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Introduction

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SYMPOSIUM THE URUGUAY ROUND AND THE FUTURE OF WORLD TRADE

INTRODUCTION

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The round of multilateral trade negotiations convened by the General Agreement on Tariffs and Trade (GATT)¹ in 1986 in Punta del Este, Uruguay (Uruguay Round) was the most ambitious of the eight rounds of negotiations convened since the creation of the GATT. The Uruguay Round, like its predecessors, seeks to continue the lowering of tariffs and customs barriers which historically have been the most prevalent and significant impediment to international trade. More importantly, the Uruguay Round seeks major progress in the reduction of nontariff barriers, the strengthening of GATT as an institution, and the broadening of the coverage of the GATT which has eluded previous negotiators.

I. THE SCOPE OF THE URUGUAY ROUND

The scope of the Uruguay Round redefines the nature of international trade negotiations and the nature of issues falling under the auspices of the GATT. The Uruguay Round and its related negotiations address tariff reductions, rules of origin, antidumping law and procedure, subsidies and countervailing duties, safeguards, voluntary restraints, market access for the products of lesser developed countries, trade in tropical products, reform and elimination of the quota system for textiles, liberalization of trade in steel, liberalization of agricultural trade, government procurement, trade related intellectual property measures, trade related investment measures, trade in services, the institutional structure of GATT, the functioning of the GATT

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1. General Agreement on Tariffs and Trade, Oct. 30, 1947, T.I.A.S. No. 1700, 55 U.N.T.S. 194 [hereinafter GATT].

system, and dispute resolution mechanisms.²

The ambitiousness of these negotiations is all the more apparent when viewed against the background of the historical and institutional weaknesses of the GATT as a pale reflection of the more powerful international trade institutions contemplated by the victorious Allies in creating the post World War II economic order.³ Nonetheless, the GATT has been successful in achieving binding tariff reductions on a multilateral basis, but has enjoyed much more limited success in addressing other evolving issues of trade liberalization.

The structure and operation of the GATT make further changes difficult to accomplish. Amendment of the GATT is no longer a feasible option.⁴ Continued trade liberalization has come through the negotiation of multilateral codes which themselves fit awkwardly into the framework of obligations contemplated by the GATT.⁵

The continuing ambivalence of the United States towards multilateral trade liberalization through the GATT has further complicated this process. It was the hostility of the United States Congress which prevented the creation of a comprehensive International Trade Organization (ITO) in the first place.⁶ The failure of the ITO forced the international trading community to use the GATT as both a set of rules and an institution when it was never intended to play this dual role.

As the years passed, Congress authorized the President to negotiate in the GATT rounds with various degrees of enthusiasm. Congress often granted specific authority to negotiate for a set period of time, specified negotiating objectives, and required ongoing dialogue with the Congress and the private sector regarding the status and outcome of the negotiations.⁷

2. See *Other Documents, General Agreement on Tariffs and Trade: Ministerial Declaration on the Uruguay Round of Multilateral Trade Negotiations*, 25 I.L.M. 1623 (1986) (declaration of goals and framework for Uruguay Round). See generally AMERICAN BAR ASS'N, *URUGUAY ROUND TRADE NEGOTIATIONS: WHERE DO WE GO FROM HERE?* (1991); Judith H. Bello & Alan F. Holmer, *The Uruguay Round: Where are We?*, 25 INT'L LAW. 723 (1991).

3. See generally KENNETH W. DAM, *THE GATT: LAW AND INTERNATIONAL ECONOMIC ORGANIZATION* (1970); JOHN H. JACKSON, *WORLD TRADE AND THE LAW OF GATT* (1969) [hereinafter JACKSON, *WORLD TRADE*].

4. See GATT, *supra* note 1, Art. XXX.

5. See John H. Jackson, *The Birth of the GATT-MTN System: A Constitutional Appraisal*, 12 LAW & POL'Y INT'L BUS. 21 (1980).

