The GATT and International Trade

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1.0 INTRODUCTION

After four months of participant-observation at the GATT\(^1\) Headquarters in Geneva during the final phase of the Uruguay Round (UR), I am most aware of the tension between the two norms of most-favored nation (MFN) status and reciprocity\(^2\) that pervade the GATT as an international trade agreement. MFN status is also called nondiscrimination, which embodies the practice of giving all trading partners the same breaks on the same goods. MFN is the “play the same to everyone” rule of the GATT. On the other hand, reciprocity is the “give-to-get” rule, typified by “If I give you a break on a trade barrier on this good, then you must give me an equivalent break on the same or different good.” Reciprocity embodies the principle that altruism, giving a trade break, is practiced for selfish reasons, to get a break in return. The tension between these norms not only creates the ambiguities in how the GATT as an agreement is applied, but it is also the source of the “ricketiness”\(^3\) in the GATT as an institution that applies the agreement.\(^4\)

Another noticeable tension is the way the majority of the GATT contracting parties, or members, live up to their GATT contractual obligations. On the one hand, they profess the GATT ideal of open and transparent trade, while, on the other hand, they make unilateral, bilateral, or regional trading associations in which trade in some goods occurs not only outside of the scope of the GATT, but is consequently protected or managed to give the trading association an advantage by controlling the trade in that area.

I am also acutely aware, after observing three major impasses occur

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3. Interview with delegate (Oct 23, 1990). Over the course of three and a half months I interviewed several delegates to the Uruguay Round as well as some GATT staff members. Because some of the topics we discussed were very sensitive, some delegates asked for anonymity. Therefore, I am not listing the names of those interviewed.
4. See infra text accompanying note 36. As an organization, the GATT consists of all the members who, when acting jointly as a political body, comprise the Contracting Parties, the Council, the executive organ of the Contracting Parties, and the Staff. OLIVER LONG, LAW AND ITS LIMITATIONS IN THE GATT MULTILATERAL TRADE SYSTEM 44-54 (1985).
in agriculture, in services and in dispute settlement, that multilateral trade liberalization under the auspices of a legally binding treaty means different things to different people. To the GATT staff, trade liberalization is a strongly supported ideal. They use the occasion of a trading round to shape an ever larger, less rickety and more institutionalized GATT organization. Indeed, the staff work diligently to contain the members' behavior that seeks to gain special and privileged access to world markets by finding ways to stretch the GATT articles to their breaking point.

To some developing countries, trade liberalization is a fairy tale because they perceive the GATT organization as an extension of the Organization for Economic Cooperation and Development (OECD), the GATT treaty as a set of rules that permits the rich to get richer at their expense and the GATT norms as propaganda for capitalism and economic inequity. To the major powers, trade liberalization can be a slogan that encapsulates the idea that what is good for our multinational corporations is good for us and the world.

When one considers the economic philosophy that underlies it, multilateral trade liberalization seems a myth. Removing barriers to trade, such as tariffs and quotas, which is what trade liberalization is all about, is described as a good both for the economy of the trading states and for the welfare of their individual citizens. Commodities get to markets, their cost goes down, trade imbalances are reduced and standards of liv-

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5. The Organization for Economic Cooperation and Development is a group of industrialized nations that fosters economic growth among its members. The organization began with the Convention for the Organization for Economic Cooperation and Development, opened for signature Dec. 14, 1960, 888 U.N.T.S.0. (entered into force Jan. 1, 1961). The original signatories to the Convention were Belgium, Canada, France, West Germany, Greece, Iceland, Ireland, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United States. Additional signatories include Australia, Austria, Finland, Italy, Japan, Luxembourg, Netherlands and New Zealand.

6. See The Free-traders Flawed Ideology, Fin. Times, Nov. 13, 1990, at 40, col. 1 (stating that the “whole concept of the GATT round in relation to agriculture,” which is the dream of a “totally free world market for food,” is an “economist’s dream,” a “figment of the imagination, and that is all it will ever be”).

ing approach relative maxima for all liberalizing trading partners. Trade liberalization relies heavily on the belief that all trading partners should have the same chances to buy and sell in the marketplace as any other partner. Thus, an open market with transparent rules of operation and equal access for all is expected to insure fair competition. In turn, an open and transparent market is expected to insure efficiency in producing the traded commodities. That is, an open market "decides" which trading nation will possess a comparative advantage relative to all other trading nations in a particular commodity. That nation will have produced the entity at a lower cost, thereby enabling it to be sold at a lower price.

This view about the inherent fairness of the market as creator of comparative advantage encompasses a world view about how the market should work and what its goals should be. Such a world view includes the belief that, once conferred by the market, a comparative advantage is generally not expected to change. However, everyday experience belies that belief. America fears that Japan will outproduce it in cars and electronics; France fears that Argentina will outproduce it in wheat; Italy fears that Morocco will outproduce it in fresh vegetables; Germany fears that Eastern Europe will learn how to broker deals for itself. Classic comparative advantage theory does not take into account relative and absolute changes in a nation's ability to produce, fluctuations in monetary exchange rates, real differences in market access due to psychological or nationalistic preferences, balance of payments difficulties, or infrastructural inability to get goods to markets.

Additionally, after watching the Uruguay Round go into impasse while trying to accomplish multilateral trade liberalization in some areas of trade that nations protect ferociously, I am aware that the ideal of a "fair fight," refereed by the rational action of players in the market seeking the best bargains and the ideal of an efficient and fair market that allows each trader to find its own natural comparative advantage, is what the GATT as agreement and as organization declares to be driving multilateral trade liberalization toward. That is, the GATT embodies these joint ideals about a fair, impersonal market creating a natural comparative advantage. All contracting parties of the GATT enjoy MFN status with respect to each other. By giving all contracting parties equal

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11. Id. at 25-29.
access to an open market according to their comparative advantage, as written into Article 1 of the Agreement, nondiscrimination or MFN treatment among GATT members is the basis in the GATT for multilateral trade liberalization.¹²

In practice there are two kinds of nondiscrimination: unconditional and conditional. Unconditional nondiscrimination is the principle embodied in Article 1 of the Agreement and requires that a GATT member who removes a trade barrier or gives a trade benefit to one GATT member must do the same for all other members. The assumption behind unconditional discrimination is that all GATT members will open access to their markets, although nowhere in the GATT is it written that members must open their markets.

Since some GATT members, especially the less-developed countries, have been slow to liberalize their trade, and developed countries have generally done most of the liberalizing of their markets, the developed world began to perceive that less-developed countries were acting as "free-riders" on the GATT liberalized trade train. To combat the free-rider problem, the developed world instituted the practice of conditional nondiscrimination toward some GATT members. Conditional nondiscrimination is the practice whereby a GATT member offers easier access to its market on the condition that all trading partners have to offer some trade concession in return.¹³ This practice of conditional MFN treatment is just another aspect of the reciprocity rule, which is the other pillar of the GATT, although generally an unwritten and often unacknowledged one. It assumes that liberalized trade and open access to markets is not always an automatic benefit. Indeed, the very practice of granting conditional MFN by some GATT members demonstrates an inherent structural weakness in the GATT as an agreement and illustrates that trade liberalization as a fair fight is a myth.¹⁴

¹². Article 1 of the GATT, supra note 1, states:

With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.


Even though GATT members find ways to get around the norm of unconditional nondiscrimination and to act in a protectionistic manner in order to preserve an "artificial" comparative advantage by using tariffs, quotas, subsidies, etc., multilateral liberalization under the auspices of the GATT is about acting on the ideal of unconditional nondiscrimination to set up liberalized trade agreements. It is this norm of unconditional nondiscrimination that makes GATT members view multilateral trade liberalization as a good thing. However, the inherent weakness in the GATT is that there is no provision within the Agreement to force members to act in accordance with that ideal. The GATT as a trade treaty cannot force a member to offer trade concessions or choose to liberalize. Thus, from a realist's perspective, what drives trade liberalization is not only the belief that all members will benefit equally and fairly (few nations are really concerned if any other nation got a fair shake), but also the need to get the best deal for oneself. Nations have joined the GATT and cooperated in granting nondiscrimination to all other members because they, in turn, will get the benefit of MFN status on any GATT deal between any GATT trading partners. What trade liberalization under the GATT is about, then, is a balancing between reciprocity and nondiscrimination, between making the best deal for itself that a member can and having to share that deal with the rest of the GATT members.15

Because of this tension, the GATT possesses an inherent and necessary structural weakness in that, during trade negotiations to create a new set of trade obligations under the GATT, if a proper balance between reciprocity and nondiscrimination is not struck, an impasse will occur. This Note discusses an example of that tension at work. This Note also discusses why negotiations to liberalize trade in agriculture during the latest round of trade negotiations, called the Uruguay Round, held under the auspices of the GATT, has so far16 resulted in an impasse; that is, why the Round has not yet produced a concrete agreement in agriculture.

The body of this Note is divided into four sections. Section 2, enti-

15. See Strange, supra note 8, at 256-259; Yarbrough & Yarbrough, International Institutions and the New Economics of Organization, 44 Int'l Org. 235, 244-250 (1990); Hufbauer & Schott, supra note 13, at 16.

16. The Uruguay Round was scheduled to end in December 1990 with the Brussels conference of Trade Ministers. However, because of the impasse in the talks on agriculture, no agreement was reached and the Round is still in limbo as of this writing. For a good quick review of what the Round could achieve, see Ruggieri, The Uruguay Round: Effects on U.S. Business, N. Y. L. J., Feb. 7, 1991, at 5, col. 1.
tled The GATT, discusses the development of the GATT both as a treaty and as an organization, and includes a run-through of the liberalized accomplishments of the seven previous negotiating rounds. Section 3, The Uruguay Round, provides an exposition of the history of the UR, including why it was commenced, what its original goals and expectations were, and what the starting positions of the major players were. Also discussed are how negotiating positions and expectations evolved (especially since the Midterm Declaration in 1989), what happened in the last three months of the Round and what resulted from of the Brussels Ministerial Meeting in December 1990.

Section 4, entitled Analysis, examines why the Brussels Conference ended up in impasse by looking at the political, ideological and organizational factors that influenced the outcome. Political variables include largely external influences on negotiators, such as private interest group lobbying and changes in political clout that some developing agricultural exporters experienced during the Round. The ideological factor discussed is the difference in the way the United States (U.S.) and the European Community (EC), the major players in the agricultural negotiations, interpreted the reciprocity principle of the GATT. Organizational factors include the lobbying done by the GATT staff to change the position of some of the negotiators, as well as the pervasive belief that negotiated agreements can only be achieved on the basis of consensus, a process that tends to silence opposing views by not allowing them. In conclusion, Section 5, Significance, reflects on the significance of the Brussels impasse in agriculture for the future of the GATT and the world trading system.

The goal of this Note is to clarify the role of the GATT, both as an international treaty creating legal obligations and as an organization with a structure and policy that attempts to apply the treaty. It also attempts to show that given the reality of inequalities in resources and in market access of trading partners, the most effective way to liberalize trade of heavily subsidized commodities may not be to aim for the big, ambitious treaty that liberalizes quickly, and consequently too painfully, but may be to go for the modest yet concrete agreement that liberalizes slowly yet irreversibly with very strong enforcement provisions.

2.0 THE GATT

2.1 History

The GATT originated in 1944 during World War II out of the
Breton Woods conference in which the allied powers, especially the British and the Americans, planned how to return the world to economic normalcy in the troubled post-war era. Of priority were monetary and fiscal matters; international trade was not really or realistically dealt with.\(^{17}\) From November 1947 to March 1948, a charter establishing the International Trade Organization (ITO), complete with specified functioning and goal, staff, policy, action program and dispute settlement process, was negotiated during the United Nations Conference on Trade and Employment at Havana.\(^{18}\) At about the same time as the Havana Conference, the GATT was negotiated in Geneva, with the expectation that it would be an addendum to the Havana charter. However, the Havana charter was never ratified by the requisite number of states and did not come into force. Thus, the ITO never came into being, leaving the GATT as the only multilateral agreement on which the world’s powers could hang their hopes for the internationalism and liberalization of trade. Although the GATT’s uniqueness as the only available world trade treaty has persisted throughout its history, it still has not come into force.\(^{19}\) The original twenty-three contracting states abide by the GATT as a binding international obligation because of the Protocol of Provisional Application, and later states are bound because of their individual accession protocols.\(^{20}\)

\(^{17}\) Out of the Breton Woods conference came two institutions, the International Monetary Fund and the World Bank, and a commitment to create a third, the International Trade Organization (ITO). Jackson, \textit{GATT and Recent International Trade Problems}, 11 Md. J. \textsc{Int’l} Law \& \textsc{Trade} 1, 5-6 (1987) [hereinafter Jackson, \textit{GATT and Recent International Trade Problems}]. There were no trade ministers at Breton Woods, only ministers of finance. \textit{Id.}

\(^{18}\) U.N. Conference on Trade and Employment, Havana Charter for an International Trade Organization and Final Act and Related Documents (Havana, Cuba, Nov. 21, 1947 - Mar. 24, 1948), UN Doc. ICITO/1/4/1948, U.S. Dept. of State Pub. 3117 (1947) [hereinafter Havana Charter]. The Havana Charter provided a broad framework for thinking about as well as managing trade issues. Included were provisions that created the ITO plus a wide-ranging discussion that set out a philosophy on trade policy, employment practices, economic development and restrictive trade practices. Long, \textit{supra} note 4, at 1.

\(^{19}\) Jackson, \textit{GATT and Recent International Trade Problems}, \textit{supra} note 17, at 5.

\(^{20}\) Protocol of Provisional Application, Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 308 [hereinafter Provisional Protocol]. Long, \textit{supra} note 4, at 11-12; K. Dam, \textit{The GATT: Law and International Economic Organization} 341-344 (1970). The Provisional Protocol states that members would apply provisionally on and after Jan. 1, 1948 Parts I & III of the General Agreement and Part II "to the fullest extent not inconsistent with existing legislation." Thus the Protocol allows that conflicts to specific provisions of Part II created by GATT-inconsistent, pre-existing domestic laws would not be a violation of the General Agreement. Dam, \textit{supra} at 341-342. The GATT was accepted by the original contracting states as a stop gap or a fill-in treaty until the real thing came along. The GATT is still provisionally applied 43 years later, a situation that one of the working groups in the Uruguay Round discussed changing. It is expected that the conference on implementing the results of the Uruguay Round (if there are any) to be held later in
Neither the agreement nor the Provisional Protocol specify an organization with a staff for administering the agreement.\textsuperscript{21} Even though it is provisional and originally only an agreement, the GATT has evolved through a pragmatic process into an institution with a staff of over 375 persons. As the number of contracting parties has grown from the original twenty-three\textsuperscript{22} to the present one-hundred,\textsuperscript{23} the GATT has built up a staff and an organizational hierarchy in order to develop precedents and traditions for resolving disputes and for conducting years-long trade negotiations. These negotiations have resulted in dramatically reduced

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1991 will require that Contracting Parties will have to recognize the GATT as having permanent status when implementing the Round results into their domestic laws. Interview with GATT Staff (Dec. 11, 1990).

During an interview in responding to my question about whether the GATT was international law because of its continuing provisional status as a treaty, a delegate who is also an international lawyer told me a fable popular in his country. The story went like this: It seems that when God made the chicken, God was tired and did not want to expend much effort so the chicken was left with a cloaca, which is an all-purpose orifice for the elimination of bodily wastes as well as for procreation. The chicken went to God to complain, asking for separate orifices for separate bodily functions. God told the chicken the cloaca was just provisional. The delegate told me that the GATT was a lot like a chicken's cloaca: it would do as trade law until something more specific and more suited for the job came along. Interview with delegate (Oct. 29, 1990).

