

guised restriction to trade and does not unjustifiably or arbitrarily discriminate among member states.

Sixth, in the event that none of the provisions outlined above is sufficient to justify a particular course of action, the waiver provisions (article XXV:5) allow the Contracting Parties by two-thirds vote constituting at least half of all CPs to waive any obligation contained in the agreement. The waiver route provides GATT members with the opportunity to pass collective judgment on a particular set of circumstances and avoids the need for amendment to the text. The discriminatory aspects of the sanctions enjoined by the Montreal Protocol, for example, could be regularized by a waiver should the necessary number of countries agree.

Finally, in order to prevent abuse of these various provisions, but particularly resort to article XX, GATT's dispute settlement provisions (articles XXII and XXIII) provide the right to challenge the policies and practices of other CPs on the ground that they "nullify or impair" benefits that could reasonably be anticipated as a result of the provisions of the agreement.

In addition to the plain language of the text, GATT law involves the interpretations placed on these rules by various GATT decisions and panel rulings. For example, the requirements of article XX have been interpreted to include the test that any measure justified under that article must not only not be a disguised restriction on trade, but must also be necessary to meet the stated goal and involve the least restrictive alternative.<sup>28</sup>

Over the years, GATT has proven a dynamic instrument capable of adapting to a range of changing requirements and circumstances, as a result of periodic negotiations, decisions, panel rulings and acceptance of regional and other arrangements imposing more stringent requirements. The need to strengthen and modernize the GATT-based trading system may be particularly acute today as a result of the explosion in international commerce and the changing nature of international business, but the basic principles remain sound. The current Uruguay Round marks the latest opportunity to modernize and improve the GATT in response to these changing circumstances. Better rules to address environmental concerns are included on the agenda, e.g., in the subsidies code.

Despite our conclusion that recent cases do not indicate a pressing need to change the rules, we see a broader utility in considering whether the existing

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<sup>28</sup> This was the conclusion reached by the panel appointed under the terms of chapter 18 of the Canada-US FTA to adjudicate the Canada-US dispute about landing requirements for salmon and herring in the West Coast fishery. "In the Matter of Canada's Landing Requirement for Pacific Coast Salmon and Herring," Final Report, October 16, 1989. While not a GATT panel, its findings interpreted GATT law as applied between Canada and the United States and thus forms part of the interpretations and rulings that will guide the policies of member states as well as any GATT panel constituted to adjudicate any similar issue.