6. See JACKSON, *WORLD TRADE*, *supra* note 3, at 49-53.

7. See, e.g., Trade Act of 1974, 19 U.S.C. §§ 2101-35 (1982) (negotiating objectives

Of key importance to United States credibility and negotiating effectiveness has been the willingness of the Congress to authorize the President to negotiate for a set period of time to conclude international trade agreements which Congress would then consider on an expedited basis, with limited debate, no possibility of filibuster, and without amendments.⁸ Under this so-called "fast track" procedure, Congress may only vote on the package of trade agreements as a whole.⁹ Any agreements concluded after the deadlines established by Congress could always be tendered to the Congress for implementation through normal Congressional procedures, but would presumably fail under the weight of debate, filibuster, amendment, and special interests.¹⁰ Against this background, the United States came to the table at the Uruguay Round with a mandate to negotiate under the fast track as long as any resulting agreements were presented to the Congress by March 1991.

II. THE PROGRESS OF THE URUGUAY ROUND

Since the initial ministerial meeting in 1986, progress has come slowly in the Uruguay Round. The 1988 midterm meeting in Montreal is credited with increasing the political will of the Contracting Parties to continue the process of multilateral trade liberalization. However, the Montreal meeting produced only a few tangible results.¹¹

The negotiations intensified as the Contracting Parties approached the 1991 deadline for the expiration of the fast track procedure under United States law. Ultimately, the deadlines under United States law passed without agreement in Geneva.

and limits for the Tokyo Round).

8. See 19 U.S.C. §§ 102, 2503, 2903 (1988).

One of the principal failings of the 1967 Antidumping Code was the negotiation of the code by the Executive Branch without any explicit delegation or authorization by Congress, which subsequently refused to implement the Code to the extent it was inconsistent with existing United States law. See Russell B. Long, *United States Law and the International Anti-Dumping Code*, 3 INT'L LAW. 464 (1969).

9. 19 U.S.C. §§ 102, 2503, 2903.

10. The impending expiration of the fast track for the United States appears to have been one of the principal stimulants for the conclusion of the Tokyo Round of GATT negotiations in 1979.

11. The 1988 meeting did produce agreement regarding the strengthening of dispute resolution proceedings under Article XXIII of the GATT and the creation of a new Trade Policy Review Mechanism. See Kenneth W. Abbott, *GATT as a Public Institution: The Uruguay Round and Beyond*, 18 BROOKLYN J. INT'L L. 31 (1992) [hereinafter Abbott].

The issue of agricultural subsidies alone proved to be the principal impediment to agreement and compromise across the full range of trade issues under consideration.¹² The talks then went into hiatus as the world trading community waited to see if the Congress would reauthorize the fast track and permit the President to reopen credible negotiations at the international level.

As a result of the eventual extension of the fast track¹³ and the tireless efforts of the GATT Secretariat and its Director-General, Arthur Dunkel,¹⁴ the negotiations resumed in earnest in the late summer of 1991. By November of 1991, the framework of agreements was approaching completion, although ultimate success was still very much in doubt.

III. BEYOND THE URUGUAY ROUND

Regardless of the final outcome of the Uruguay Round, both the GATT and United States international trade law and policy will not stand still. The GATT has yet to finish the process of the elimination of the tariff as a barrier to international trade. In order to achieve true multilateral trade liberalization on a global scale, important sectors of the world economy must be permanently brought within the framework of GATT discipline and its pillars of binding tariff reduction,¹⁵ most favored nation treatment,¹⁶ national treatment,¹⁷ and the host of rules designed to prevent evasion of these fundamental principles.

The GATT appears to be in the middle of its next great struggle over the regulation and elimination of the many nontariff barriers which have arisen in place of the tariff. Since

12. See *Uruguay Round of Multilateral Trade Talks Tops U.S. Trade Agenda for 1991 as Administration, Congress Also Prepare to Deal With Range of Other Issues*, 8 Int'l Trade Rep. (BNA) 60 (Jan. 9, 1991) [hereinafter *Uruguay Round*]; *The Other Brinkmanship*, THE ECONOMIST, Jan. 5, 1991, at 34.