\textsuperscript{21} Early drafts of the GATT mentioned an organization, but the U.S. Congress told its trade negotiators that they did not have the authority to enter the U.S. into a GATT that contained a clause creating a GATT institution. Having the U.S. accede to membership in a GATT which was only a treaty was regarded as primarily a prerogative of the executive branch, and a weak one at that. See infra this note. Congress felt that having the U.S. accede to membership in a GATT which was a trade organization was fundamentally a Congressional prerogative, requiring Congressional approval. Jackson, \textit{GATT and Recent International Trade Problems}, supra note 17, at 8. See generally Jackson, \textit{The General Agreement on Tariffs and Trade in United States Domestic Law}, 66 Mich. L. R. 249, 253-275 (1967) [hereinafter Jackson, \textit{The General Agreement on Tariffs and Trade in United States Domestic Law}] (explaining that Congress never ratified the GATT into U.S. law. The President negotiated the GATT as a treaty, with the Presidential authority for binding the U.S. to the GATT being the Reciprocal Trade Agreements Act as amended in 1945 (59 Stat. 410 (1945)). This legal basis may originally not have been adequate to allow the President to commit the U.S. to the GATT without Congressional approval; nevertheless, all three branches of U.S. government now act as if GATT is law.)

Along with Article 22, Article 23 forms the basis for the settlement of GATT trade disputes, states that “[t]he Contracting Parties shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate.” It is this power of the Contracting Parties to act as a kind of political authority to oversee any matter referred to them that has ultimately been used as the basis to create the entire structure of the GATT organization.

\textsuperscript{22} These included Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Southern Rhodesia, Syria, South Africa, United Kingdom, and United States.

\textsuperscript{23} The 100th member is Costa Rica, who was accepted for membership in September 1990. J. de Genève, Sept. 27&28, 1990 at 7, col. 4. Three other states have become contracting parties since April 1990: Tunisia, Bolivia and Venezuela. GATT, \textit{Focus Newsletter} No. 75, at 28 (October 1990).
tariff rates on many kinds of goods. The GATT as an international organization is continuously expanding and filling a role in the regulation of international trade affairs that it was never intended to have.\textsuperscript{24}

2.2 \textit{The Structure of the GATT}

2.2.1 \textit{The Agreement.} To understand the structure of the GATT, one must look at both the structure of the agreement and the structure of the organization. The agreement has a total of 38 articles divided into four parts, plus a preamble, all of which have remained unchanged since 1965.\textsuperscript{25} The Preamble and Part I, consisting of Articles 1 and 2, set out the norms of how to create and abide by international trade agreements, as well as how to conduct international trade relations. These norms include non-discrimination, also called MFN treatment (Article 1), transparency (Article 2) and reciprocity (Preamble).\textsuperscript{26}

Part II comprises Articles 3 through 23, inclusive, which spell out the bulk of the substantive GATT obligations. Among the most important obligations are the following: the Article 11 requirement to eliminate quantitative restrictions (quotas or licenses) on both imports and exports;\textsuperscript{27} the recognition that dumping, or subsidization that results in dumping, may allow a countervailing or retaliatory action (Articles 6, 15 and 19);\textsuperscript{28} the acknowledgment in Article 18 that nations experiencing...
balance of payments difficulties may derogate from their GATT responsibilities by withdrawing a trade concession already negotiated without having to pay any retribution; and the Article 23 provision for settling disputes when a contracting party believes any of its benefits accruing to the Agreement has been nullified or impaired.

Part III of the GATT includes Articles 24 through 35, inclusive, and deals with a few substantive obligations but mainly with the procedural mechanics of entering into the GATT and of applying its provisions. The more important concepts in Part III comprise the Article 25 definition of Joint Action by the Contracting Parties and the Article 28 process of modifying a negotiated trade concession.

The three Articles, 36 through 38, of Part IV were not in the original 1947 version of the GATT, but were added in 1965 during a time when former colonies were emerging as independent nations. Part IV promotes trade in developing nations in mainly philosophic, non-prag...
matic terms. It urges the Contracting Parties to commit to joint action to consider special measures that would ease trading barriers to the developing world, but does not specify a program for action or enumerate specific duties owed to less developed members.

2.2.2 The GATT Organization. As used throughout this Note, the organization of the GATT means both the roles that comprise the bureaucracy that functions to fulfill the provisions of the Agreement, and the individuals who fill those roles. The number and nature of GATT roles change whenever there is a negotiating round. During a round, the GATT organization has three different roles: the Contracting Parties and the GATT Council, the GATT Staff and the Round negotiators. Each role has its own configuration, political environment, goals and functions. A later section discusses the roles of Round negotiators. This section focuses on the GATT organization during the inter-round phase, that is, on the Contracting Parties and the GATT Council and the GATT Staff.

2.2.2.1 The Contracting Parties and the GATT Council. Article 25 of the Agreement states that the "[r]epresentatives of the contracting parties shall meet from time to time for [effectuating] those provisions of the Agreement which involve joint action and . . . [for facilitating their] operation," and that whenever the contracting parties act "jointly, they are designated as the Contracting Parties." The Contracting Parties as a group legislate changes to the Agreement and possess a quasi-judicial function in settling disputes. The Contracting Parties act jointly at an annual meeting during which they may grant waivers from GATT obligations to member countries, adopt modifications to GATT articles, and pronounce the resolution of disputes between members by adopting the reports of panels assigned to settle disputes.

The GATT Council was established by the Contracting Parties in June 1960. The Council is comprised of all of the Contracting Parties plus a group of high-level staff members of the GATT administration.

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34. I prefer to use the word staff instead of secretariat. No staff is specified in the GATT agreement.
35. This paper follows the standard procedure of using the form "Contracting Parties" to designate the legislative, judicial and political role of the contracting parties in joint action.
36. LONG, supra note 4, at 46.
37. Some argue that since the Agreement does not specify a secretariat, and since the existence of the Council was created only by a joint action of the Contracting Parties, and since the Agreement implies only a vague political competence to the Contracting Parties, members ought to consider the GATT as without a real organization—as only an ad hoc structure—in order to facilitate the crea-
These staff members act as permanent administrators to organize and record the Council meetings, to set the agenda and to advise the President of the Council on the issues to be addressed at each meeting. Between the annual meetings of the Contracting Parties, the GATT Council, as the executive organ of the Contracting Parties, takes on the legislative and quasi-judicial functioning of the group and actually does most of the joint action of the group as well. It sets up working parties to examine trade issues of interest, it establishes panels to review dispute claims, and in approving the findings of these reports, the Council acts in a judicial capacity to settle disputes.

The Council meets approximately ten times per year and is usually attended by each member's permanent delegate to the GATT, a prestigious position in the hierarchy of trade delegations. Having attended two Council meetings, I believe that what engages the Council most are requests for temporary waivers, the adoption of dispute resolution panel reports, the airing of disputes and the creation of working parties to examine a trade issue. What was interesting about how the Council operated was not what it accomplished, but how Council members interacted with each other; in other words, the political cleavages among them. For example, the U.S. and the EC often found themselves at odds on a variety of issues, whereas Canada, the U.S., Australia and New Zealand often agreed. Chile, Brazil, India and Thailand were quite vocal and served as mouthpieces for the developing nations. With the exception of Cote d'Ivoire and Tunisia, Africa's voices were usually silent.

2.2.2.2 The GATT Staff. As mentioned above, a GATT staff is not explicitly provided for in the Agreement. Nonetheless, inasmuch as the Contracting Parties approve the annual budget for the GATT, funds for which are levied against each contracting party, the GATT staff is approved by a joint action of the Contracting Parties. The GATT staff now consists of well over 375 persons. There are divisions, such as those for agriculture, tariffs, services, non-tariffs, and technical barriers, which roughly correspond to the areas under negotiation during a round. The general function of the staff between negotiating rounds is to review and research the status of world trade in these areas. During a negotiating...
round, the staff from these divisions may also act as secretaries to the chairmen of the various negotiating groups, taking notes on the negotiating meetings and composing draft documents upon which negotiations proceed.

Since the staff exists largely out of the exigency of having to administer the GATT for the Contracting Parties and is an entity created by their discretionary power and presumably has no formal power of its own, there is relatively little written about the functioning or the informal power of the GATT staff, either by GATT itself or by others. This is ironic given the potential of the staff during a round to interact with all of the delegates, to be the most informed about what is going on in the negotiations and consequently, to lobby the delegates to change their positions.

2.3 Decision by Consensus

The way in which the GATT organization, either the Contracting Parties, the Council, or during a negotiating round the trade delegates, takes decisions is by consensus. Consensus works this way: an issue will be raised on the floor of the meeting, be it the Contracting Parties’ Session, Council meeting or a negotiating group meeting. The chairman

39. A GATT staff member told me that all publications produced by the staff must be approved by the Director-General’s office. Interview with GATT Staff (Oct. 25, 1990).

40. Given that sessions of the Contracting Parties and Council Meetings are closed to the public, there is generally little opportunity to observe the GATT organization first hand unless one is considered an academic insider, that is, a recognized legal or economics scholar who publishes pro-GATT articles, such as John Jackson, Robert Hudec and Kenneth Dam. DAM, supra note 20, at 335-341. Most of the material that I have read describing the GATT staff faults it for being too rigid or not flexible enough to deal with dispute settlement matters and grey-area safeguard measures effectively either because the staff has not been formally institutionalized into the GATT agreement or because the GATT treaty has not been formally constitutionalized into members’ domestic laws. Hilf, Settlement of Disputes in International Economic Organizations: Comparative Analysis and Proposals for Strengthening the GATT Dispute Settlement Procedures, in THE NEW GATT ROUND OF MULTILATERAL TRADE NEGOTIATIONS: LEGAL AND ECONOMIC PROBLEMS 285 (Ernst-Ulrich Petersmann & Meinhard Hilf ed. 1988); Ernst-Ulrich Petersmann, The GATT Dispute Settlement System and Uruguay Negotiations on its Reform, in LEGAL ISSUES IN INTERNATIONAL TRADE 53 (Sarcevic & Van Houtte ed. 1990).

Yet strengthening the procedural rigor of GATT dispute settlement machinery can only do so much, since implementation of settlement results depends on the consensus of the parties involved. It is believed that role of the GATT staff could be expanded to fill a void in GATT legal reform by its neutrality. Hudec, supra note 24, at 290-297.

(in all the meetings I observed it was always a man) asks for comments from any and all attending representatives who wish to speak. At the end of all comments the chairman may force a political decision to be taken or postpone it until after a working party, if one has been commissioned, reports its results or until after more consultations. After such consultations or a report has been issued, the chairman will, at a subsequent meeting, take a political decision.

During a negotiating round, the chairmen of the various negotiating groups use GATT staff members assigned to the corresponding staff division as support to engage in informal consultations, to write drafts of discussions at previous meetings and to lobby for specific positions. The staff, acting as support, have wide and unseen discretion to foster one position at the expense of others. Since there are one-hundred plus members, as different as Switzerland, Sri Lanka, and Singapore, who have strongly competing and divergent interests, the norm of decision by consensus tends to silence anti-majoritarian views, which are often put forth by economically smaller and less politically powerful members. Thus, the non-discriminatory treatment written into the Agreement in Article 1 is easily feigned by the political decision-making of the organization.

42. A "political decision" is a bit of GATT jargon that means that some anti-majoritarian views, even those strongly-held, will be withdrawn, excluded or expunged from the final agreement of the issue in order to create a consensus. Taking a political decision does not necessarily imply a compromise, but it does imply that dissent has in some way been dissolved.

43. "After more consultations" means the chairman will informally discuss the issue with those delegates whom he is entirely at his discretion to canvass. Generally, the delegates who are dissenting will be canvassed in the hopes that they will take a political decision and modify their position or work out an acceptable compromise.

44. Consensus is by no means a written requirement of the Agreement. Voitovich, supra note 41, at 22. However, it is a strongly-held norm of GATT behavior, buttressed by the belief that negotiation is the best way to accommodate and incorporate into GATT documentation political differences between members. Voting to allow a majoritarian view to rule is regarded as silencing minoritarian interests and voices. Kohona, supra note 41, at 8-9, 99, 101, 116, 136, 166.

45. For more detail about the role of the staff during a negotiating round, see infra text accompanying notes 336-337.

46. The GATT is by no means the only international economic organization (IEO) that takes decisions by consensus. Other IEOs that rely on the norm of unanimity and consensus include the Organization for Economic Cooperation and Development (OECD), European Free Trade Association (EFTA) (see infra note 161 for definition), and Organization of Petroleum Exporting Countries (OPEC). Voitovich, supra note 41, at 22. There has been a trend since the 1960s towards agreement by consensus and away from majoritarianism. Id.; Kohona, supra note 41, at 85.
2.4 GATT Philosophy

2.4.1 Liberalism. While the above description of the GATT as agreement and as organization is useful as a background to understanding what occurred during the UR, the following discussion on the philosophy underlying the GATT and the norms of behavior arising from the interpretation of the agreement is critical.

Liberalism is the philosophic basis of the GATT twice over. In its economic manifestation, liberalism grounds the GATT in laissez-faire economics, a concept which Adam Smith developed and which David Ricardo operationalized with his idea of comparative advantage. Economic liberalism is a philosophy espousing the idea that free or liberalized trade is an economic ideal that all nation-states should strive for. By opening up access to the market for all, liberalized trade makes all trading partners better off than they would otherwise be, even though

47. See G. MYRDAL, THE POLITICAL ELEMENT IN THE DEVELOPMENT OF ECONOMIC THEORY 14-139 (Paul Streeten trans. 1969) and UNGER, LAW IN MODERN SOCIETY 142-235 (1976) as the basis for the explication below of liberalism as a philosophy. Liberalism in economic theory derives from philosophy that pre-dates Adam Smith, generally considered the founder of modern economic liberal thought. Economic liberalism is grounded in the philosophy of natural law, reawakened during the Middle Ages, which holds that there are such absolute categories as a natural order and a natural value of things. From these concepts of order and value grew the doctrine of laissez-faire, of letting nature find its own economic order and of letting the natural order find the intrinsic natural value of things and of labor. This school of positive economic theory, developed by the Physiocrats, who were inspired by contemporaneous Rousseausque ideas of the social contract, represented the economic order as a circular flow of a series of exchanges between individuals and classes. This flow eventually found an equilibrium position to which actual exchanges tended to move. Adam Smith took up the idea of exchange equilibrium, using the concept of normal price as natural price.

Another school of thought important to economic liberalism is utilitarianism, which acted as a buttress for the philosophy of natural law. Utilitarianism also views sociopolitical goals in creating a social or economic order in an objective light. That is, utilitarianism does not view a social or economic order as natural, but as useful—which is an objective category, like natural—based on some objective criterion of utility. From utilitarianism came the concept of marginal utility, which states that price is determined at the margin. This concept together with equilibrium theory is the basis for modern price-formation theory.

48. Jousting, supra note 7, at 12-19; Wall St. J., Dec. 10, 1990, at A10, col. 3. Comparative advantage is ultimately based on a nation's possession of a greater abundance of natural resource than any others. Id. Given the opportunity to trade, each country will specialize in those commodities in which it has a comparative advantage, exporting these in exchange for other commodities in which it has a comparative disadvantage. J. INGRAM, INTERNATIONAL ECONOMICS 269 (1983).

As originally conceived, comparative advantage was static and unchanging because resources were thought to be fixed. Wall St. J., Dec. 10, 1990, at A10, col. 3. But comparative advantage among nations can change in many ways, one of them being that nations artificially create an advantage for their own products by setting up barriers against imports into their domestic markets. Id.

