*Zeitschrift für die gesamte Staatswissenschaft*] 148,4 [December 1992], p. 677.

of contract and association, private property etc..[74] Given the inextricable connection between domestic and foreign economic policies, Willgerodt emphasises that no change in the mercantilist character of trade policies can be expected without market-led reforms in domestic [macro- and microeconomic] policies.[75] In the absence of the latter, and with the continuance of protectionism as the inevitable result of domestic policy, too much cannot be expected from multilateral negotiations.[76]

This political economy of a liberalism "from below" for international order would not be complete without a legal underpinning. Manfred Streit and Stefan Voigt attempt to do just that with reference to the works of Franz Böhm, the co-founder of the Freiburg School, and F.A. Hayek.[77]

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[74] Hans Willgerodt, "Perspektiven einer freiheitlichen Ordnung des internationalen Handels und des Ausgleichs zwischen Nord und Süd", *Symposion VII der Ludwig Erhard Stiftung: Zwischenbilanz der Diskussion über eine neue Weltwirtschaftsordnung* [Stuttgart: Gustav Fischer, 1981], pp. 105-107. Also see Helmut Gröner and Alfred Schüller, "Grundlagen der internationalen Ordnung: GATT, IWF und EG im Wandel -- Eucken's Idee der Wirtschaftsverfassung des Wettbewerbs als Prüfstein", *Ordo* 40 [1989], pp. 429-463; Josef Molsberger and Angelos Kotios, "Ordnungspolitische Defizite des GATT", *Ordo* 41 [1990].

[75] Hans Willgerodt, "Interdependenzen nationaler Handels- und Wirtschaftspolitiken: Anforderungen an das GATT", *Beihefte der Konjunkturpolitik* 34 [1988], p. 32.

[76] Richard Senti, "Erscheinungsformen und Ursachen des neuen Protektionismus im Aussenhandel", *Ordo* 37 [1986], p. 232.

[77] Often overlooked in Anglo-Saxon circles is Hayek's long association with a number of the German neoliberals, particularly Eucken and Röpke. See F.A. Hayek, *The Fortunes of Liberalism: Essays on Austrian Economics and the Ideal of Freedom,* The Collected Works of F.A. Hayek, vol. IV [London: Routledge, 1992], pp. 185-198.

The bedrock of a market economy is a framework of private law, or what Böhm terms a "private law society". Laws of contract and property rights are supposed to be applied universally and impartially to free and equal legal individuals -- an integral component of the *Rechtsstaat* [government under the rule of law]. These rules are abstract and negatively defined, defending the individual's liberties from encroachment by the state and other individuals in society, but leaving all other actions not explicitly mentioned allowable.[78] This facilitates self-coordination in market transactions between autonomous but interdependent individuals, and the self-control of competition, or put another way, in the Hayekian sense, competition as an evolutionary and open-ended "discovery procedure" of experimentation and trial-and-error.[79]

The rule base of private law is frequently interfered with within

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[78] See Franz Böhm's classic essay, "Privatrechtsgesellschaft und Marktwirtschaft", *Ordo* 17 [1966], pp. 85-86, 99-100, 102. Also see a shorter version of the above in translation, "Rule of law in a market economy", in Peacock and Willgerodt eds., *Germany's Social Market Economy, op. cit.*; Jan Tumlir, "Franz Böhm and the development of economic-constitutional analysis", in Peacock and Willgerodt eds., *German Neoliberals and the Social Market Economy, op. cit.*.

[79] Böhm, "Privatrechtsgesellschaft und Marktwirtschaft", op. cit., pp. 88-89, 91, 94, 98-101, 140-141; F.A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* [London: Routledge, 1982], pp. 67-70; Streit and Voigt, *op. cit.*, p. 42. It should be evident that this evolutionary model of competition is strikingly different from the standard neoclassical model of perfect competition with Pareto-optimal equilibrium, operating with the "Nirvana" assumptions of rational action, full and costless knowledge, and a predictable future. See Terence Hutchison's typically trenchant essay "A Methodological Crisis?" in his *The Uses and Abuses of Economics: Contentious Essays on History and Method* [London: Routledge, 1994], pp. 241-259.

nation-states, especially by governments, for example by changing starting positions, providing shelter from competition, manipulating market results and retarding structural change, with domestic and international effects. The proliferation of discretionary and differential import protection given to producer groups erodes the legal framework of property rights, including cross-border contracts, by discriminating between persons before the law.[80]

To ensure the equality of persons before the law in cross-border transactions, the following framework practices should be observed: 1] guarantee domestic private law applications to foreign citizens without discrimination if they trade with citizens of this country; 2] apply national antitrust legislation to foreign competitors without discrimination; 3] refrain from interference in foreign exchange markets and with the international mobility of the factors of production.[81]

The GATT was never clearly built on these principles. What is more, the Uruguay Round agreements do not alter the situation in any significant way, particularly by not explicitly making the GATT a "self-enforcing", "directly effective" constitution[82],

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[80] F.A. Hayek, *The Constitution of Liberty* [London: Routledge, 1960], pp. 220-233.