13. See Harold Hongju Koh, *The Fast Track and United States Trade Policy*, 18 BROOKLYN J. INT'L L. 143 (1992) [hereinafter Koh].

14. See *Time is Running Out, Dunkel Warns Uruguay Round Negotiations*, 8 Int'l Trade Rep. (BNA) 1404 (Sept. 25, 1991); *Trade Ministers Express Optimism on Timely Conclusion to Uruguay Round*, 8 Int'l Trade Rep. (BNA) 1492 (Oct. 16, 1991); *Talks Will Reach Decisive Phase in October and November, Dunkel Says*, 8 Int'l Trade Rep. (BNA) 1148 (July 31, 1991); *Uruguay Round*, supra note 12; *Draft GATT Agreement Offered By Dunkel Draws Mixed Response; Talks To Continue*, 9 Int'l Trade Rep. (BNA) 38 (Jan. 1, 1992); *Uruguay Round Talks To Last Until Spring As U.S., EC Voice Reservations on Draft*, 9 Int'l Trade Rep. (BNA) 98 (Jan. 1, 1992).

15. GATT, supra note 1, Art. II.

16. GATT, supra note 1, Art. I.

17. GATT, supra note 1, Art. III.

the Kennedy Round of negotiations in the 1960s, the GATT has sought to address these problems. Few nontariff barriers have been eliminated outright. However, nontariff barriers have been identified and defined with greater specificity, and remedies have been created and harmonized for countries affected by the nontariff barriers of their trading partners. The code system was the outcome of the Tokyo Round's efforts to define the legitimate countermeasures available to contracting parties injured by nontariff barriers and other practices deemed unfair by the international trading system.¹⁸

The Uruguay Round has continued in this tradition and is unlikely to prohibit or eliminate outright these most elusive of trade barriers. The multitude of nontariff barriers must eventually be eliminated as a substitute for the tariff barriers that the GATT has already so successfully addressed. Much work will remain for the GATT in future rounds.

Finally, the GATT has barely begun to address the social aspects of trade policy. The interplay between trade and environmental issues will undoubtedly be the subject of intense political debate in the United States and elsewhere, and will continue to be raised in ongoing disputes before the GATT.¹⁹ The next round of GATT negotiations will be the first available forum to reach a more comprehensive resolution to this pressing global issue. The interaction between competition and international trade policy remains another topic of intense scholarly interest,²⁰ and already has been suggested as a fitting topic for fu-

18. See, e.g., *Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade*, GATT, BASIC INSTRUMENTS AND SELECTED DOCUMENTS, 171 (26th Supp. 1980) [hereinafter GATT Antidumping Code]; *Agreement on Interpretation of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade*, GATT, BASIC INSTRUMENTS AND SELECTED DOCUMENTS, 56 (26th Supp. 1980) (Subsidies Code); *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade*, GATT, BASIC INSTRUMENTS AND SELECTED DOCUMENTS, 116 (26th Supp. 1980) (Customs Valuation Code); *Agreement on Technical Barriers to Trade*, GATT, BASIC INSTRUMENTS AND SELECTED DOCUMENTS, 8 (26th Supp. 1980) (Standards Code); *Agreement on Government Procurement*, GATT, BASIC INSTRUMENTS AND SELECTED DOCUMENTS, 33 (26th Supp. 1980).

19. *United States Restrictions on Imports of Tuna, Report of the Panel*, GATT DS21/R (Sept. 3, 1991) (holding United States ban on tuna caught in manner endangering marine mammal life to be violation of GATT rules against quantitative restrictions in international trade).

20. See SPENCER WEBER WALLER, *INTERNATIONAL TRADE AND U.S. ANTITRUST LAW* (1992); MARIO MARQUES MENDES, *ANTITRUST IN A WORLD OF INTERRELATED ECONOMIES* (1991); ORGANISATION FOR ECO. COOPERATION AND DEV., *COMPETITION AND TRADE POLICIES: THEIR INTERACTION* (1974).

ture GATT rounds.²¹ The final stage in the evolution of GATT will have to include the consideration of the full social costs of trade liberalization including competition, environmental, labor, immigration, and cultural barriers to trade, and the other short term and long run dislocations experienced in national economies exposed to international trade.