49. See, e.g., LEUTWILER, supra note 7 for a representative GATT publication strongly typifying the free trade ideal as well as the GATT organization's attachment to it.
"trade does not equalise incomes when productivity differs across countries."§

In its political manifestation, liberalism grounds the GATT into the multilateralism that created the United Nations, the International Monetary Fund and the World Bank at the end of World War II. The working premise behind the GATT was that because power relationships were unequal between nations, the creation of an international agreement where all nations, rich and poor, would be treated alike in terms of trade obligations and trade benefits would lessen political tensions. Further, tensions would lessen as all nations took part in the improvement of their respective standards of living, which would result from their economic cooperation and openness.¶

2.4.2 Norms. The liberalist philosophy underlying the creation of the GATT has emphasized both a free-trade vision of international trade, that is, open, unmanaged trade without border protection maximizes benefit to all traders under all conditions and in all circumstances, as well as several norms of behavior appropriate for achieving that vision. The most important norms are non-discrimination (MFN), transparency

§ Jousting, supra note 7, at 15.
¶ Baldwin, supra note 7, at 82-83. The nature of the social contract that underlies the GATT is the association of interest, whose basis is "that [humans] will abide by relatively stable standards of interaction because they believe it to be to their mutual advantage to do so rather than because they participate in an identical vision of the truth and the good." Unger, supra note 47, at 144-45. This association of interest is nothing but the reciprocity, give-to-get, norm that I believe not only explains the behavior that led to the impasse at the Brussels conference, but also can broadly predict what kind of agreement in agriculture might eventually be decided upon.

52. In this Note the term "free trade" is used interchangeably with the term "liberalized trade." Some make the distinction that free trade is trade without any barriers on the exchange of goods, that is, no quotas, no licensing restrictions, no tariffs. See, e.g., Bhagwati, Protectionism 33-35 (1988); cf. Finn, World Without Borders, Forbes April 17, 1989 at 118 (for a delightfully self-contradictory look at an argument for free trade by setting up a "free-trade" zone made up of OECD countries that will bypass the GATT because the GATT has become too unwieldy, what with all the developing "free-riders," whereas liberalized trade occurs when some, but not all, barriers are reduced).

Although I acknowledge these distinctions, I see free trade not as a separate category but as a kind of liberalized trade. Also, I do not see the goal of the GATT as world free trade (and even the GATT does not insist that free trade is its absolute goal, see Leutwiler, supra note 7). The process of removing trade barriers is the same for liberalized trade as it is for free trade because it relies on the same set of ideals, goals, and norms about why it is good to remove such barriers and how best to do that. However, because of national interest and the reciprocity principle acting in all trade negotiations, I believe liberalized, and not free, trade is the actual goal sought in trade talks. See Carmichael, National Interest and International Trade Negotiations, 9 World Econ. 341 (1986) for a thorough and realistic discussion of the survival policies that nations adopt to protect domestic industries in trade negotiations.
and reciprocity.\textsuperscript{53} Other important norms include the goal to safeguard the liberalized agreements once they are achieved, the goal to aid countries in development and the aim to strengthen multilateralism.

At the heart of the free-trade philosophy\textsuperscript{54} is the unconditional non-discrimination norm, or MFN treatment, stemming from Article 1 of the Agreement. This norm requires that members not treat any other member preferentially in making trade concessions, but treat all other members equally favorably, that is, as the most favored nations are treated.

With the goal of transparency, also called the liberalization norm,\textsuperscript{55} the Agreement strives to convert all those trade barriers that protect the price of goods from being set by the demands of the market, such as quotas, licensing restrictions, and subsidies, into tariffs. Tariffs must then be bound,\textsuperscript{56} and, through periodic negotiating, must be continually lowered.\textsuperscript{57}

\textsuperscript{53} Jousting, \textit{supra} note 7, at 7; Finlayson & Zacher, \textit{supra} note 2, at 566-578; Curzon & Curzon, \textit{Non-discrimination and the Rise of 'Material' Reciprocity}, 12 \textit{WORLD ECON.} 481, 482-3 (1989); Curtis, Book Review, 13 \textit{N.C.J. INT'L L. & COM. REG.} 399, 399-400 (1988) (reviewing Hudec, \textit{DEVELOPING COUNTRIES IN THE GATT LEGAL SYSTEM} (1987)). \textit{See also Carmichael, \textit{supra} note 52} (discussing how the reciprocity principle works in terms of national policies to protect economic advantage or efficiency).

\textsuperscript{54} Compare Curtis, \textit{supra} note 53, for the view that merely liberalized trade has been the goal of the GATT. This distinction is important because if one posits free trade as the GATT goal, unconditional nondiscrimination might be the more important norm. If one posits liberalized trade as the GATT goal, conditional discrimination, that is, acting reciprocally, might be the more important norm.

However, I am suggesting that the type of trade barrier to be reduced—tariff or nontariff—is a more important category than the overall goal of free vs. liberalized trade when determining which norm of behavior—MFN or reciprocity—will govern in trade negotiations. It is arguable that reducing tariffs—where the trade benefits are more clearly measurable, acting with non-discrimination is easy and appropriate because all members can know what they are giving up and what they are receiving in return. But in reducing non-tariff barriers, as was the case in the agriculture negotiations in the UR, where trade benefits are not so clearly measurable, acting with reciprocity is arguably more appropriate.

\textsuperscript{55} Finlayson & Zacher, \textit{supra} note 2, at 570.

\textsuperscript{56} Binding a tariff fixes a tariff percentage rate for a particular good and is a promise not to raise the rate in the future. Tariff bindings are listed in schedules of tariff concessions which become part of the GATT treaty. Currently, there are forty volumes of tariff schedules. Each country has its own schedule of tariff bindings. For example, in the U.S. tariff schedule besides the word "bicycles it might say 'five percent' and that means that the United States cannot charge more than a five percent tariff under the GATT." Jackson, \textit{GATT and Recent International Trade Problems, \textit{supra} note 17, at 10.}

\textsuperscript{57} Through Article 2 schedules of negotiated concessions, i.e., tariff bindings and reductions as well as quota reductions, removal of licensing restrictions, etc., become part of the Agreement itself. Every trade concession agreed to in all of the previous trading rounds have been put into Annexes of the GATT, which are part and parcel of the Agreement. Thus, every GATT trading concession and obligation is written into the Agreement and therefore known and transparent.
Reciprocity is that ideal which promotes exchanges of trade concessions. If one member lowers a trade barrier, a country who benefits is expected to lower its own barriers in an equivalent, if not identical, way. Unlike transparency and non-discrimination, reciprocity is not technically written into any one article of the Agreement, and is a more diffuse norm presented in the Preamble and in the way that various articles relate to each other to create complex and general obligations.

These three norms acting in concert have been responsible for reducing tariffs on many goods from a 40% rate in 1947, to roughly a 5% rate by the start of the UR in late 1986.\textsuperscript{58} Reciprocity and unconditional MFN working in tandem to lower tariffs have a powerful push-pull effect. For example, when one member lowers its barriers on certain goods to gain access to another member's market, that member, because of the unconditional nondiscrimination principle, must give the same concession on the same goods to all third party members, who in turn are expected to reciprocate by lowering barriers in an equivalent way on either the same or different goods.

However, the reciprocity norm can also erode the effects of unconditional MFN because of the bilateral way most trade concessions (and certainly all concessions on agricultural products) are negotiated.\textsuperscript{59} Usually, negotiations to reduce a trade barrier work bilaterally via the following process: the importing country and its principal supplier (an exporting country) negotiate a concession, which is supposed to extend to secondary suppliers, who in turn are expected to offer a reciprocal concession. This is called "principal supplier" negotiation.\textsuperscript{60} Principal supplier negotiation therefore creates bilateral concessions negotiated between two trading partners that are supposed to become multilateral because of the action of the unconditional MFN principle. If, however, the secondary suppliers to a country are less-developed countries, without large import markets, or are not major suppliers, they will often be unable to offer reciprocal concessions to the countries creating the bilateral concession. Furthermore, because the smaller, secondary suppliers cannot offer reciprocal concessions, the two major powers who cut the initial deal between themselves may stipulate that their concessions are offered conditionally to secondary suppliers. That is, only if secondary suppliers

\textsuperscript{58} Jousting, supra note 7, at 7.
\textsuperscript{59} See Curzon & Curzon, supra note 53 (discussing reciprocity and conditional MFN in much greater detail than here. They argue that bilateral trade negotiations result in a sectoral reciprocity, which does not promote overall trade liberalization, and that multilateral trade negotiations may achieve a general reciprocity that does promote overall trade liberalization.)
\textsuperscript{60} Finlayson & Zacher, supra note 2, at 590.
reciprocate with lowering some of their own trade barriers will the major trading powers give to secondary suppliers their bilaterally-negotiated concessions. In essence, this practice of placing conditions on the offer of a trade concession to some but not all GATT members is called conditional MFN or nondiscrimination, and cuts against the unconditional MFN norm written into Article 1. The effect of conditional MFN during a GATT negotiating round is that secondary supplier countries have no power to object or accept bilateral concessions between major powers and are therefore locked out of creating trade policy. It is important to point out that the principles of conditional MFN and of reciprocity are the same.

In more recent trading rounds, the norm of multilateralism has, to some extent, counteracted the effects of bilateralism in the way negotiating is done via principal supplier negotiation. A negotiating style that encourages multilateralism, called linear tariff negotiating, is achieved by reducing tariffs on a class of goods, for example steel products, which necessarily involves negotiation among a variety of principal and secondary suppliers of a diverse range of goods. However, multilateralism is not a strong norm in the GATT organization and the reciprocity principle still strongly influences trade negotiations.

The norm to aid countries in development, written into both the Preamble and Part IV of the Agreement, tends to counteract the principle of reciprocity. This norm takes into account the relatively low level of technology and skill and the low profitability of markets in the developing world, and so reduces the expectation that less developed GATT members must always offer a reciprocal trade concession when given one by a more developed member. Through the practice of treating less-developed nations specially by not requiring them to reciprocate concessions, by allowing them to refuse market access, and by allowing them to protect infant industry in order to shore up their balance of payments, the development norm has created what the developed members view as

61. Id. at 589-593. Multilateralism is the norm that promotes a style of negotiating strategy; it is therefore a procedural rather than a substantive norm, such as MFN or transparency. Substantive norms are written into the Agreement to identify in a general way what are liberalized trading benefits and how should liberalized trading agreement should be structured. It can be argued that reciprocity is both a substantive and a procedural norm because it promotes a give-to-get liberalizing behavior as well as a bilateral, or major interest, style of negotiating. At any event no procedural norms on the preferred techniques of negotiating are written into the Agreement. All such norms form an unspoken tradition arising from what the GATT organization—the Contracting Parties, the Council, the staff and the trade negotiators—have perceived in the past to be appropriate negotiating techniques.

62. Interviews with GATT Staff (Nov. 14 & 15, 1990); Interview with Delegate (Nov. 11, 1990).
the problem of "free riders." Ultimately, the norm of unconditional MFN, requiring that all members be given all trade concessions regardless of their ability to reciprocate and regardless of their economic development, can be viewed as distorted by the development norm that emphasizes preferential treatment for less developed members. It is the counterbalancing practice of reciprocity and conditional MFN, requiring all members to give concessions in order to get them, that swings back the pendulum to maintain the GATT as a trade liberalizing agreement.

The goal of safeguarding liberalized trade benefits can act in opposition to either the unconditional MFN, the reciprocity, or the development norms. The safeguard norm arises from several articles in the Agreement, especially Articles 12, 18, 19 and 25. Articles 12 and 18 together allow the exceptional imposition of quantitative restrictions to safeguard the balance of payments. Article 19 gives the right for a contracting party to retaliate when, because of a sudden and unforeseen market disruption, such as dumping, one of its domestic industries experiences a bona fide injury or threat of injury. Thus, retaliatory quotas may be imposed after giving notice to the party who is dumping. Not surprisingly, the safeguard norm preserves the functioning and integrity of the GATT as a treaty by acting as a built-in safety valve or flexibility-creating principle that permits the waivers and exceptions necessary to keep the agreement adhered to in most cases.

GATT norms of behavior operate as a system of counterbalancing and opposing ideals, which highlight the weak points in the philosophy of economic liberalism as well as the process of negotiating liberalized trade agreements. Pro-economic liberalism and free-trade sentiment surged during the 1960s at the apex of the Cold War and as negotiations during the Kennedy Round (1963-67) reduced tariffs by the greatest percentage ever, or since. At that time, U.S. economists and politicians viewed the GATT to be healthy, hale, and strong, but best of all, effective, as they observed it promoting liberalized trade agreements that largely reduced tariffs. However, since the 1970s, as developed coun-

63. The problem of persistent free riders to developed countries has given "rise to the claim that international trade is 'unfair,' that the playing field is not level. It sows the ground for 'get tough' policies, such as threats in the United States of retaliatory action under Section 301 [of the 1988 Trade Act]." Curzon & Curzon, supra note 53, at 485.

64. A reciprocity principle or conditional MFN is often viewed as the result of domestic policies and pressures injected into the negotiation of international trade restrictions. Carmichael, supra note 52, at 343.

65. Imposition of quantitative restrictions is generally prohibited by Article 11.

66. The U.S. has been the major supporter of the GATT, including the use of its dispute settle-
tries have grown increasingly more protective, erecting more non-tariff barriers to trade, and as developing countries have demanded preferential treatment that makes access to their markets more difficult, liberalized trade agreements have not been so wholeheartedly promoted or easily agreed to.67

The GATT and Multilateralism includes the U.S.'s changing its trade laws to force open closed markets via the Crossroads, multilateralism and a new interest in regional arrangements. Bhagwati, liberalization). The porter's request to preserve whatever trade flow it already has. VER's are "grey area" measure as far exports. These agreements are often made under the implied threat that the importer will place a porting partners, whereby the importer requests that the exporter voluntarily limit the number of its exporting partners, whereby the importer requests that the exporter voluntarily limit the number of its exports. These agreements are often made under the implied threat that the importer will place a sanction against increased imports by the exporter. Usually, the exporter capitulates to the importer's request to preserve whatever trade flow it already has. VER's are "grey area" measure as far as the GATT is concerned: not entirely GATT-illegal, but certainly thwarting the GATT spirit of liberalization).

Some economists are dismayed that the U.S. is generally showing a weakened commitment to multilateralism and a new interest in regional arrangements. Bhagwati, United States Trade Policy at the Crossroads, 12 WORLD ECON. 439 (1989). Evidence of a weakened commitment to the GATT and multilateralism includes the U.S.'s changing its trade laws to force open closed markets via Super § 301 of the 1988 Trade Act. See Recent Developments in International Trade: The Implementation of "Super 301", 31 HARV. INT'L L.J. 359 (1990) [hereinafter Recent Developments]; see generally Behney, Escape Clause Relief in the EEC and the United States: Different Approaches to the Dilemma of Adjustment to a New World Trading Environment, 15 N.C. J. INT'L L. & COM. REG. 1 (1990) (discussing the general approaches adopted by the U.S. and the EC in applying sanctions against increased quantities of imports that may damage a domestic industry).

Furthermore, forty leading world economists issued a statement in April 1989 calling for an end to the "perilous" trade policy of the U.S., which "embraces" managed trade by judging the foreclosure of foreign markets and then retaliating to force an opening up. Statement by Forty Economists on American Trade Policy, 12 WORLD ECON. 263 (1989).

Other evidence of increasingly protectionist U.S. commercial and trade policy includes the Bush administration's hedging its bets against a possible Uruguay Round failure by laying the foundation
At the heart of the developed nations souring on economic liberalism is the realization that the notion of comparative advantage does not automatically work to improve all trading partners' economic position.\textsuperscript{68} Comparative advantage does not always work, especially when the developed nations are called upon to give up trading concessions to enter the market of an importing nation that can and will not reciprocate, yet wants to be given the benefit of unconditional MFN treatment in negotiating a concession with a third party. At the heart of the souring, then, is the realization that when all players do not have equal or equivalent abilities to trade, some players may have to give more than they get or more than they want to give just to stay in the game of liberalized trading.\textsuperscript{69}

In turn, the souring on economic liberalism has led to a re-evaluation of the goals of political liberalism and multilateralism. Economic and political integration is, and has been for the last decade, a process of creating geographical trade regions. Regional trading partners, who act as principal suppliers to each other, keep whatever benefits that exist in liberalizing trade in that region to themselves. Regional integration has been adopted by both developed and developing countries\textsuperscript{70} alike. Because of the rise of protectionism and the pervasiveness of regionalism, some economists no longer see the GATT as being effective in promoting the myths of free or liberalized trade.\textsuperscript{71}

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\textsuperscript{68} Jackson, \textit{The Crumbling Institutions}, supra note 37, at 94.

