European Foreign Affairs Review **5**: 445–451, 2000.

Renewing The US–EU Trade Relationship

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After 50 years of great progress in liberalizing world trade, in which Europe and the USA have worked together to create a new legal and institutional framework for multilateral free trade, some on both sides of the Atlantic are now questioning whether this progress can be sustained. On a more fundamental level, some are even questioning whether the new World Trade Organization (WTO) trade rules and institutions we have constructed matter at all.

To support their contention that the international trading system is not working, critics of the multilateral system point to the recent controversies arising from decisions of the WTO's Dispute Settlement Body. They point to the disturbing failure of the third WTO Ministerial Conference Meeting in Seattle, a unique event in the history of the modern world trading system.

On the face of it, the failure of the Seattle Ministerial is enormously disheartening. The collapse of the Seattle Ministerial was the first time countries came together to start a trade negotiation and failed to do so. Prior negotiations had missed deadlines, and there were other interruptions before talks were completed.[1] However, until Seattle, ministers had never before convened to launch a new round, and then failed to agree on the contours of the negotiations.[2]

Moreover, as far as I am aware, this was the first time the failure of a trade negotiation involved questions about the legitimacy of the world trading system itself.

Finally, the prominence of regional trading blocs, such as MERCOSUR in Latin America, CARICOM in the Caribbean, and APEC in the Asian and Pacific Rim, is seen by some of its critics as a sign of the WTO's diminishing

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[1] Delegates at the 1990 Brussels Ministerial failed to conclude the Uruguay Round when they attempted to do so, even though the text of the Final Act submitted to them by the GATT Director-General was not much different than the Agreement finally adopted at Marrakesh in April 1994.

[2] The November 1982 GATT Ministerial rebuffed a US attempt to begin a new round of trade negotiations, but few trade ministers came to Geneva in 1982 prepared to start a new round. Launching a new round was the central focus of the Seattle Ministerial.

relevance. The rise of these regional trading arrangements certainly raises major policy issues about the integrity of the multilateral trading system, especially in light of the failure of the Seattle Ministerial, and the advent of EU negotiations with MERCOSUR.[3]

In spite of these complex challenges, I believe there are three things that the EU and the USA can do together to renew and strengthen our bilateral trade relationship, and the world trading system.

First, both the USA and the EU should take comprehensive steps to launch a new round of multilateral trade negotiations by the next meeting of the WTO Ministerial Conference in 2001. Maintaining the momentum of Transatlantic trade liberalization is imperative in light of the growing extent to which the USA and the EU depend on one another for our economic well-being. We must both face the fact that our continued prosperity in large measure depends on the stability, transparency, and effectiveness of our global trade rules.

Our economic interdependence is not a policy choice. It is a fact. European direct investment in the USA has nearly tripled since 1990.[4] European investment in the USA far exceeded investment by Asian and Pacific Rim countries during the same period.[5] Similarly, US direct investment in Europe has more than doubled in the last decade.[6]

In addition, Europe has convincingly shown that despite a listless Euro, and generally weak economic growth, it is an increasingly robust participant in international trade negotiations. One merely has to look at the Lisbon Declaration signed by Mexico and the EU on 23 March 2000, implementing the Mexico–EU Free Trade Agreement. This ambitious agreement, which took one year and nine rounds of talks to conclude, creates the first free-trade area between Europe and the Americas.

Because of our deep economic interdependence, and the combined strength of our longstanding commitment to free trade, it is clear that USA–EU accommodation will, at least for the near term, be the central axis for most of the progress that is made in global trade negotiations.

I believe the first important test of this USA–EU accommodation is whether

[3] If EU and MERCOSUR trade negotiations are successful, we may see the creation of the world's first free-trade area between two customs unions.

[4] European foreign direct investment in the USA amounted to USD247 billion in 1990, and USD685 billion in 1999. See 'US Direct Investment Position Abroad on a Historical-Cost Basis, 1990', *Survey of Current Business*, July 1993; and 'US Direct Investment Position Abroad on a Historical-Cost Basis, 1999', *Bureau of Economic Analysis International Investment Data*, <www.bea.doc.gov/bea/di/diapos_99.htm>.

[5] *Ibid.* During the same period, Asian foreign direct investment in the USA grew from USD92 billion to USD167 billion.