[81] Streit and Voigt, *op. cit.*, p. 42; Vanberg, *op. cit.*, p. 383.

[82] See Jan Tumlir's proposal to incorporate the unconditional MFN principle in national laws, *Protectionism, op. cit.*, pp. 62-65. For a related proposal, see Ernst-Ulrich Petersmann, "National constitutions and international economic law", pp. 49-51, in Meinhard Hilf and Ernst-Ulrich Petersmann

that is, justiciable by subjects of private law within nation-states. For example, a European exporter cannot unambigiously have access to a judicial remedy in the U.S. if he believes that the U.S. government is not living up to its GATT obligations. Foreign trade law is a grey area in many national constitutions [and the E.E.C. Treaty], allowing broad discretionary powers to be exercised by governments. Most national constitutions have no equivalent of the MFN and national treatment principles, the Swiss Constitution being very much an exception in guaranteeing the freedom of international trade in its Articles 29 and 31. Furthermore, courts have shied away from effective judicial scrutiny of these areas of "foreign policy", generally witholding direct effect from the GATT.[83] Governments resist direct effect in order to preserve maximum discretion in national trade policy and in the operation of the GATT regime.

Finally, an open-ended liberal international order would include an *institutional competition of systems*, with the immobile factors of nations and regions, including their laws and policy packages, competing for the mobile factors of production. Capital would seek its most propitious location and act as a disciplinary mechanism, rewarding market-oriented laws and policies and

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eds., *National Constitutions and International Economic Law* [Deventer NH: Kluwer, 1993].

[83] Curzon Price, *op. cit.*, pp. 67, 102-103; Petersmann, "Why do governments need the Uruguay Round agreements, NAFTA and the EEA?", *op. cit.*, p. 37; Petersmann, "National constitutions and international economic law", *op. cit.*, pp. 27, 31; Marco C. E. J. Bronckers, "Non-judicial and judicial remedies in international trade disputes: some reflections at the close of the Uruguay Round", *Journal of World Trade* 24,6 [December 1990], pp. 123, 125.

punishing those that are market-nonconforming. Through imitation and trial-and-error, governments could learn from each other on how to improve their policy and legal packages.[84] Although such an institutional competition was foreclosed by the Bretton Woods compromise, which subsumed strict national capital controls in order to facilitate government intervention, floating exchange rates and the globalisation of capital markets have gone a long way towards opening the international system. Mechanisms of international policy coordination, so popular among Anglo-Saxon [particularly American] policy-makers and analysts, run the risk of foreclosing an open-ended institutional competition and increasing discretionary power in an inter-governmental cartel. An over-emphasis on "managing interdependence" through policy coordination would make it all too easy for opportunistic politicians to escape both domestic political accountability and market disciplines.[85]

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[84] On institutional competition, see Lüder Gerken, *Institutional Competition: An Orientative Framework with Specific Regard to Competition Among States*, unpublished monograph, 1995, especially pp. 1-3, 24; Manfred E. Streit, *Westeuropas Wirtschaftsverfassungen unter dem Druck des Systemwettbewerbs*, Discussion Paper, Max Planck Institute for Research into Economic Systems [01-1994], pp. 5-7; Werner Mussler and Michael Wohlgemuth, *Institutionen im Wettbewerb -- Ordnungstheoretische Anmerkungen zum Systemwettbewerb in Europa*, Discussion Paper, Max Planck Institute for Research into Economic Systems [05-1994], pp. 6-8; Herbert Giersch, "Kern und Rand in der spontanen Ordnung: Thünens Fläche, das Prinzip Offenheit und die Motorik der westlichen Zivilisation", *Frankfurter Allgemeine Zeitung*, May 21 1994.

[85] Vanberg, *op. cit.*, p. 386; Paarlberg, *op. cit.*, p. 10. Richard Portes comes to much the same conclusion, pointing to the troubled experiences and questionable record of international policy coordination. See his "Comment", pp. 64-68, in Peter Kenen ed., *Managing the Global Economy, op. cit.*.

## 3c. Liberalism "from below" and liberalism "from above" on international trade: a contrast

While certainly not going as far as Susan Strange in consigning the GATT and all its works to the bottom of Lac Leman[86], the above-mentioned German and Hayekian liberal approaches would perhaps place more emphasis on unilateral national policy changes "from below" in order to provide the elbow-room for the generation of market-friendly "spontaneous orders".[87] This by no means obviates the need for international regimes like the GATT -- on the contrary, they can play a very useful supporting role. But too great an emphasis on them, *without* a change of direction at the national level, is a *l'art pour l'art* exercise reeking of political naïveté [the quote from Röpke at the head of the article is the *summa summarum* of this standpoint]. Thus these approaches would have little, if anything, in common with the mixed systems thinking of liberal institutionalism; they would reject out of hand any combination of "Keynes at home and Smith abroad". While in agreement with the objectives of "international legalism", they would perhaps tone down the faith placed by the latter in international rule-making exercises.[88] Both liberal

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[86] Susan Strange, "Protectionism and world politics", *International Organisation* 39,2 [Spring 1985], p. 259.