\textsuperscript{69} Curzon & Curzon, \textit{supra} note 53, at 496-498; Curtis, \textit{supra} note 53, at 401.

\textsuperscript{70} See Fin. Times, Oct. 3, 1990, at 5, col. 3 (discussing Mexico's President Carlos Salinas de Gortari's push for trilateral negotiations with the U.S. and Canada to be included in a three way free trade agreement); see J. COMM. INT'L ED. SPECIAL REPORT, Oct. 29, 1990; J. de Genève, Nov. 10, 1990, at 4, col. 3 (discussing the plans that Brazil and Argentina, the two largest economies in South America, for creating a bilateral free trade zone that may eventually include Uruguay and Paraguay); see Fin. Times, Sept. 28, 1990, at 2, col. 1 (discussing that the EC seeks a free trade agreement with the Gulf states as a way to strengthen EC-Gulf relations following in the wake of the Iraqi invasion of Kuwait); see J. COMM. INT'L ED. SPECIAL REPORT, Oct. 29, 1990, (discussing that Japan might join in a free trade zone with the U.S. in order to "meet the challenge of proliferating free trade zones throughout the world").

\textsuperscript{71} See Thurow, \textit{GATT is Dead}, Sept. 1990 J. OF ACCT. 36 for an argument about the relevancy
Several reasons account for the GATT's ineffectiveness to inhibit regionalism. Some believe that because the GATT has huge institutional weaknesses, such as a cumbersome amending process, a negotiating strategy that caters to major interests, and a weak dispute settlement process that prefers consultation at the expense of applying needed sanctions against transgressors, and because it is still provisional in domestic legal systems, members with trading interests in common go outside the GATT to conclude side agreements that give better returns on trading than would a multilateral GATT agreement. Others fear that if regional interest caused the UR to meet with failure, this would confirm a fear that the GATT is dead, and herald a return to trading wars like those during the 1930s which exacerbated the Great Depression.

That rampant regionalism, in the wake of the Brussels impasse, will result in the demise of the GATT or in trading wars seems hyperbolic. What seems clear is that the Brussels impasse spells the end of an era of idealism about "letting the market decide" a member's comparative advantage and the start of new era of realism that acknowledges that GATT members liberalize their trade with each other because that is the most efficient process for promoting their own selfish interests; likewise, that they act in a protectionist fashion for the same reasons. What is also needed to maintain the GATT as a world trade treaty with the potential for fostering liberalized trade agreements is to stop the mythologizing about what the goals of trade liberalization should be. What is needed is a realization of what the goals of trade liberalization are in practice; that strong GATT norms such as reciprocity, non-discrimination and development work to counterbalance competing trade interests; and that this counterbalancing fosters liberalized trade agreements that act simultaneously to open a member's market while attempting to protect a member's advantage.

of the GATT as a world trade treaty that stresses open, unmanaged trade. His argument consists of several points: First, no major trading power is "prepared to make the necessary changes" to coordinate its monetary and fiscal policy with that of other major trading powers so as to produce a level playing field for trade, nor will they "yield economic sovereignty." Id. at 36. Second, "it is far better to accept the reality of trading blocs and get on with the job of understanding how trade between the blocs could be managed so that it doesn't deteriorate into the" trade wars of the 1930s. Third, "the existing rules of the GATT need to be replaced by a set of rules governing what is and is not permissible in managing bloc trade." Fourth, even though the GATT as a trade treaty will be propped up diplomatically if the Uruguay Round fails, the "time has come to build up a new world economy based on today's realities." Id. at 39.

72. Jackson, The Crumbling Institutions, supra note 37, at 96.

73. Schott, The Global Trade Negotiations: What can be Achieved, 29 INST. FOR INT'L ECON. 1, 5-8 (September 1990).
3.0 THE URUGUAY ROUND

Periods during which negotiation takes place to formulate reductions in trade barriers under the auspices of the GATT Agreement, as well as to emend the articles of the Agreement, are called Rounds. The most recent negotiating period conference was the Uruguay Round held at the GATT headquarters in Geneva, and originally scheduled to last from the end of 1986 to the end of 1990. Its agenda was the most ambitious of any other round, attempting to place the heavily subsidized trade of farm products and textiles within the scope of the Agreement.

77. In the past these areas had proved difficult to bring into the GATT. For example, the previous negotiating round, the Tokyo Round, was scheduled to last only two years from 1973 to 1975 but lasted until 1979. ECONOMIST, Dec. 8, 1990, at 71. Agriculture was one of the main areas holding it up.


In 1974, the MultiFiber Arrangement (Arrangement Regarding International Trade in Textiles, Dec. 20, 1973, T.I.A.S. 7840, reprinted in 218 B.I.S.D. 3 (entered into force Jan. 1, 1974) [hereinafter the MFA], was originally negotiated as a temporary derogation from GATT rules to regulate textiles
In addition, the agenda included such perennially difficult-to-negotiate areas as GATT dispute resolution procedures and safeguards. It also included several areas never discussed before at a GATT round, such as the complicated and complex area of services, an umbrella term covering such diverse areas as maritime transport, tourism and telecommunications, and trade-related investment measures (TRIMS) and trade-related intellectual property (TRIPS).
The UR agenda was ambitious because diverse interests and needs had shaped it. The developed nations, especially the U.S., wanted to talk services because they perceived they had the edge in this area and wanted access to the developing world's untapped markets. The developing nations wanted to talk agriculture, an area which had been left undone by the previous Tokyo Round, as well as textiles because they perceived they had an advantage in these areas. Many, especially the GATT staff, wanted negotiations on dispute settlement, safeguards, and subsidies because of the increasingly protectionist practices that had cropped up since the Tokyo Round to bypass the stronger enforcement mechanisms instituted during that round.

3.1 History of Previous Rounds

To understand the origins of the UR, it is necessary to examine a brief history of the seven previous GATT rounds. These were in order: Geneva 1947, Annecy (France) 1949, Torquay (England) 1951, Geneva 1956, Dillon (in Geneva) 1960-62, Kennedy (in Geneva) 1962-67, and Tokyo (in Geneva) in 1973-79. The first five rounds worked on reducing tariff rates using the method of product-by-product negotiation. The first Geneva Round was the original session where the GATT was drafted, whereas the Annecy and the Torquay, while resulting in small tariff reductions, were more involved with accessional negotiations of new members to the GATT. The next two rounds, the Geneva and the Dillon, followed along the lines of the earlier rounds in reducing tariffs. The sixth round, the Kennedy, saw a major change of negotiating technique because, as more and more individual products were considered eligible for tariff reduction, it was increasingly more cumbersome and time consuming to negotiate concessions for each individual product. The negotiating technique adopted during the Kennedy Round


81. Id. at 8.

82. For example, the tariffs on 8,700 products had been negotiated in the Torquay Round alone. Id. at 9.
was a mixture of a linear-reduction strategy and the product-by-product method. Called the French plan, this technique reduced the tariffs on a class of products but specified a time-limit on tariff reductions. This method helped make the Kennedy Round quite successful inasmuch as members exchanged tariff concessions for approximately $40 billion of world trade. Also, the Kennedy Round saw the first attempts at reducing nontariff barriers (NTB’s), and resulted in the first agreements on anti-dumping practices and customs valuation.

The Tokyo Round from 1973-1979 also reduced tariffs on previously-negotiated goods by the linear-reduction method. However, some goods, such as agricultural products, continued to be negotiated bilaterally on a product-by-product basis. The Tokyo Round is significant not for tariff reductions, but for the six major agreements called Codes that reduced nontariff barriers. These Codes were not added to the Agreement but stand separate from it; each code applies only to those goods.

83. Linear reduction is simply the reduction of all tariffs for a certain class of products by a uniform percentage. Casadio, supra note 79, at 61.

84. Morrison, supra note 80, at 10.

85. Casadio, supra note 79, at 62.

86. During the Tokyo Round, members reduced tariffs using the so-called Swiss formula, which proportionately lowered the highest tariffs by the greatest percentage and consequently harmonized tariff schedules on diverse goods to be more uniform and at a lower rate. Morrison, supra note 80, at 10.

87. Agricultural liberalization of nontariff barriers held up and was not accomplished in the Tokyo Round.

88. The major Tokyo Round agreements include:
1) a customs valuation code (also called the Agreement on the interpretation of Article 7 GATT), which, by adopting the transaction value as the worth of the good, removes a government- or administrative agency-set worth that was inflated solely for the purpose of collecting a higher duty;
2) a government procurement code, which requires more transparent laws, regulations and practices on governments’ buying of goods and services and makes bidding by domestic and foreign firms more competitive;
3) an import-licensing code, which requires more openness in published rules for getting license needed to conduct business;
4) a subsidies and countervailing-duty code, which prohibits the use of domestic subsidies to harm trading interests of importers and prohibits countervailing duties from being used to unjustifiably impede international trade;
5) a technical barriers to trade code (the Standards Code);
6) and finally, a civil aircraft agreement, which liberalized trade in this area by getting rid of tariffs and some NTBs on civil aircraft and parts. Casadio, supra note 79, at 35.

Other Tokyo Round agreements include:
7) the Geneva (1979) Protocol to the GATT and the Supplementary Protocol, containing new schedules to GATT for 37 countries or areas;
8) the new anti-dumping code (also called the agreement on implementation of Article 6 GATT);
9) the arrangement regarding bovine meat;
members that agree to be bound by it.  

The reason why extra GATT Codes resulted from the Tokyo Round stems from the strong norm that all of the trade agreements during a round form a single package which is then accepted or rejected in toto. Individual agreements from a round are not accepted in a piecemeal fashion. Thus, members' consent to the package of agreements that came out of the Tokyo Round meant that the whole package became part of the GATT, which in turn bound members to all of these agreements. However, the Codes were negotiated as subsidiary to the GATT because they represented settlements on difficult-to-negotiate and protected trade areas on which members had not fully agreed to liberalize. Since there was no bona fide consensus on applying unconditional MFN treatment to the nontariff barriers dealt with in the Codes, members had the option to bind themselves to the Codes.

Similarly, in the UR, negotiations on goods (as opposed to services) were expected to result in a package of agreements that would become part of the GATT. Members would have to accept all fourteen goods agreements in order for the Round to produce a concrete result. Fundamentally, the reason why the UR produced no concrete results is because not all members could accept the agreement in agriculture, a goods area.

3.2 Launching the Uruguay Round

When the trade ministers of the GATT contracting parties met at the Atlantic seaside resort at Punta del Este, Uruguay, on September 20, 1986, and unanimously adopted a declaration stating the principles, objectives and agenda of a new trade conference, they launched the UR. The immediate origins of the Round went back four years before to a biannual GATT ministerial meeting in 1982 at which the U.S. pushed hard

89. Adamantopoulos, supra note 77, at 109. The legal status of the Tokyo Round Agreements within the GATT is problematic because they are based on reciprocity and not on unconditional MFN. In other words, a non-signatory to any one of the Tokyo Codes can not invoke an infraction of that code even against a signatory to it. Consequently, because not all contracting parties have signed all of the Tokyo Round Codes, a GATT member has a unique set of GATT obligations to each other member, depending on which codes any two members have signed. The U.S. has bound itself to all six codes; therefore, only those members who have also signed all six codes may invoke Codes obligations in a dispute against the U.S. Id. at 109-110.

90. See generally Casadio, supra note 79.


for another round of trade talks that would include services. 93 Serious preparation started in November 1985 when the Contracting Parties at their annual session established a preparatory committee (Prepcom) to review what the goals and substance of a new conference ought to be. 94 Prepcom recommended an agenda that would closely follow the problems discussed in the 1982 ministerial meeting, and the agenda in the Punta del Este Declaration closely follows the Prepcom agenda. 95

The text of the Punta Del Este Declaration emphasizes a holistic view of the economic environment and strives to create a stable, liberalized link between trade, money, finance and development. Overall, the Declaration has four main goals: to liberalize trade in many traditional areas of particular concern to the developing world; to make the Agreement more responsive to new issues in the trade of goods; to strengthen safeguards against restrictive trade measures; and to create a framework for the trade of services. 96

The Declaration is divided into two parts: Part One, on the goals for the negotiations on trade in goods, and Part Two, on the goals for negotiating services trade. Specifically, Part One required that there be a standstill and rollback of any protectionist trade measures inconsistent with the Agreement for the duration of the Round. 97 Part One also identified the fourteen areas of trade in goods to be negotiated: tariffs, non-tariff measures, tropical products, natural resource-based products, textiles and clothing, agriculture, including sanitary and phytosanitary regulations, existing GATT articles, safeguards, Multilateral Trade Negotiation (MTN) Agreements and Arrangements, 98 subsidies and


94. In 1982, when the GATT ministerial meeting was held to determine a preliminary agenda for a new round of trade talks, it was estimated that, in the United States, the services sector accounted for the employment of 7 out of 10 working Americans and for about 65% of the U.S. gross national product. Comment, Legal Problems in Expanding the Scope of GATT to Include Trade in Services, 7 INT'L TRADE L.J. 281, 282 (1982-83) (citing U.S.T.R., U.S. DOMESTIC STRATEGY FOR SERVICES TRADE (July 9, 1982)).

95. GATT ACTIVITIES 1986, supra note 92, at 6.
96. Id. at 5-7.
97. Id. at 11-12.
98. Rollback and standstill provisions ensure that during the Uruguay Round no member could bully its trade interests into becoming top priorities by applying GATT-illegal protections and then “negotiating” to give these up so long as certain trade concessions it desired were promised.
99. These are the Tokyo Round Codes, except for the Subsidies code. See supra note 88.
countervailing duty measures, dispute settlement, trade-related aspects of intellectual property rights (TRIPS), including trade in counterfeit goods, and trade-related investment measures (TRIMS).

Moreover, Part One created the organization responsible for negotiating agreements on goods, called the Group of Negotiation on Goods (GNG). The GNG set up individual negotiating groups for each of the fourteen trade areas as well as the negotiating agendas of these groups. Examples of the individual groups are the Negotiating Group on Agriculture (NGAgri) and the Negotiating Group on Textiles (NGTextiles). The negotiating groups were to report to the GNG and, in turn, the GNG was to report to the Trade Negotiations Committee (TNC), which oversees the conduct of the entire Round. The TNC is comprised of all the senior negotiating officials from each member’s delegation for all trade areas, who have the political authority to make offers and concessions when the negotiations get bogged down and to change their position.

Trade ministers and top GATT officials participated in selecting chairmen for each of the negotiating groups. Arthur Dunkel, Director-General of the GATT, was named Chairman of the GNG and two-chairmen were named to head the TNC. The Uruguayan trade minister was made chairman for the occasions when the TNC would meet at the ministerial level, and Dunkel was also named chairman of the TNC when it would meet at the officials level.

Part Two of the Declaration placed the negotiations on services under a separate group, the Group of Negotiations on Services (GNS), which also reported to the TNC. However, the GNS was "to respect the policy objectives of national laws and regulations applying to services," which implies that any services agreement resulting from the Round need not heed to the multilateralism norm of the GATT and that such an agreement was not intended by the ministers to be included within the

99. Articles 6 & 16 and the Subsidies Code would be reviewed.

100. Ministerial level means a meeting of the Trade Ministers of GATT members. Officials level means a meeting of the senior negotiators from all delegations who have the political authority from the Trade Ministers to alter offers, make proposals, bargain away points and concede. The dual chairmanship of the TNC was a matter of diplomatic etiquette, only a trade minister ought to chair a meeting of other trade ministers, and pragmatism, TNC meetings at the officials level were where most of the deals were struck, whereas at TNC meetings at the ministerial level, the deals were accepted.