[6] *Ibid.* US direct investment in Europe amounted to USD213 billion in 1990, and USD581 billion in 1999.

or not we can revive the last draft of the Seattle text on agriculture, or, at the very least, the precise principles contained in this draft text. We ought to do this because the last draft of the Seattle agriculture text is the best starting point for new WTO trade negotiations in 2001. The EU insists this text is inoperative, but the fact remains that no EU member country spoke against the final draft Seattle text in the EU delegation meeting just before the collapse of the Ministerial Conference. A great amount of work went into drafting this language. We came very close to agreement. This text, and the progress it represents, should not be cast aside.

WTO members met in Geneva four times in 2000, in a Special Session of the WTO Agriculture Committee, to continue the agriculture negotiations following the failure of the Seattle Ministerial.[7] Although they are useful, these so-called 'mandated' negotiations are inherently limited, because they are not comprehensive, and because they have no deadlines for final action.[8]

Both the EU and the USA should agree to use the March 2001 meeting of the Special Session to focus on specific options, using the draft Seattle text as a framework, that would support the launching of a new round later in the year at the 2001 WTO Ministerial.

At some point, all WTO members will have to address the issue of what scope a new round of trade negotiations might have. Although we could not agree on this in Seattle, I believe that a comprehensive round is required. One way to deal with the difficult question of precisely what matters are negotiated might be to start with a commitment to a comprehensive round, and then use the Punta del Este Declaration, which launched the Uruguay Round, as a general model.

The Punta del Este Declaration contained a fairly broad mandate that also dealt with controversial matters, like whether services would be part of the General Agreement on Tariffs and Trade (GATT) structure. By leaving this disputed matter at least partly open, the Punta del Este Declaration made it possible for the central negotiations on trade in goods to go forward, while leaving room for delegates to compromise later on how the more difficult matter of services would ultimately be handled.

By using the meetings of the Special Session of the WTO Agriculture Committee in Geneva as a venue to reach an agreement on key agriculture issues, most of which were already largely resolved in Seattle, and then crafting a broad Punta del Este-style mandate in the final declaration at the end of the

[7] The Special Session of the WTO Agriculture Committee met in March, June, September, and November 2000.

[8] The current Geneva negotiations are mandated because Article 20 of the 1994 Uruguay Round Agreement on Agriculture calls for the initiation of negotiations for continuing the process of agricultural trade reform one year before the end of the URAA implementation period, that is, in 2000.

next Ministerial, we could launch a new round in 2001 focused on agriculture and services trade, while we bridge the differences on the exact scope of the new talks that proved so fractious in Seattle.

The second area of joint USA–EU action to strengthen the world trading system ought to be a comprehensive, cooperative effort to assist China, once it accedes to the WTO, in becoming an effective trading partner committed to fully embracing and observing its fundamental WTO obligations.

The USA and the EU share a strong interest in China's complete integration into the world trading system. WTO rules require its members to maintain transparent, consistent, and non-discriminatory trade rules. Complying with these WTO rules will require enormous changes in China's trade and economic regimes.

There is no question about China's progress in implementing economic and trade reform. We should remember, in assessing China's progress, how much has changed in half a century. In 1952, China's Communist government mounted a wide-ranging crusade to undermine private entrepreneurs. Businesspeople were commonly condemned as 'counter revolutionaries'. Many were assessed large fines, and forced out of business. By 1956, China required all private firms to be jointly owned and run by the State. It was not until the early 1980s that private enterprise began to reemerge in China, during the economic reforms launched by Deng Xiaoping. More significantly, it was not until 1988 that the private economy even had a defined legal status in China.[9]

So it is astonishing that we are even discussing the sort of sweeping economic reform that will accompany China's accession to the WTO. Today, young Chinese engineers who studied and worked in California's Silicon Valley are going back to China, lured by entrepreneurial opportunities that didn't even exist a few years ago.[10] This new wave of entrepreneurial energy can help transform China, and result in new political reforms as well. As the number of individuals who are employed by state-owned enterprises decreases, and the number of individuals employed in the private sector rises, the State will have less and less direct control over how people think and react to political change.

[9] In April 1988, the National People's Congress adopted an amendment to China's constitution stating:

> The State permits privately owned economic entities to exist and develop within the limits prescribed by the law. The private economy is a complement to the socialist public economy. The State protects the legitimate rights and interests of the private economy, while providing the private sector with guidance, supervision, and administrative regulation.

This amendment represented the first time since the Communist takeover in 1949 that China's private sector attained official legal status.

[10] See 'China's New Revolution', *Businessweek*, 27 September 1999, p. 23.