These issues will also be played out in the United States as it confronts the full impact of international trade in its domestic market. The United States faces, on an ongoing basis, the choice of whether its national interests can best be served through a long term commitment to a system of multilateral trade liberalization through the GATT or if it should seek to achieve its national interests elsewhere.

IV. THE SYMPOSIUM

After more than five years of negotiations in the Uruguay Round and an end in sight (one way or another), the time was ripe for an assessment of past efforts, predictions for the future, and, most importantly, analysis of how the Uruguay Round had already shaped and changed the way the international community and the United States look at GATT and the future of world trade. On November 15, 1991, a unique symposium was convened at Brooklyn Borough Hall to address both the international and domestic effects of the Uruguay Round.²² The symposium was a cooperative effort of Brooklyn Law School, the Brooklyn Journal of International Law, the Brooklyn Law School Center for the Study of International Business Law, the American Society of International Law (ASIL)²³ and the International Economic Law Interest Group of the ASIL.

The thesis of the symposium was deceptively simple. Although as yet uncompleted, the Uruguay Round already has exerted a present influence over the multilateral regulation of international trade through the GATT and the national regulation of international trade in the United States. The continuing negotiations in Geneva have shaped the way the international

21. *Commission Analyzes Problems Posed in Post-Uruguay Round Era*, 8 Int'l Trade Rep. (BNA) 1405 (Sept. 25, 1991).

22. A debt of gratitude is due Brooklyn Borough President Howard Golden for the use of the spectacular restored Beaux-Arts ceremonial courtroom in Brooklyn Borough Hall which was the site of the symposium.

23. The symposium was designated as a regional meeting of the American Society of International Law.

trade community thinks about the GATT, the scope of international trade issues, whether the struggle for multilateral trade liberalization is worth continuing, and whether the GATT should be the institutional framework for that effort.

The ongoing and unresolved Uruguay Round also has shaped United States trade policies. The United States has made a strong political commitment to negotiate a North American Free Trade Agreement (NAFTA) with Canada and Mexico, and to continue embryonic efforts to extend such a free trade area throughout the entire Western hemisphere, either as an alternative, or as a supplement, to further multilateral liberalization through the GATT.²⁴ The need for an extension of the President's fast track negotiating authority to complete the negotiations at the Uruguay Round, and to commence the NAFTA talks, led to a bruising political confrontation between the executive and the legislative branches, resulting in the extension of the President's fast track negotiating authority, for both the Uruguay Round and NAFTA, through 1993.²⁵

The morning session of the symposium focused on the effects of the Uruguay Round on the future of GATT as the principal institution for the multilateral regulation and liberalization of international trade. Professor John Jackson of the University of Michigan Law School opened the symposium with his paper *GATT and the Future of International Trade Institutions*.²⁶ Professor Jackson argues that "governments need to pay as much attention to the institutional structure of the GATT system, as they pay to the substantive measures in the GATT" if the GATT is to continue to play its important and constructive role in the field of international economic relations.²⁷ Professor Kenneth Abbott of Northwestern University School of Law continued with his paper *GATT as a Public Institution: The Uruguay Round and Beyond*,²⁸ analyzing the continuing evolution of the GATT in fresh terms of the public and private interests served by the GATT. Professor Abbott applied this framework

24. The Administration explicitly linked the Uruguay Round and the North American Free Trade Agreement negotiations by seeking the extension of the fast track authority for both negotiations as a package.

25. Now the 1992 Presidential election also looms on the horizon, making trade liberalization even more prominent as a political issue.

26. 18 BROOKLYN J. INT'L L. 11 (1992).

27. *Id.* at 28.