In theory, having the GATT Director-General chair the TNC at the level of officials meant that if negotiations got bogged down, the GATT staff could call a TNC meeting to get officials to take political decisions and to seek compromises, thereby keeping the negotiations moving.
3.3 Agricultural Policies of the EC and the U.S.

To better understand the agricultural negotiations in the Uruguay Round, the following description highlights the cornerstones of the agricultural policies of the EC and the U.S. that were to be liberalized in the negotiations.

3.3.1 EC Agricultural Policy. The EC's farm aid program is carried out through the Common Agricultural Policy (CAP). The CAP has five goals: "(1) to increase farm productivity; (2) to ensure a fair standard of living for farmers; (3) to stabilize agricultural markets; (4) to assure the availability of supplies; and (5) to maintain reasonable prices for consumers." There exist three procedures for achieving these goals: (1) "common prices for agricultural products in all member countries"; (2) "an absolute preference for EC producers over outside producers, and" (3) "common funding of its agricultural programs through the EC Commission in Brussels."

The CAP works this way: a common price for the same farm product in all EC countries is achieved by the EC Council of Farm Ministers setting each year a target price as well an intervention price for all protected farm products. These products include cereals, grains plus feed products, meat, poultry, eggs, milk products, fruits and vegetables, wine, tobacco and fishery products. The target price is that price which EC farmers must get for a product; the intervention price is that price at which each EC member state is bound to purchase EC farm commodities. If the prices of non-EC food imports are lower than the established target price, a variable levy is tacked onto the import's cost. Thus, the

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101. As there was no mandate in the Punta del Este Declaration that the services agreement had to be concluded within the four corners of the GATT, members expected that the services agreement would be separate from the GATT and would result in a General Agreement on Services. See Nayyar, supra note 78, at 35.
102. See generally A Common Agricultural Policy for the 1990s, EUR. DOC. PERIODICAL 5/1989 (1989) (a very pro-CAP, and not surprisingly, anti-U.S. farm policies brochure that gives an honest look at the EC farm aid program but glosses over the Uruguay Round's Midterm Declarations goals for farm trade liberalization (See infra note 142 and accompanying text).
103. Filipek, supra note 77, at 132-133.
104. Hathaway, Agriculture and the GATT: Rewriting the Rules, INST. FOR INT'L ECON. NO. 20, at 72 (September 1987).
105. Filipek, supra note 77, at 132.
106. Hathaway, supra note 104, at 76-77.
107. Filipek, supra note 77, at 133.
variable levy acts like an import quota and as a barrier to the EC market.  

When EC farmers export their products, the EC pays them export subsidies to match the difference in price between world market prices and the inflated internal target price. The EC farmer is insulated from the rise and fall of world prices for agricultural products. It is no wonder that the EC production has continued to increase as world demand has fallen and that the rise in the cost of CAP is bankrupting the EC.  

3.3.2 U.S. Agricultural Policy. Unlike the CAP, which began in the 1960s, the U.S.'s farm program began during the Great Depression of the 1930s and its three fundamental tenets still persist. These are: (1) price supports, "whereby the government stands ready to make non-recourse loans to eligible farmers for crops at a specified minimum price"; (2) "production controls on basic crops," such as wheat, corn, cotton, rice, peanuts and tobacco, that pay farmers for reducing their harvested acreage of these crops; and (3) "deficiency payments to make up difference between the market price and some 'target' price determined to be desirable[,] there has never been any permanent direct market intervention for beef, pork, or poultry, nor for minor field crops, fruit, or vegetables."  

In 1985, due to a dramatic fall in the world market of the prices of U.S. food imports, export subsidies for major crops, especially for cereals and grains, were added to the program as target prices and deficiency payments were to be phased out. In 1987, more export subsidies were added. U.S. federal budget costs for farm price and income support rose "sixfold between 1982 and 1986," just as the Uruguay Round was coalescing.  

108. Hathaway, supra note 104, at 73.  
109. Id.  
110. Id.  
111. See infra note 306.  
112. The CAP was created by the Treaty Establishing the European Economic Community, March 25, 1957, 298 U.N.T.S. 11 (Treaty of Rome).  
113. Hathaway, supra note 104, at 81.  
114. Id.  
115. Id. at 83-84.  
116. Id. at 84.
3.4 The First Three Years

3.4.1 1987. Negotiating sessions for the fifteen groups began in February 1987.118 During that year the Negotiating Group on Agriculture (NGAgri) met five times.119 Proposals were tabled first by the U.S.,120 then by the European Community (EC), the Cairns Group,121 and Canada,122 followed by the Nordic Countries,123 a coalition of Finland, Iceland, Norway and Sweden, and Japan.

The U.S. proposal124 called for the long-term irreversible elimination over ten years of most governmental assistance to agriculture including: a ten year phase out of both internal support and export subsidies; a conversion of import barriers into tariffs, which would then be reduced over ten years;125 and immediate action on health and sanitary regulations that blocked market access. Rather than negotiating specific reductions for various kinds of support, the reduction of subsidies would be accomplished by lowering an aggregate measure of support (AMS) by an annual percentage, that is, an average of total government aid such as domestic price supports, subsidies on exports and quotas on imports.

The EC's first proposal126 was less detailed than that of the U.S.'s, and did little more than state a general world view and position on farm trade liberalization. It also highlighted the difference between the U.S. and the EC in their goals for liberalizing farm trade. Only short-term, reversible reductions were presented, with long-term reductions to be ne-

121. A coalition of developed and developing agricultural exporting countries formed in the summer of 1986 at a meeting of these countries' trade ministers at Cairns, Australia for the purpose of representing exporters' interests in the UR. Included were Australia, Canada, New Zealand, Argentina, Brazil, Colombia, Chile, Fiji, Hungary, Indonesia, Malaysia, Philippines, Thailand and Uruguay. For a more detailed description of the Cairns Group, see infra note 293 and accompanying text.
122. News of the Uruguay Round No. 11, at 2/3-4 (Nov. 12, 1987); Canada's individual proposal will not be reviewed.
125. This process is called tariffication.
negotiated at a later phase in the Round. It was more of a “Let’s go slow and see what minor changes do first” proposal compared to the American demand of “Let’s change it all now.”

The Cairns group proposal\textsuperscript{127} was similar in philosophy to that of the U.S. in that it aimed for full liberalization, but it also called for short-term relief measures, such as freezes on import quotas and short-term cuts to subsidies. This proposal also sought the tariffication of import access barriers and the elimination of subsidies by calculating aggregate measures of support for each country, which are then progressively phased. Some members complained that the Nordic proposal concentrated too heavily on reducing price supports and subsidies for agricultural products and not enough on reducing import access restrictions.\textsuperscript{128} Japan’s proposal\textsuperscript{129} focused on creating stability in agricultural prices and food security within its borders, especially for basic foodstuffs, particularly rice and beef. Restrictions on foods imported to Japan were to be negotiated on essentially a bilateral basis, by each trading partner negotiating its own tariff concessions for access to Japan’s consumers. Thus, Japan was choosing a give-to-get posture of reciprocity instead of an unconditional MFN treatment on imported food. This proposal was criticized as being overcautious, and not nearly ambitious (read that liberalizing) enough. In hindsight it can be seen that by the end of 1987, the major players in the Round with respect to agriculture had already revealed the degree of liberalization they wanted in agricultural trade.

\textbf{3.4.2 1988.} In 1988 there were seven meetings of the NGAgri.\textsuperscript{130} Many of the same themes from the previous proposals were repeated in those issued in 1988. For example, at the June meeting of the NGAgri, the U.S. and the EC each issued papers.\textsuperscript{131} The EC was still talking about short-term reductions, specifying freezing support on cereals, oilseeds, beef/veal and dairy products at 1984 levels until a long-term agreement, if any, could be reached.\textsuperscript{132} The U.S. argued that protectionism for the sake of food security was not the same as that for self-suffi-

\textsuperscript{127} See sources cited supra note 126.
\textsuperscript{128} NEWS OF THE URUGUAY ROUND, No. 13, at 5 (Dec. 21, 1987).
\textsuperscript{129} GATT ACTIVITIES 1986, supra note 92, at 32.
\textsuperscript{131} NEWS OF THE URUGUAY ROUND, No. 17, at 6-7 (June 30, 1988).
\textsuperscript{132} Id.
ciency and proposed removing Article 11:2(a) from the Agreement, which allows members to prohibit exports of agricultural food products to relieve critical shortage.\textsuperscript{133} The Cairns Group, ever pragmatic, proposed a framework for initializing liberalization: an immediate freeze on support and subsidies plus reduction of support for the next two years by ten per cent each year.\textsuperscript{134}

Throughout 1988, developing importers offered proposals\textsuperscript{135} that differed from those of the major players. In October 1988, the U.S. and the EC each tabled proposals for the trade ministers to consider for adoption as the Midterm agreement in agriculture.\textsuperscript{136} For the second time, the U.S. wanted long-term reduction of farm aid, including the EC's variable levy by tariffication. As the EC was generally not in favor of tariffication, the EC wanted the trade ministers to accept that long-term reduction of farm aid be done by calculating an aggregate measure of support and then reducing that figure.\textsuperscript{137}

A TNC meeting at the ministerial level took place in Montreal from December 5-9, 1988, during which trade ministers undertook a midterm review of the Round results.\textsuperscript{138} However, as a presage to the impasse that occurred in Brussels at the end of the UR, trade ministers could not agree to a Midterm Declaration at the December 1988 Ministerial meeting. The meeting experienced an impasse for four months until agreement could be achieved in the four areas of agriculture, textiles and clothing, safeguards and trips. Not until April 1989 at the next TNC

\textsuperscript{133} Id.
\textsuperscript{134} Id.
\textsuperscript{135} Id.
\textsuperscript{137} Id.
\textsuperscript{138} Id.

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\textsuperscript{133} Id.
\textsuperscript{134} NEWS OF THE URUGUAY ROUND, No. 18, at 9 (Aug. 2, 1988).
\textsuperscript{135} India's proposal stated that direct government action in agriculture was legitimate for developing countries, that tariffs and quotas must be reduced on a voluntary, not unconditional MFN basis, and that export subsidies would be reduced only if consistent with the developing countries' competitive needs. NEWS OF THE URUGUAY ROUND, No. 21, at 1 (Nov. 30, 1988).


Korea, a newly industrialized country, aligned itself with Japan in proposing that security of basic food products for self-sufficiency reasons justified not liberalizing trade in rice and other basic foods. GATT ACTIVITIES 1988 (1989) at 36-37; NEWS OF THE URUGUAY ROUND, No. 20, at 6-7 (Nov. 4, 1988).

\textsuperscript{136} NEWS OF THE URUGUAY ROUND, No. 20, at 7-8 (Nov. 4, 1988).
\textsuperscript{137} Id. An aggregate measure of support lumps all supports—internal price supports and export subsidies—together. Another method is to negotiate to reduce specific supports by an annual percentage. The U.S. has increasingly grown against an AMS approach because it does not guarantee reduction of export subsidies, which the U.S. regarded as crucial to any agricultural reform package.

\textsuperscript{138} GATT ACTIVITIES 1988 (1989) at 22-25.
meeting (held at the official level), and after several months of intense informal negotiating sessions, was a Midterm Declaration concluded. The Declaration was comprised of preliminary agreements made in a few of the negotiating areas and other texts, affirming the progress made in all of the fifteen areas to date and prescribing a path for the negotiators to follow in all of these areas until the end of the Round.

The midterm impasse in agriculture occurred because there was no agreement on how to liberalize farm trade in the long term; whether to reduce by tariffication, or by using an AMS, whether to reduce all kinds of farm aid or only internal price support. The midterm review text that was eventually adopted for agriculture was little more than a declaration that progressive reduction of farm support was the goal of the negotiations and that either calculating an AMS or negotiating reductions on specific kinds of support could accomplish reduction. Further, the Declaration clarified some of the confusion inherent in the previous two years by identifying three kinds of agricultural support that could be reduced: restrictions on imports (also called border protection measures); subsidies and export competition (this category includes internal domestic support, such as price supports, as well as export subsidies); and export prohibitions.

At the end of two years of negotiation, no real political decisions were taken either by the Trade Ministers or at the officials level to create a working compromise proposal. Also, after two years, there was no real movement in any of the major players' positions on how farm trade should be liberalized. The central issue impeding progress was not how to make farm trade nondiscriminatory, as the negotiations had not progressed that far. The more fundamental central issue was how to reduce rampant protectionism on farm products. The fundamental enterprise, then, in the agricultural negotiations of the UR, was the creation of a reciprocity arrangement in which all of the major players, the EC, the

139. Id.
140. For the full text of the Uruguay Round Midterm Agreement, see GATT, Focus Newsletter No. 61 (May 1989) [hereinafter GATT, Focus].
141. GATT Activities 1988 (1989) at 34.
143. Id. at 9-13. As it turned out, border protection measures, subsidies and export competition were the subjects of final two years of negotiations. Export prohibitions were considered but did not become an important issue in the next two years.

Also agreed to in the Midterm Declaration were some short-term measures: a freeze on current internal and export support and on border protection measure plus harmonization of national regulations on health and sanitary regulations placed on imports for the duration of the Round. Id. at 12.
Cairns Group and the U.S., would perceive that the farm trade support that they were giving up would result in an increase in their farm trade.

3.4.3 1989. As a result of the impasse in the midterm agreement, there were no new negotiations or proposals in agriculture until July 1989. The Round had effectively lost six months because of the midterm impasse. This created a sense of urgency that was subsequently reflected in the increasing polarization and lack of compromise in the positions of the major players, and in the increasing specificity of the communications and proposals tabled. After the midterm review, the negotiations became sophisticated and complex.

In July 1989, both the EC and the U.S. issued communications that contained language that would become buzzwords for their respective positions. The EC focused on reducing both domestic and export assistance exclusively by using an aggregate measure of support and not by negotiating specific policy reductions. The U.S. communication focused on border protection by tariffication. The U.S. provided a formula for reducing converted tariffs and argued that tariffication was market stabilizing and revenue generating. Although at this point in the negotiations, the U.S. still considered tariffication and using an aggregate measure of support, and complementary approaches to long-term reduction of farm support, the U.S. doubted that the variable levy could be effectively converted into a tariff or calculated into an aggregate measure of support. The U.S. began to believe that the variable levy could not be effectively phased out or reduced by any method, but had to be dismantled in one fell swoop. From this point on, the story of the Round negotiations in agriculture is about the U.S. and the EC growing increasingly farther apart in their goals for liberalizing agricultural trade.