[87] On spontaneous orders, see Hayek, *Law, Legislation and Liberty*, *op. cit.*, pp. 35-52.

[88] A point reinforced by J. Michael Finger, who argues: "__ rules to implement agreed liberalisations have proven useful. But the reverse of this, "rules first", has not worked. Rules agreed in the hope that they would motivate liberalisation have proven ineffective, even counterproductive." See J. Michael Finger, "That old GATT magic no more casts its spell", *op. cit.*, p. 22.

institutionalism and international legalism could be accused of a "constructivist fallacy", as Hayek would put it, in designing elaborate architectures of institutional cooperation to "manage" the world economy.[89]

Having said that, the differences between the perspectives adumbrated here cannot be portrayed, in Manichean fashion, as a choice of mutually exclusive alternatives: *either* unilateralism *or* international cooperation. Given a common acceptance of *a degree of* international cooperation, the differences boil down to pinpointing the appropriate level of action and interpreting the nature of interaction between national, regional and international levels.

A liberalism "from below" would be ambivalent about the conclusions of the Uruguay Round. It would welcome the developing policy consensus on the many market access and rule-enforcement agreements [particularly the new Dispute Settlement Understanding] in the Round as useful flanking mechanisms for freer trade. It would certainly be encouraged by the unilateral liberalisations taking place in developing countries and the ex-planned economies. On the other hand, it would be disturbed by the continued mixed systems compromise embedded in the GATT, especially where primacy is accorded to national policy

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[89] On constructivism, see Hayek, *Law, Legislation and Liberty*, *op. cit.*, pp. 24-35. The constructivist proposals for the management of the world economy have, at base, mechanical, rather than evolutionary, conceptions of competition that are at the heart of neoclassical welfare economics and liberal institutionalism in political science.

discretion with a protectionist bias [as in anti-dumping rules]. Most disturbing would be the continuing mercantilist trade policy orientations of the U.S. and the E.U., without a unilateral change of heart "from below". Schizophrenia in trade policy -- liberalism "from above" and mercantilism "from below" -- is not *passé*; it continues to prosper as a policy reflex action.

Such a liberal orientation would look out for unilateral national deregulatory exercises that have an impact on trade policy, such as the removal of quantitative barriers to trade, the implementation of the tarrification principle, more transparency in policy-making [for example, integrating consumer groups and downstream users into policy consultations, publishing annual "protection balance sheets"], renouncing escape clauses and exemptions from the GATT [for example, for balance of payments reasons], and giving direct effect to international treaty obligations, especially the MFN and national treatment principles, in national law.[90] These might seem to be pie-in-the-sky ideas to hard-boiled political "realists", but there are smaller countries, open economies who are "price takers" in the international system, who have shown some willingness to proceed along these lines, for instance Switzerland's proposal for the domestic implementation of trade rules, and the joint paper submitted by Canada, Australia, Hong Kong and New Zealand on domestic transparency, both during the course of the Uruguay Round. These proposals might be difficult for countries to

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[90] Willgerodt, "Interdependenzen nationaler Handels- und Wirtschaftspolitiken", *op. cit.*, pp. 14-15, 19, 32; Curzon Price, *op. cit.*, p. 102.

undertake unilaterally in the face of rejection by the bigger "price makers" in the system, but the possibility might be more realistic in the context of a "free trade coalition" uniting, say, the Cairns Group, the Eastern European countries, some LDCs and the smaller West European countries.[91] In short, this would represent, in the words of Ludwig Erhard, West Germany's first Federal Economics Minister and later its Chancellor, the "functional integration" of the world economy through the removal of trade barriers, rather than an "institutional integration" with the setting up of new and complex organisations-cum-mechanisms of international cooperation and policy harmonisation.[92]

## Conclusion

The Uruguay Round conclusions are not unreserved successes for multilateralism. On the contrary, the complex agreements indicate a continuance of the Bretton Woods compromise, if anything with the scales tilting towards national policy discretion. Liberal perspectives would take different snapshots of the current

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[91] See refs. in previous note.

[92] Ludwig Erhard used this distinction between functional and institutional integration in his arguments for liberalisation in the world economy as well as for European integration in the 1950s. It is well known that he favoured the free trade area of "big Europe" over the customs union of "little Europe", with its potentially market-nonconforming common institutions and policy harmonisation. His arguments were very similar at the time to the highly controversial positions of his friend Wilhelm Röpke. See Alfred Müller-Armack, "Wirtschaftspolitiker zwischen Wissenschaft und Politik", pp. 480-481, in Gerhard Schröder *et al* eds., *Ludwig Erhard: Beiträge zu seiner politischen Biographie. Festschrift zum fünfundsiebzigsten Geburtstag* [Bonn: Propyläen Verlag, 1972]; Herbert Giersch *et al*, *The Fading Miracle*, *op. cit.*, pp. 118-122.

international trading system, with normative differences between conventional liberalism "from above" and German/Hayekian liberalism "from below" approaches.