While this trend certainly looks encouraging, we should not deceive ourselves about the daunting road ahead. The transition from total repression to greater degrees of political and economic freedom in China will be difficult to achieve and sustain, particularly in light of China's lack of a jurisprudence and legal infrastructure that is separate from the influence, if not the domination, of the Communist Party. China has a weak, almost non-existent, administrative law system, a basic prerequisite for a modern economy. The concept of the rule of law itself is quite weak in China. This might make it difficult for the central government to make sure that local government officials, as well as central government ministers, fashion and implement rules that are consistent with WTO requirements.

This latter issue, whether the central government in China has the ability to bring local governments into compliance with WTO rules, is a key concern. Major foreign companies operating in China have encountered enormous difficulties in overcoming protectionist trade barriers put in place by local authorities.[11]

Because our shared interest in China's ability to comply with WTO trade rules and agreements is so substantial, the USA and the EU should work in concert in Geneva to design and implement an effective monitoring effort to make certain that we have adequate transparency of China's trade regime when it enters the WTO. One option is to fashion a review program using the WTO's Trade Policy Review Mechanism. I believe we need at least an annual review of China's trade policies for the time being. However, the Trade Policy Review Mechanism as presently structured would not permit an annual review, so we would either have to restructure the Trade Policy Review Mechanism, or adopt another approach, such as reconvening the China Working Party every year for the purpose of conducting a review.

In either case, a report on China's trade practices should be submitted directly to the General Council. There is no model for us to follow in tailoring an appropriate trade policy review effort for China, which is why it is so vital that we closely coordinate our efforts.

At the same time, we should intensify joint efforts to provide, through the WTO, sufficient technical assistance to China's officials and ministries at all levels to help implement China's WTO obligations.

These joint efforts are so important that I believe they will affect the future of the WTO for decades to come, and perhaps even determine the ultimate fate of the world's trading forum.

The third initiative the USA and the EU should undertake to strengthen the

[11] See 'US–China Trade Companies Face a Maze of Barriers', *The Asian Wall Street Journal*, 26 May 2000.

world trading system is to reinforce our support for the dispute settlement system. We will rely on the dispute settlement system to a much greater extent in the 21st century, as we implement complex new trade agreements, and as countries such as China join the WTO. As Professor John Jackson noted in testimony on the WTO dispute settlement system before my International Trade Subcommittee of the Senate Finance Committee;

> the WTO's dispute settlement system is unique in international law. It provides an effective juridical system for managing disputes, coupled with a virtually automatic application of its decisions and reports that is binding on all WTO members.[12]

Yet, of all the WTO's Understandings, the Understanding establishing the dispute settlement mechanism has endured the greatest criticism, sometimes from WTO member governments, but more often from members of the so-called civil society, and from particular industries affected by WTO panel rulings or dispute settlement procedures.

There will probably always be an inherent tension in the dispute settlement system that arises from concerns about national sovereignty on the one hand, and the need to develop efficient, cooperative mechanisms that promote the interdependence of our global economy on the other. This tension will probably always cause a 'fraying' of the system, particularly when domestic political pressures are more animated. So it will be very important for WTO members to avoid placing additional stress on the dispute settlement system by bringing politically-inspired challenges that ought to be resolved through diplomatic negotiation.

Since both the USA and the EU are major users of the dispute settlement system, we both have a very large stake in maintaining its integrity. We should try to engage each other in as many ways as possible to defuse the tensions inherent in the system, through more frequent and substantive parliamentary exchanges, efforts to improve transparency, and the like.

In addition, we can strengthen the political acceptance of the dispute settlement system in our respective countries by addressing together the question of the extent to which WTO dispute settlement panels create new law that is not agreed to among the Member States. This is a particularly important issue, because if we do not have new negotiations for a period of years, WTO panels might begin to fill in some of the details that Member States ought to deal with. Even though Article 3.2 of the Dispute Settlement Understanding warns against using panel reports to address treaty ambiguities, I believe it is nonethe-

[12] Testimony of Professor John H. Jackson before the Subcommittee on International Trade, United States Senate Committee on Finance, 20 June 2000.

less important to develop an understanding that the principle of 'judicial restraint' is valuable and worth preserving.[13]

I fear that in the end, nothing will undermine the WTO more than a jurisprudence that is not firmly anchored in the assent of its Member States.

If we begin to address these three challenges in the next year, I believe that we can strengthen the WTO as an essential pillar of the world economic system, provide more stability for world trade, and renew our bilateral trading relationship so that it is even more resilient, and open to the new possibilities of this unfolding century.

[13] Article 3.2 of the DSU states:

> The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.

The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations (2nd edn, Cambridge University Press, Cambridge, the World Trade Organization, 1999) at p. 355.