In September 1989, the EC issued another communication and in December issued its third comprehensive proposal of the Round, the essentials of which were the following: reduction in farm support must be accomplished by reducing an aggregate measure of support; reductions were less than those called for in the Midterm Declaration and were

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146. Id. at 8.
147. Id.; GATT ACTIVITIES 1989 (1990) at 50.
only to occur in the short-term, for a five year period; tariffication was not a preferred process for reducing border protection unless a process of rebalancing existing border protections (the EC’s border protection was the variable levy) was put into place.\textsuperscript{151} Using the rebalancing concept, reducing the variable levy would occur in the following way: First, an aggregate measure of all farm support—internal price supports, the variable levy, and export subsidies—for a farm product would be calculated. This is the figure to be reduced by a certain percentage each year, e.g., 3\% per annum. Next, a new, fixed tariff would be created which would increase the price of the farm product up to certain limits as money exchange rates and the market price of the product fell. Thus, this new, fixed tariff would rebalance, that is, protect, the price of the farm product from fluctuations in the market, which is exactly what the variable levy has done all along. With this proposal, the EC reaffirmed its desire to use a system of dual pricing in agriculture.\textsuperscript{152} These ideas were criticized at the September meeting of the NGAgri as preserving the status quo in farm trade liberalization and as falling far short of the Midterm review guidelines.\textsuperscript{153}

In October 1989, the U.S. issued its third proposal, which remained for the most part its core proposal throughout the remainder of the Round.\textsuperscript{154} In the area of border protection, the proposal called for the tariffication of nontariff barriers, with tariffs reduced to zero over ten years. Additionally, price policies that distort trade, such as internal support to increase production, would be phased out in five years and all export subsidies and restrictions would be phased out in ten years. Moreover, all forms of derogation, such as waivers and special accession protocols from existing GATT rules, would be eliminated.\textsuperscript{155}

The year 1989 also saw proposals from several other players, including two major ones, the Cairns Group and Japan.\textsuperscript{156} In November 1989 the Cairns Group's proposal\textsuperscript{157} called for a ten year transition period of irreversible liberalization using an AMS to reduce trade distorting policies. The tariffication of internal support that distorted trade was fa-

\textsuperscript{151} Id.
\textsuperscript{153} News of the Uruguay Round, No. 31, at 8 (Oct. 14, 1989).
\textsuperscript{154} News of the Uruguay Round, No. 32, at 6-7 (Nov. 21, 1989).
\textsuperscript{155} Id.
\textsuperscript{156} GATT Activities 1989 (1990) at 50-51.
\textsuperscript{157} News of the Uruguay Round, No. 33, at 6 (Jan. 11, 1990).
Permissible internal support included humanitarian aid and income decoupled from production and marketing. Also favored was the elimination of all provisions in the agreement that allowed exceptions to Article 11 prohibitions on quantitative restrictions. Further, the proposal banned new export subsidies and froze existing ones, to be reduced according to a schedule.158

Also in November, Japan and Korea each submitted similar proposals.159 Their proposals made food security a prime objective, emphasizing the importance of domestic support policies that maintained a secured access to basic foodstuffs to preserve economic and political stability. Japan advocated that quotas should be allowed to restrict exports in case of food shortages and that export subsidies as a major source of trade distortion should be progressively reduced and eliminated.160

The Nordic countries, Austria and Switzerland,161 each submitted proposals162 that broadly advocated the aims of reducing farm support but proposed a flexible approach that allowed some kinds of aid to be reduced. Flexibility, it was argued, was necessary to accommodate national policy aims, such as the preservation of rural areas and the institution of small farming. It was further argued that border protection in various forms such as quotas and variable levies should be permitted.163

In 1989, the developing importers' interests were represented by three communications.164 A joint proposal by Peru, Egypt, Mexico and Morocco in October165 and a paper in November by Bangladesh166 called for compensation for the negative short-term and medium term effects of agricultural liberalization.167 Also in November, Brazil and Colombia, as developing members of the Cairns Group, expanded on the Group's

161. The proposals of these countries collectively represent the European Free Trade Association (EFTA) viewpoint. EFTA is an association of European countries, including Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland, who have chosen not to belong to the EC because of the EC's political ties to the NATO treaty. EFTA countries are politically neutral.
163. See sources cited supra note 162.
165. NEWS OF THE URUGUAY ROUND, No. 32, at 7 (Nov. 21, 1989).
167. It was expected that if agriculture were liberalized, prices for dairy products in those coun-
proposal by stating that developing countries should be able to maintain quantitative restrictions on food imports for economic and social development needs.\(^{168}\)

Thus, not until the end of 1989 did all major players put forth comprehensive proposals that detailed their positions. It was clear that only the U.S. wanted to eliminate all border protection, all internal support and all export subsidies within ten years. Although in fundamental agreement with the U.S., the Cairns Group was less stringent by allowing farmers to receive price supports that did not increase the incentive to produce. The European Free Trade Association (EFTA) countries wanted slow, flexible reduction of trade distorting policies. Japan wanted to preserve border protections and internal supports on foodstuffs considered essential to political security and to eliminate export subsidies and restrictions. The EC generally wanted a five-year, not necessarily irreversible, liberalization with the capability to rebalance the tariffication of the variable levy in order to allow increases in support that would accommodate market fluctuations. It is common practice not to give one's rock bottom offer in the beginning, but instead, to bargain point by point until the absolute end of the negotiating period in order to concede the least amount necessary to reach agreement.\(^{169}\) The UR proposals in agriculture for 1989 had not changed appreciably from the 1987 proposals. Few points had been bargained away and nothing had really been conceded. If negotiation is a practice in exercising flexibility by exchanging concessions, which makes precise results difficult to predict, and if it is a search for finding acceptable formulae into which the details of the agreement can be placed,\(^{170}\) then what occurred in 1990 during the Round with respect to agriculture was not "negotiation." Even though the Montreal Midterm Declaration did state a very broad formula for negotiation, no real concessions for liberalization were exchanged. Already by the end of 1989, an impasse between the U.S. and the EC was forming: their philosophies of liberalization were too far apart.\(^{171}\)

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\(^{168}\) NEWS OF THE URUGUAY ROUND, No. 33, at 7 (Jan. 11, 1990).


\(^{170}\) Id. at 118-121, 89-96.

\(^{171}\) Filipek, supra note 77, at 159-160.
3.5 Deterioration of the Uruguay Round

3.5.1 1990 - January to October. Although in 1990 there was some movement in the positions of the major players, the U.S.-EC impasse took definable shape. None of the major players offered any new communications in the six agriculture meetings held during the first part of 1990. At the June meeting of the NGAgri, the chairman, Aart de Zeeuw, a retired Dutch businessman, reported that the informal consultations of the last month and a half had failed to narrow disagreement on internal support, border protection and export competition or to complete a text to offer at the upcoming biannual TNC meeting in July. Furthermore, there was no agreement on export competition. At the biannual TNC meeting in July, 1990, de Zeeuw submitted a “Chairman’s Text” as a working agriculture agreement with the understanding that it did not represent consensus among contracting parties, but was merely an expedient from which a “real” working text would be constructed. According to Arthur Dunkel, Chairman of the TNC (at the level of officials), this text was a “means to intensify negotiations.” However, the irony was that because the Chairman’s text favored the U.S.-Cairns Group position, it may have prevented rather than promoted compromise.

Since deadlines for achieving working drafts of agricultural agreements were consistently not being met in the UR (for example with the Midterm Declaration and the 1990 July TNC meeting), the July meeting of the NGAgri focused on issues of timing. It planned an acceleration of negotiations from September until the end of November, and set up the deadline of October 15, 1990, as the last day for tabling of offers for reducing farm aid.

At the biannual TNC meeting in the middle of July, Dunkel set the

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174. Id.

175. NEWS OF THE URUGUAY ROUND, No. 39, at 5 (July 30, 1990); Interview with GATT Delegate (October 9, 1990).

176. Id.

177. Id.

final agenda and timetable for the last remaining months of the UR. He stressed accelerating the negotiations and focusing on problem spots, and stated that intensive work would begin in late August, with the NGAgri the first to start formal and informal meetings. From the July TNC meeting came the final agenda as well as the following timetable for achieving the written agreements upon which trade ministers would make the final negotiations:

August 27 - October 7: Negotiating Groups to resolve outstanding issues;
October 8 - November 22: Stage of Final Agreements and Textwriting during which senior officials were required to be present;
Early November: GNG would evaluate the results of negotiations in all fourteen groups dealing with goods;
November 23: Deadline for submission of all final texts;
December 3 - 7: Closing meeting of the Round at Brussels, where trade ministers were to meet to agree to the final texts hammered out in the last months of the Round.

At the August meeting (August 27-29, 1990) of the NGAgri, delegates discussed the substantive matter of how to apply GATT rules and disciplines to agriculture as well as the procedural matter of how members were to table final offers. These discussions turned into a stymied debate over whether the rules and disciplines which specified violations and remedies of the agricultural agreement-to-be could even be discussed when basic elements of the final agreement were unknown.

In September some trade ministers and others in the know began the first public rumblings about a possible impasse in the UR. On October 6, Dunkel confirmed that the talks were behind the schedule he had set up at the July TNC meeting. Moreover, two days later, Julius Katz,
the Assistant U.S. Trade Representative, said that the UR talks had not reached a "critical mass," that none of the negotiating groups were close to a proposed final text and that everything was being held up by everything else. It was implied that disagreements over agriculture and textiles were threatening the talks.

3.5.2 October 1990. Although the U.S. had announced that it would be tabling a new agricultural offer on September 24, the U.S. proposal was not tabled until October 15, the declared deadline. On October 15, the Cairns Group also tabled its final proposal which was quite similar to the U.S. proposal. On October 8, the EC had promised Dunkel to meet the October 15 deadline for tabling proposals in agriculture. This was an ironic gesture, since that very same day (October 8), the farm ministers of the individual members of the EC rejected the proposal of Ray MacSharry, the Irish EC Agricultural Commissioner, which called for a 30% cut in overall farm support for ten years, starting with 1986 as the base year.

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187. Id.
189. The essential elements of the final U.S. proposal were familiar from its previous proposals and included the following:

1) 90% reduction of export assistance over ten years for all countries and for all unprocessed products, such as dairy products, starting in 1991. U.S. deficiency payments on grain products were not to be included in the category of export assistance but were classified as internal income support. Reduction would be done by tariffication, i.e., converting this assistance into a tariff and then phasing the tariff out. Export subsidies on processed products like wine and pasta would be reduced even faster, with phase-out by 1996/97.

2) In the area of market access and border protection, all existing tariffs would be bound and all non-tariff barriers, such as the variable levy, would be converted to bound tariffs. All tariffs would then be reduced by 75% over 10 years starting in 1991.

3) Internal support that aids production (the most trade-distorting kind) would be reduced by 75% over 10 years starting in 1991, with other internal support reduced by 30% during that period. Agra Europe, Oct. 19, 1990 [hereinafter Agra Eur.].

190. What differed between the U.S. and the Cairns Group proposal was:

1) The U.S. deficiency payments on grain products were not to be classified as internal support but as external subsidies. On this point, the EC and the Cairns Group were agreed.
2) In the area of market access and border protection, existing tariffs would be reduced by 50% in 10 years. If dumping or market disruption occurred during the last years of reduction, a penalty of an additional tariff would be applied.
3) Internal support reductions would be two-tiered and accomplished using an aggregate measure of support: the least developed countries would reduce by 45% in 10 years while others would reduce by 75% in 10 years. Agra Eur., Oct. 19, 1990.

192. Fin. Times, Oct. 9, 1990, at 2, col. 1. Ignaz Kiechle, the German farm minister was the "most vocal critic." Id. See also Int'l Herald Tribune, Oct. 9, 1990, at 11, col. 4; Wall St. J.-Eur.,
The irony arises from the fact that over the next four weeks the EC farm ministers would meet at least seven times in order to formulate an acceptable farm proposal that could be tabled to the NGAgri.193 In those four weeks, from October 12 to November 5, because of the EC farm ministers' indecision and inability to agree among themselves, the farm talks were suspended, and for all practical purposes the entire round of talks were delayed.194 The world community, as well as the GATT staff, began to appreciate just how real the risk of impasse was.195 The suspension affected progress in other areas as well.196 The schedule that Dunkel had established at the July TNC meeting was crumbling.197

Dunkel responded to the shutdown by encouraging only higher-level delegates, who had the authority to make political decisions and concessions on the spot, to attend the informal meetings.198 Dunkel also called for crisis meetings among trade ministers in late October to prevent a total breakdown of the Round.199 However, these meetings were

Oct. 9, 1990, at 3, col. 1 (explaining that Jacques Mermaz, France's farm minister was also unable to accept the plan, but that Britain and the Netherlands were for it).

Thus, six days before the deadline for tabling the last farm proposals in the Uruguay Round, the U.S. was calling for 75% reduction in internal support and 90% reduction in export subsidies over the next ten years whereas the French and German farm ministers of the EC felt that a 30% reduction in overall support was too high.

193. Instead of meeting as originally planned on October 14-15 to discuss MacSharry's proposal, the EC farm ministers postponed discussion of it until October 18, a full ten days after originally vetoing the proposal and three days after the GATT deadline for tabling offers. J. de Genève, Oct. 12, 1990, at 11, col. 2. When the farm ministers refused that proposal a second time on October 18, it became increasingly clear to many that the UR was in imminent danger of an impasse. The danger arose in that the EC farm ministers were rejecting as too liberal MacSharry's proposal, which the Americans said was not anywhere near liberalized enough. Int'l Herald Tribune, Oct. 22, 1990, at 11, col. 6.

194. In large part, the agricultural negotiations were blocked because Germany and particularly Chancellor Helmut Kohl was strongly opposed to altering the internal support package of the CAP in order to keep German farmers assured of their anticipated yearly income. Kohl was facing elections of a unified Germany on December 2, and was lobbying hard for the support of farmers from the south Rhineland areas. Wall St. J., Oct. 23, 1990, at A15, col. 6; Fin. Times, Oct. 20-21, 1990, at 2, col. 2.

195. It was believed that it had always been in the cards that the EC could "scupper" the UR. ECONOMIST, November 1990, at 70. Dunkel said for the first time that the risk of impasse is real. Fin. Times, Nov. 3, 1990, at 2, col. 1.

196. For example, in the meetings of the NGServices that I attended during the last two weeks of October, U.S. and Cairns Group delegates never let an opportunity pass to express their frustration at the EC’s behavior in the farm talks.

197. Dunkel had set early November for the GNG to review progress reports from all the groups negotiating goods. He pushed that review back to November 12. Int'l Trade Rep. (BNA) No.41, at 1578 (Oct. 17, 1990).


199. The crisis meetings were originally scheduled to begin after an informal TNC meeting on Friday, November 2, and were to extend over the weekend of November 3-4. Expected to attend
delayed, and ultimately would never take place, because on November 5, the EC finally accepted MacSharry's original offer, which in effect was not very different from the EC's earlier agricultural proposals. It was not until November 6, that the EC tabled MacSharry's proposal at a TNC meeting. The Americans and the Cairns Group found the EC's proposal unacceptable because it did not separately reduce the three elements of farm trade liberalization, export subsidies, border protection and internal support, but instead lumped these into an aggregate measure of support that was reduced, which is how the EC had been structuring the negotiations.

200. Fin. Times, Nov. 3, 1990, at 2, col. 1. Another irony in the EC's behavior surfaced during this period. During a weekend summit held on October 27-28 at Rome, leaders of the EC countries met to discuss the state of the economy of the EC. Of primary interest was the upcoming economic integration of 1992. Unmentioned at the Rome summit was the suspension of farm trade talks at the UR, which the EC's farm ministers had precipitated, or indeed any other UR topic. Fin. Times, Oct. 30, 1990, at 1, col. 2.

201. The elements of the EC's final proposal were familiar from proposals of previous years:
(1) The EC wanted to accomplish farm trade liberalization by a lumping or a global approach in which all kinds of farm support for a product would be lumped into an aggregate measure of support that would then be reduced by 30% by 1995. The level of support in 1986 was the level upon which this reduction would be calculated. However, in 1986 the EC paid the highest level of support ever to its farmers, and since the EC had already reduced its overall farm support by 15% since 1986, the actual reduction in farm support between 1991 and 1995 would only be another 15%.