28. Abbott, *supra* note 11, at 31.

in highlighting and analyzing the tangible results of the Uruguay Round arising out of the 1988 Montreal agreements modifying and streamlining the dispute resolution provisions of the GATT and the functioning of the GATT system.²⁹

The morning session continued with two distinguished commentators, each uniquely qualified to discuss the international effects of the Uruguay Round from his own national and regional perspectives. Peter McKellar, of the Canadian Consulate General in New York City, offered his comments on the NAFTA, which may emerge as a major regional alternative to further multilateral trade liberalization.³⁰ Richard Wright, the Counsellor for Trade and Commercial Affairs for the Delegation of the Commission of the European Communities, provided his commentary from the vantage point of the European Communities, a key player in both the Uruguay Round negotiations and in regional arrangements to complete and expand the European common market.³¹

The symposium continued with the luncheon remarks of William B. Barreda, the Deputy Assistant Secretary for Trade and Investment of the United States Department of the Treasury. Mr. Barreda shared with the symposium the up to the minute developments of the Uruguay Round negotiations, in which he serves as one of the principal negotiators for the United States government.

Mr. Barreda's remarks formed a natural bridge to the afternoon session, which focused on the effect of the Uruguay Round on United States international trade law and policy. Professor Ronald A. Brand, of the University of Pittsburgh School of Law, presented his paper, *GATT and the Evolution of United States Trade Law*, in which he traced the ongoing links between the GATT and United States international trade law and policy.³² Professor Brand's paper was a continuation of his longstanding interest and work in the interaction between these two bodies of law, despite the domestic political and constitutional forces which often place the United States at odds with the interna-

29. Abbott, *supra* note 11, at 31.

30. Peter McKellar, *NAFTA and the GATT: A Regional Perspective on the Uruguay Round*, 18 *BROOKLYN J. INT'L L.* 87 (1992).

31. Richard Wright, *The European Community's View of the Uruguay Round: A Brief Perspective*, 18 *BROOKLYN J. INT'L L.* 95 (1992).

32. Ronald A. Brand, *GATT and the Evolution of United States Trade Law*, 18 *BROOKLYN J. INT'L L.* 101 (1992).

tional community on trade issues.³³ Professor Harold H. Koh of the Yale Law School then presented his paper on *The Fast Track and United States Trade Policy*, placing both the Uruguay Round and the NAFTA negotiations in the context of the continuing struggle between the United States Congress and the President for supremacy in the field of international economic relations, and the necessary accommodations between both branches in order to negotiate and implement international economic agreements within the framework provided by the United States Constitution.³⁴

The commentators for the afternoon panel brought a wealth of governmental and private practice experience to bear on the effects of the Uruguay Round on United States import relief laws. Gary N. Horlick, of O'Melveny & Myers in Washington, D.C., discussed the continuing efforts to adopt a new multilateral antidumping agreement which would modify and improve the implementation of the existing GATT antidumping provisions,³⁵ the 1979 Antidumping Code,³⁶ and the impact of the newly proposed code on United States antidumping law and procedure.³⁷ Robert Leo, of Adduci, Mastriani, Meeks & Schill in New York City, then offered his comments on the effect of the Uruguay Round and the NAFTA on the substance and practice of United States customs and international trade law.³⁸

The papers and comments from the symposium deserve preservation and promulgation to the widest audience possible. They represent lasting contributions to the literature and jurisprudence of the GATT and United States international trade law. Therefore, the Brooklyn Journal of International Law, the cosponsors of the symposium, and all the participants are pleased to present this special symposium issue — The Uruguay Round and the Future of World Trade.

33. See Ronald A. Brand, *The Status of the General Agreement on Tariffs and Trade in United States Domestic Law*, 26 STAN. J. INT'L L. 479 (1990).

34. Koh, *supra* note 13, at 143.

35. See GATT, *supra* note 1, Art. VI.

36. See GATT Antidumping Code, *supra* note 18.

37. Gary N. Horlick, *Proposals for Reform of the GATT Antidumping Code*, 18 BROOKLYN J. INT'L L. 181 (1992).

38. Robert J. Leo, *Practicing International Trade Law After the Uruguay Round*, 18 BROOKLYN J. INT'L L. 189 (1992). Mr. Leo is the former Vice President and Counsel of the American Association of Exporters and Importers.

