

trade in one or a limited number of sectors would require us to seek a GATT waiver (pursuant to Article XXV:5).

A waiver requires the approval of two-thirds of the votes cast comprising more than half of all contracting parties (with 111 members, this approach translates into 56 to 74 affirmative votes)¹. Developed countries have obtained important waivers (one thinks of the U.S. Auto Pact and Section 22 agriculture waivers sought in the mid 1960s and mid 1950s respectively), but no recent waiver has addressed balanced sectoral agreements between two important markets (as distinct from largely one-way, unreciprocated access by a developed country to several developing countries, such as the U.S. arrangements with Caribbean states and the Andean countries). In addition, most waivers have been relatively narrow and technical in focus (40 of 105 waivers granted to date were approved for implementation of a modified tariff Schedule in advance of completion of negotiations under GATT Article XXVIII concerning implementation of the Harmonized System (introduced in the 1980s), and for the renegotiation or new establishment of tariff Schedules). In the current environment, it is unlikely that GATT CONTRACTING PARTIES would easily grant to Canada and another country representing an important market a waiver for a deal encompassing balanced and preferential access to each other's market in a few sectors.

Moreover, a waiver is not necessarily cost free. If a country obtains a waiver, another GATT member can still initiate dispute settlement proceedings if it believes that it can demonstrate that a nullification or impairment of benefits accruing to it under the GATT has resulted from restrictions imposed pursuant to a waiver that could not have been reasonably anticipated by the complaining Party. Although a violation of a GATT provision is not technically in question here, a successful "non-violation" impairment case can lead to trade compensation of equivalent effect. In fact, the MTN Final Act reaffirms the right of access to dispute settlement even when a trade measure is applied that is fully consistent with the appropriate waiver. In addition, the Act clarifies that any future waiver must indicate the date on which it shall terminate and will be subject to an annual review by CONTRACTING PARTIES. These provisions clearly underline the uncertainty facing producers, exporters and governments seeking cover for sectoral free trade.

Finally, multilateral free trade sectoral accords negotiated pursuant to a GATT Round (e.g., the Civil Aircraft Code) are possible. But they are infrequent, require the active support of the major international players, and would most likely be successful

¹ Pursuant to the MTN Final Act, waivers will require the approval of three-quarters of the Members of the new World Trade Organization, once the latter enters into force in 1995.