202. Carla Hills, the U.S. Trade Representative, called for the EC to keep the promise it made to President Bush at the G-7 meeting in Houston in July 1990 to separately reduce farm export subsidies, internal support and border protection. Fin. Times, Nov. 7, 1990, at 4, col. 6.

farm support reduction all along. This “lumping” would ultimately allow the EC to retain its export subsidies and its border protection of the variable levy, while reducing less trade-distorting internal support payments.\footnote{204}{Fin. Times, Nov. 14, 1990, at 1, col. 2; id. at 4, col. 1.}

\subsection*{3.5.3 November 1990.} On November 7, Dunkel, ever the diplomatic strategist,\footnote{205}{See Phillippe Le B; Arbitre des tensions, 12 BILAN 16 (December 1990) (describing the soul of the GATT Director-General, Arthur Dunkel, as essentially that of a “Suisse de l’etranger” (a Swiss who has lived abroad and therefore has a broader view of life) and pointing out his past negotiating experience as the Director of Business at OECD and as chief agriculture negotiator to the GATT for Switzerland). Id. at 16, 19, 23.} instituted the use of the TNC as the focal point for the UR talks instead of allowing each of the fifteen negotiating groups to continue negotiating in isolation.\footnote{206}{Fin. Times, Nov. 3-4, 1990, at 2, col. 1.} As only the highest level delegates of each mission typically represented the contracting party at a TNC meeting, Dunkel’s goal was to make these upper level delegates responsible for the progress of the talks. He was trying to force political decisions by requiring that upper level delegates with authority do the negotiating. Very intensive negotiations on agriculture began again on November 8th.\footnote{207}{Fin. Times, Nov. 14, 1990, at 4, col. 1.}

During the three and a half weeks between the EC’s tabling its proposal and the opening of the closing conference of the Round in Brussels on December 3, where trade ministers would meet to decide on the final package of agreements, the UR not only seriously floundered, but reached an anticipated impasse.\footnote{208}{See J. de Genève, Nov. 7, 1990, at 7, col. 1; Int’l Herald Tribune, Nov. 9, 1990, at 9, col. 2; Agra Eur., Nov. 23, 1990, at E1.} Those three and a half weeks are critical to understanding what happened at Brussels. As soon as the EC finally tabled its offer, the general tenor at the GATT was that all things were now possible, even if there were only weeks left to iron out the enormous differences in the positions of the major players. What needed to be done was to reach the “critical mass” of desire and discipline necessary to pull off a successful round of negotiations by satisfying “the divergent national interests.”\footnote{209}{J. de Genève, Nov. 27, 1990, at 7, col. 2 (translated from French).} To the extent that during those three and a half weeks during November 1990, negotiators at all levels of discussion from the informal group meetings to the formal TNC meetings perceived that things could be worked out, the UR still had a chance of success. However, several political events during November 1990 indicated that
the success of the Round was doubtful and an impasse in the agricultural negotiations likely. Some of the more revealing events which served to create a negative perception during this period included a mass demonstration of European farmers at the GATT building in Geneva on November 13,210 two international conferences held in mid-November at

210. See La Suisse, Nov. 6, 1990, at 7, col. 3; J. de Genève, Nov. 8, 1990, at 21, col. 1; La Terre Romande, Special Edition: GATT, Nov. 10, 1990, at 1, col. 1; La Tribune de Genève, Nov. 13, 1990, at 1, col. 2; Nous, ou des hamburgers! (Us or hamburgers), La Tribune de Genève, Nov. 14, 1990, at 1, col. 1; J. de Genève, Nov. 14, 1990, at 17, col. 1; La Tribune de Genève, Nov. 15, 1990, at 27, col. 3. See also NEWSWEEK (European Ed.), Nov. 26, 1990, at 7 (observing that a “placard help up by European farmers” in this protest before the GATT said: “GATT Go Home—Via Iraq!”); Press Release, Reuters News Services, Farmers Protest to GATT Over Proposed Subsidy Cuts, Nov. 13, 1990, Geneva: REP PIG DM (stating that an “enormous effigy of Uncle Sam (the United States) showed him with a small European farmer in his jaws and a burlap sack of dollars held to his chest.”)

Within a week of the EC’s tabling MacSharry’s proposal at the UR, a “monstre manifestation” (giant demonstration) of about 7000 European farmers, mainly French, Swiss and German, took place in Geneva. It began outside the gates of the Palais des Nations, the UN Headquarters, traversed three quarters of a mile to the William Rappard Centre, which houses the GATT, where the farmers broke through the 10-feet high iron gates and demanded to speak with Arthur Dunkel, chanting “assassin” until he finally appeared. Although not violent—except for storming the GATT gates and breaking a window—the farmers carried all manner of signs that expressed sentiments in anything but peaceful ways. Typical of the messages were “Don’t GATT Us” and “Carla Hills is a Witch.”

The GATT staff had anticipated the demonstration for several days. GATT Memo, Avis au Personnel: Manifestation des Agriculteurs, INT(90)49 (Nov. 9, 1990). The GATT building officially closed at noon that day. Since no negotiating meetings had been scheduled, there were few delegates to witness the demonstration. Almost all GATT personnel left the building promptly at noon. By the time the farmers arrived at 2:30PM the GATT was almost empty, except for a few of the highest officers and the security staff.

These precautions were taken out of fear and concern that the farmers would become violent. Many of the GATT staff that I spoke with perceived the farmers as potentially violent and absolutely bent on getting their way, as did delegates. (French farmers had been consistently demonstrating with varying measures of violence since the summer of 1990. For example, they burned tires at an airport where French President Mitterand landed to protest any potential change in France’s position on export subsidies. See infra note 276.)

I observed the demonstration by marching with the farmers from the Palais to the GATT building. It was the subject of much coverage in European newspapers and television. The farmers symbolized their fight against any change in the CAP and against the reduction of the variable levy and of export subsidies as the ultimate life and death struggle. They also symbolized the U.S. as an evil force to be overcome, since the U.S. was demanding “efficiency” in farming. In this struggle, Carla Hills, the U.S.TR, became the embodiment of all the evil that the U.S. wanted to wreak on the European farmers. Hence, she was symbolized as “die Hexe” (the witch). The message on signs and posters, “Don’t GATT Us,” evinced several values: first, the farmers’ need to remain small and independent; second, the farmers’ desire to remain in control of the quality of the food they produced; and third, the need to be creative or “non-efficient” in the way they farmed. All of these values are counter to the farmers’ stereotype of U.S. farming as big business, overmechanized, wholly efficient, yet producing tasteless, nutritionless food.

Thus, the farmers’ demonstration did more than demand no change in the CAP, it beseeched the EC not to transform European farmers into those dreaded American ones. The demonstration was
which world leaders met to discuss peace and international cooperation, yet could not find a compromise solution to the agriculture issue, and a press war throughout November between the U.S. and the EC blaming each other for the potential impasse of the Round. The net effect of

as much about preserving the uniqueness of European culture as it was about reducing export subsidies.

211. The first of the two conferences was the annual meeting of state officials of the U.S. and the EC, which began November 11. J. de Genève, Nov. 12, 1990, at 5, col. 4. These meetings were designed to get some agreement on agriculture; discussions were held at very high political levels. The conference lasted for ten days until November 18. Int'l Herald Tribune, Nov. 15, 1990, at 11, col. 2. Nonetheless, the Andreotti-Bush-Delors (Guilio Andreotti is the President of the EC Council of Ministers; President Bush of the U.S.; Jacques Delors is the President of the EC Commission) discussion on November 14, produced no concrete results. J. de Genève, Nov. 15, 1990, at 7, col. 1. Further, U.S. Secretary of State James Baker met with Delors in Brussels on November 16, and on November 18, Carla Hills met with EC Trade Minister Frans Andriessen. J. de Genève, Nov. 17-18, 1990, at 9, col. 1. Neither of these discussions were productive. In fact after the Baker-Delors discussion, Clayton Yeutter and Raymond MacSharry, the U.S. and the EC Agricultural Ministers respectively, both expressed doubt that the gap between the U.S. and EC positions could be bridged. Fin. Times, Nov. 17-18, 1990, at 2, col. 4.

On November 18, President Bush attempted some shuttle diplomacy to end the stalemate. In Germany he met with Chancellor Helmut Kohl for lunch and then flew to France to have dinner with President Francois Mitterand. At the same time, MacSharry and Yeutter met. J. de Genève, Nov. 17-18, 1990, at 9, col. 1. Not only did nothing come of these meetings, but press coverage about the lack of agreement was played down.

The next day, November 19, opened the second international conference, the Conference on Security and Cooperation in Europe, which was expected to culminate in a treaty to reduce stockpiles of armaments on European soil. The U.S.-EC semiannual meetings had been to some extent a prelude to the Security Conference, an event that upstaged the Uruguay Round as a media event for a few days because it was viewed as a symbol of success, encouraging cooperation between the U.S. and the EC. Fin. Times, Nov. 19, 1990, at 2, col. 1. However, at the Security Conference, Jacques Delors and Guilio Andreotti prevailed over George Bush by not allowing any mention of the potential results of the Uruguay Round into the text of an accord on the future security of Europe. J. de Genève, Nov. 12, 1990, at 5, col. 4. That action could be interpreted either that the EC knew it would not change its offer enough to be palatable to the U.S. and the Cairns Group or that the EC did not want the U.S. to coerce it into a UR agreement just for the sake of preserving the Security Conference accord. Either way, that action was a vote of no confidence in whatever results were to emerge from the UR.

212. A mild war of threats between the U.S. and EC had been on-going throughout the fall of 1990. However, it escalated immediately upon the realization that the EC was more intransigent about institutionalizing its agricultural policy into the GATT agreements than was previously thought. As the high level meetings in mid-November between U.S. and EC officials produced no movement, Dunkel no longer hesitated to speak of the very real possibility of impasse. See supra note 211; J. de Genève, Nov. 13, 1990, at 5, col. 2.

On November 14, the restraints on internal support and export subsidies to U.S. farmers and the restraints on border protection of U.S. farm products as specified in the U.S. agricultural proposal in the UR were incorporated into the 1990 U.S. Farm Bill. This meant the U.S. was codifying its UR farm proposal into law, at least for the short term. Also, the U.S. Senate Finance Committee and the House Ways and Means Committee refused to allow the President to accept a final agreement coming out of the UR in outline form for fast track purposes. That is, in order to get a Congressional vote on the whole UR package without debate or revision of any particular provisions, the President
these events was to signal to the delegates that the negotiations in agri-
culture were mired in what Dunkel called "declared positions." If Oc-
tober 1990 was an example of the EC's intransigence about not reducing
export subsidies or dissolving its border protection, the variable levy, then November 1990 demonstrated the U.S.'s intransigence in refusing to
negotiate on the EC proposal and in demanding that the proposal be
changed to reduce export subsidies and border protection. Already hav-
ing begun to incorporate into its domestic law some elements of its own
GATT farm proposal, the U.S. feared that negotiation using the EC
proposal, that did not address reduction of export subsidies, would result
in institutionalizing the CAP into the GATT, which was to be avoided at
all costs.

had to present to Congress a fleshed out agreement. Fin. Times, Nov. 14, 1990, at 1, col. 2. This
restriction as to the nature of an acceptable UR agreement plus the unilateral commitment to liberal-
ize farm aid amounted to a congressional warning to the EC, to the GATT staff and to all GATT
members that the U.S. Congress was not going to commit to just any result from the Round in order
to preserve the existence of the GATT. Actually, in past rounds, the U.S. had done just that, caved
in on many of its demands at the last minute to ensure that an agreement was reached. Int'l Herald

Amid speculation as to whether the UR might extend past the scheduled end of the Brussels
ministerial meeting, Clayton Yeutter and Carla Hills, who had been adamant against extending the
Round, softened and stated for the first time in late November that the U.S. might consider exten-
ting the talks but only if the EC cooperated by discussing the reduction of farm export subsidies
(which the EC regarded as taboo). Int'l Herald Tribune, Nov. 19, 1990, at 11, col. 7; U.S. Mission

Also, in late November, Julius Katz, U.S. Asst. Trade Representative, implied that the two big-
est agricultural subsidizers, the U.S. and the EC, had been unable to agree on basic principles
throughout the Round. He said that in four years, there had not been "one serious day of negotia-

Just before Brussels, Dunkel said that the UR would succeed only if declared U.S. and EC posi-
tions were dropped. He strongly hinted that the U.S. might have to move out of its intransigent
position of flatly rejecting the EC's proposal because it did not address reducing export subsidies.
Calls for Realism in Row Over Farm Subsidies, Dec. 2, 1990, Brussels:EK-AMW-JMS.

The U.S. began preparing a list of processed EC agricultural products, mainly French and Ger-
man, whose duties it would raise as early as January 1, 1991 as retribution for the EC's intransigent
attitudes in the GATT negotiations. The EC softened a little bit and hinted it might display a little
more negotiating maneuverability at Brussels than it had in the past. Press Release, Reuters News
Service, Battle or Truce on Farm Subsidies? U.S., EC Have to Decide Now, Nov. 29, 1990, Brus-
sels:291329-GMT. Throughout this dizzying political merry-go-(Uruguay)-round ride, the developing
world stood back in mounting frustration as it watched the two hegemonies fight for the gold
ring of control over farm liberalization, in which developing nations felt they had a major stake. J.

214. Fin. Times, Nov. 14, 1990, at 1, col. 2. See supra note 212. See also Agra Eur., Oct. 26,
1990, at N/6 (for a concise, specific summary of the 1990 Farm Bill).
There were several ripple effects of the November impasse in farm negotiations at the UR. One of the most notable was that a few days before the November 23 deadline for the final text for Brussels, the U.S. expressly declared that it would not support unconditional nondiscriminatory, that is MFN, treatment in the services agreement. Although the U.S. did not clearly explain its abrupt about-face on services, some of the impetus for it was probably due to the perception that the UR would not produce an acceptable farm agreement. Without such an agreement, developing exporters who were strongly relying on liberalized agricultural trade, and who were concomitantly the strong and vocal dissenters in the NGAgri, would press for and probably achieve protection in the areas of market access and of investment/ownership rights. This would create a totally unacceptable services agreement as far as the U.S. was concerned. By beating the less developed countries to the punch with the demand for conditional MFN, the U.S. tried to assure that its service industries would be protected in rendering their technological know-how to less-developed countries who would not offer these industries an unencumbered market share and profit margin.

A second ripple of the November impasse was that the final 391-page draft agreement, which was to contain draft texts for all fifteen negotiating areas, and was the basic document upon which final negotiations in Brussels would proceed, contained no draft text for agriculture. Inserted into the final draft agreement was the very text drafted by the NGAgri Chairman de Zeeuw in July 1990. It is important to remember that this text had never been agreed to by the NGAgri, was drafted with the help of GATT staff, and favored the U.S.-Cairns position. Its insertion into the final agreement only served to drive home the point that

216. Fin. Times, Nov. 22, 1990, at 8, col. 1; Wall St. J.-Eur., Nov. 22, 1990, at 2, col. 4; J. de Genève, Nov. 22, 1990, at 5, col. 1. See also Wall St. J.-Eur., Nov. 30-Dec. 1, 1990, at 1, col. 1. The U.S. had been already been taking “flak for failure” to achieve even a modest agreement on services because it had been especially unwilling to commit to unconditional MFN in telecommunications, air transport, and maritime shipping. At the same time, the U.S. was demanding unconditional MFN for the audiovisual sector (which includes the export of U.S. movies into foreign markets). Fin. Times, Nov. 14, 1990, at 16, col. 3.

217. It was implied that the U.S. was responding to pressure by AT&T as well as other strong services lobbies. Wall St. J.-Eur., Nov. 30-Dec. 1, 1990, at 1, col. 1. See also Fin. Times, Oct. 19, 1990, at 4, col. 1 (stating that “AT&T wants the U.S. to retain the right to negotiate bilaterally access to other countries’ markets”).


220. See supra note 175 and accompanying text.
there had been no movement in the agricultural negotiations for over a year.

In the days just before, and at the start of the Brussels meeting, the trade ministers of the contracting parties and the GATT staff knew they faced "defeat," but some hope surfaced especially after Japan seemed prepared to put the issue of rice imports, previously undiscussed, on the negotiating table if other members would also table their difficult issues.

3.6 At Brussels

What transpired at the Brussels Ministerial meeting, which was scheduled to end the four years of UR talks, can be summed up as follows: the critical mass necessary to overcome the inertia of polarized positions in agriculture was never achieved. The Brussels meeting ended without a package of agreements because the U.S. and the Cairns Group were adamant that an agreement on reducing farm export subsidies was an absolute requirement of any UR package and because the EC was unwilling to negotiate specific reductions in that area. That there was no agreement between the U.S. and the EC on the agricultural negotiations translated into an impasse for the Round.

The Brussels meeting from Monday, December 3, to Friday, December 7, 1990 was essentially a conference of the TNC (Trade Negotiating Committee) at the ministerial, not officials, level. This meant that in Brussels the players changed. Instead of the high-level officials of each mission, the trade minister and often the agriculture minister acted as delegates and spokespersons. The Brussels conference was not chaired by Dunkel (who was chair of the TNC at the officials level), but by the

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223. J. de Genève, Nov. 27, 1990, at 7, col. 1. Several observers predicted that a critical mass would be necessary to pull the Round off and that most negotiators would be content with modest results. See, e.g., Fin. Times, Dec. 7, 1990, at 2, col. 1.
225. However, the EC was an exception, as it was not represented by the ministers of trade and agriculture who had intimate knowledge of the EC farm proposal and policy as developed through the Fall of 1990. Instead, members of the EC Commission acted as delegates who sat in on the negotiations and then reported back to the EC ministers. Fin. Times, Dec. 8-9, 1990, at 6, col. 3.
Uruguayan trade minister, Gros-Espiell. In most other respects, however, the game remained the same. There were formal meetings where the entire TNC would meet to conclude agreements and informal meetings of each negotiating group where delegates would hammer out differences in the 391-page working text. Since many informal groups would be meeting simultaneously, a trade minister could not attend each meeting. Instead, high-ranking substitutes with the authority to make political decisions would attend. Moreover, several delegations took along experts in specific trade areas, as well as business people who would act as lobbyists. The U.S. delegation comprised 500 people, the Japanese 300.\footnote{226}

The atmosphere of the Brussels meeting was similar to a conference at a swank hotel in the middle of large urban downtown area that only the uppercrust of the business world would attend, except it was on an even grander scale. The ultramodern conference center was actually a conference campus, with several interconnecting buildings that housed movie theaters, stores and restaurants surrounded by gardens with a human-made river running through.\footnote{227} Thirty-thousand farmers descended on the periphery of the conference center on December 3, the opening day of the meetings, to make their opposition felt and to make opening day a "spectacle."\footnote{228}

\footnote{226}{On the other hand, Germany maintained a very low profile at the Brussels meeting. It sent no ministers. \textit{Fin. Times}, Dec. 4, 1990, at 3, col. 1. It was reported that Switzerland had a powerful delegation because it sent 30 delegates. \textit{J. de Genève}, Dec. 1-2, 90, at 6, col. 1.}

\footnote{227}{\textit{Fin. Times}, Nov. 29, 1990, at 4, col. 2. And as at a business conference at a hotel, some of the most basic needs did not seem efficiently provided. Three days after the Brussels conference ended, members of the GATT support staff spoke to me about the earphone situation. Unlike in the UN Building or the GATT centre where meeting rooms are equipped with a set of earphones permanently affixed to each chair so that all attending may listen to an instantaneous translation of the proceedings in French, Spanish or English, none of the conference rooms in Brussels was so equipped. Delegates had to remember before entering a meeting to pick up earphones at a dispensing location some distance away from the meeting room. Also, once outfitted, delegates were required to carry their earphones with them. The result was that delegates who did not remember to take their earphones with them were constantly having to borrow or get new ones. Interview with GATT staff (Dec. 10, 1990). The earphone situation created the inconvenience of not having easy access to what was going on in the Brussels meetings and represents a small but significant error in planning that raises a nagging doubt about the insight that went into the planning of the Brussels conference.}

\footnote{228}{\textit{J. de Genève}, Dec. 4, 1990, at 7, col. 2. Most of the farmers were French, German and Belgian. Others included Swedish, Swiss, British, Italians as well as Japanese and South Koreans. Many of their signs read "Ne Gattez Pas L'Avenir de l'Agriculture" (Don't GATT the Future of Agriculture). \textit{Id.} Police used water cannon on the farmers to disperse them and by Tuesday their numbers had decreased. The EC building in Brussels was heavily guarded and ringed with barbed wire. \textit{Fin. Times}, Dec. 4, 1990, at 3, col. 2.}
The meeting began around noon on Monday, December 3, with a series of addresses to the ministers. Because “the menace of an impasse at Brussels [was] very real,” and because agriculture and services were to be discussed in the TNC for the first two days, it had been predicted that the end of the Round would be played out in the first few hours into one of three outcomes, “rupture,” “happy ending” or “prolongation.” However, the Brussels meeting was not quite that predictable and seemed as if on a see-saw.

By the end of the second day, comments such as “total impasse” made by the Canadian trade minister, “end of the road” made by the New Zealand trade minister and “very close to collapse” by the U.S. Ambassador to the GATT abounded. Mats Hellstrom, the Swedish Agriculture Minister who chaired the agricultural talks at Brussels, said that there was no basis for negotiation because, as Dunkel pointed out, not one political decision to compromise had been made. The IMF director, Michael Camdessus, gave a pep talk through the press to the farm negotiators to impress upon them how great the stakes were. He stated that the abolition of farm supports would increase the foreign earnings of farm exporting nations by some fifty billion dollars.

The EC began blaming the Americans for their intransigence by not yielding to unconditional MFN in the services sectors of telecommunications and maritime transport. On their part, the American delegates did show some signs of compromise, but their willingness to commit to unconditional MFN depended on some less-developed countries keeping promises to maintain open market access in the banking and insurance

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230. J. de Genève, Nov. 27, 1990, at 7, col. 1 (translated from French). French seems to convey a slightly different meaning than English in speaking of negotiating events. For example, it seemed to me that the English word impasse was more often used in the English press and by the GATT staff to mean both the general breakdown in the talks and a stalemate specific to an issue and to a meeting. The French press seemed to use the word “rupture” to denote a general impasse but the connotation of “rupture” was certainly different than that of impasse. “Rupture” connotes images of a break in the pathway of negotiations, a chasm to be bridged. “Impasse” implies no break, rather an obstacle to be removed from the path. The French press also used the word “blocage,” which often denoted a specific stalemate. “Blocage” is a cognate for blockage and connotes, like “impasse,” an obstacle to be removed.

It seems fascinating that French speakers and English speakers describing the same events of the UR attached different meaning to them and thus conceptualized different strategies for dealing with the same events.

233. Id.
Most delegates blamed the EC for the official deadlock that was declared by Tuesday evening.237

The Round was revived, however, largely due to the herculean efforts of Hellstrom, who got the EC to at least re-think some aspects of its position, if not actually to budge from it.238

Using a nine item questionnaire that Dunkel had inserted into the agricultural working draft,239 Hellstrom produced in just two days a working text of an agricultural agreement that was a genuine compromise between the U.S. and the EC positions.240 The text was short and simple yet dealt with reduction in each of the three areas of internal support, export subsidies and border protection, designed to please the U.S. and the Cairns Group. The reductions would be 3% per year for the next five years, using 1986—the year of highest farm support—as the base year. This was designed to please the EC.241

The Chairman of the conference, Uruguayan Minister Gros-Espiell, gave an ultimatum that a preliminary breakthrough had to occur in the farm negotiations by noon Thursday, December 6, or the conference was over. He later extended the deadline to 5:00PM Thursday afternoon as the EC farm and trade ministers were meeting on Thursday morning and he wanted to give them time to change their bargaining position and to begin serious negotiation.242 Up until this point at the Brussels conference, the agricultural meetings had either been formal or informal sessions of the NGAgri. On Thursday, things started to change; for the first time, the negotiations became serious, the negotiators were going into the

237. For example, on Wednesday evening (Dec. 6), 24 hours after impasse was officially declared, the EC still had not budged. Neal Blewett, Australian Trade Minister, blamed the EC, stating that “for all practical purposes, the UR is dead in the water.” Wall St. J.-Eur., Dec. 6, 1990, at 2, col. 1. Rubens Ricupero, Brazilian Ambassador to the GATT, acting as spokesperson, issued a joint statement on Wednesday evening of 70 developing countries that blamed the EC. Id.; Fin. Times, Dec. 6, 1990, at 1, col. 2.
240. J. de Genéve, Dec. 7, 1990, at 7, col. 1. During an interview earlier in the fall of 1990, I asked a Swedish delegate who did not participate in the agricultural negotiations how he thought the Nordics and Sweden were viewed by other delegates. At the time, I thought his answer was self-serving. He said, “we are perceived as a voice of reason, as flexible and not extremist.” Interview with Delegate (Oct. 5, 1990). In reviewing what Mats Hellstrom was able to accomplish in two days as compared to what had remained unchanged in four years of negotiation, I realized that I had undervalued the insight of the Swedish delegate.
Pessimism reigned at the conference on Thursday morning. However, because the EC had declared itself ready to discuss export subsidies and the Americans had modified their stance on conditional MFN in services, David Woods, the press relations officer of the GATT, stated that there was no more impasse.

The NGAgri met at 8:00PM Thursday evening and were told to be prepared to stay all night. Nonetheless, by 9:30PM, a short hour and a half later, the discussions were going nowhere. The EC delegates stated that they would only discuss the Hellstrom text if a list of pre-conditions were met, which would in effect turn Hellstrom’s text into the EC proposal. To some, the Uruguay Round had just ruptured.

The GATT staff circulated a proposal for adjournment on Friday morning even though 11:00AM meetings had been scheduled for areas other than agriculture. At a Friday morning press conference, EC officials were defensive about the lack of progress in the Brussels meetings and a little later the Round was officially pronounced in impasse.

243. “Green Room” negotiations can occur once disagreement has been narrowed to small but very significant differences among negotiators. These are often long, intense sessions conducted by Dunkel himself in an informal setting to crystallize and to agree on the specific boundaries of disagreement and then to search pragmatically for a common formula to resolve them. Interview with Delegate (Nov. 9, 1990).

They are called “green room” negotiations because the conference room next to Dunkel’s office in the GATT building, where such meetings took place during the Round, is painted green. On Wednesday, after the impasse was declared, the NGAgri broke into informal groups, but there was no “green room” meeting scheduled then because there was no common ground. J. de Genève, Dec. 5, 1990, at 4, col. 2.

248. Wall St. J., Dec. 10, 1990, at A4, col. 2. On Friday Dec. 7, I arrived at the GATT library about 12:30PM and remained there until it closed at 5:30PM. A curious thing had happened: there seemed to be a news blackout of sorts. Staff of the GATT library, which is a department within the press relations division of the GATT, were unable to get through by telephone to other GATT members of that division stationed in the press room at the Brussels conference center. The GATT staff in Geneva were surprised and were unable to account for the breakdown in communication.

In any event, by 2:00PM it became known throughout the GATT building that an “adjournment” of the Round had occurred. By Monday December 10, a memo had circulated to the GATT staff asking them to prepare themselves for the return of the delegates, which may be as early as Jan. 25, 1991. The memo also implied that some informal meetings might even begin before Christmas 1990. Thus, the sense from the GATT staff was that the Round was not over; it was entering a new phase.
3.7 Responses to and Predicted Consequences of the Impasse

This section will look at some of the underlying reasons why the impasse occurred. The discussion directly below will touch on some of the immediate responses to what happened at Brussels and why, and what were believed to be the consequences of a failed Round. Explanations about why the Brussels conference failed were more easily formulated than statements naming the event that had occurred there. The press seemed in agreement that the EC's negotiating strategy at Brussels had created disarray and disharmony in the NGAgric as well as in other negotiating groups, and that the EC as a negotiating institution had acted as a dinosaur, unable to move under the weight of its own bureaucracy.249 The press also agreed that the impasse resulted in part from EC myopia about its own importance in the world trading system,250 and in part from the U.S. fear that the rest of the world wanted to encroach on its privileged position of being front and center in the world economic picture.251 Also, an increase in political tensions among developed nations, which was an unanticipated consequence of the dissipation of the Soviet threat, encouraged the U.S. to be much less willing to back down than in past Rounds.252 In addition, the absolute lack of chemistry between the U.S. and EC players,253 as well as the plain and simple fact that the 391-page draft agreement presented a much too complicated agenda for many ministers to understand and work on, made a bad situation worse.254

In trying to name the event that transpired at Brussels, press reports were full of contradictions largely because "what happened" depended

249. Wall St. J.-Eur., Dec. 10, 1990, at 1, col. 6; Fin. Times Dec. 8-9, 1990, at 6, col. 3. The negotiating strategy of keeping the farm and trade ministers who had formulated the EC proposal away from the Brussels meeting, by ensconcing them in another building in the conference center, created tremendous communication difficulties. The trade and farm ministers were the policy creators yet were unable to act as policy negotiators and the policy negotiators at Brussels did not take pains to inform the ministers about what was going on in the meetings. The ministers could not respond in order to make the necessary concessions, even if they had wanted to. Fin. Times, Dec. 7, 1990, at 2, col. 1.


253. Jacques Mermaz, the French farm minister, said that it was "impossible to have a polite conversation with an American." Fin. Times, Dec. 8-9, 1990, at 6, col. 3. Carla Hills was perceived as having a combative personality while Ray MacSharry was regarded as consumed with self-interest because he was trying to please his Irish constituency in order to run successfully for president. Fin. Times, Dec. 7, 1990, at 2, col. 1.

on whether the delegates would re-convene sometime in the future. Identifying what happened, then, necessarily included some degree of hope attached to a prolongation of the Round.\textsuperscript{255} Some expressed a sense of futility about reconvening the talks because the U.S. Congress would have to extend the fast-track authority of the U.S. President past March 1, 1991, an act which Congress was not likely to do given its current protectionist stance which was worsened by the meager personnel and money commitments of Germany and Japan to the crisis in the Gulf.\textsuperscript{256}

A failure to achieve even modest results at Brussels was a surprise to some, given that the anticipated consequences of such a failure had been reported as grave. From early October, even before the debacle of the EC ministers' inability to reach political consensus on a farm proposal, the U.S. was making veiled threats about what would happen if the Round failed. For example, Clayton Yeutter, Secretary of Agriculture, said that the U.S. would consider expanding its farm subsidies (and worsening distorted trade in agriculture) if the Round did not achieve U.S. objectives.\textsuperscript{257} Carla Hills declared that trade conflicts would proliferate and become worse than those of the 1980s, and that she would not hesitate to use the tool of § 301 of the 1988 Trade Act to pry open protectionist markets.\textsuperscript{258}

As these statements imply, a major consequence of a failed UR was that sectoral trade wars would most likely flare up, especially in agriculture.\textsuperscript{259} Other predicted consequences included a significantly reduced world economy throughout the 1990s as an increased number of subsidies and tariffs reduced access to foreign markets and stymied business expansion.\textsuperscript{260} Consumers would pay more for food and long-term inflation would ensue. A failed UR would accelerate the general fragmenta-

\textsuperscript{255.} For example, the GATT staff used the word adjournment. The original idea was that Dunkel would shuttle between capitals in the weeks after Brussels to narrow preferences about farm trade support. This shuttle diplomacy would ease the reconvening of talks in January 1991. \textit{Wall St. J.}, Dec. 10, 1990, at A4, col. 2. The American and British press named the event a "collapse" of the trade talks. \textit{Wash. Post}, Dec. 8, 1990, at A1, col. 3; \textit{Fin. Times}, Dec. 8-9, 1990, at 1, col. 7. Other names called the event as a "failure" of the trade talks (\textit{J. de Genéve}, Dec. 10, 1990, at 4, col. 1; \textit{Wall St. J.}, Dec. 10, 1990, at A4, col. 2) or as an "indefinite adjournment" (\textit{Fin. Times}, Dec. 8-9, 1990, at 1, col. 3).

\textsuperscript{256.} \textit{See infra} note 274. Recall that the President's fast-track authority meant that Congress must vote yes/no on the entire package of UR agreements presented by the President. \textit{See supra} note 212.


\textsuperscript{259.} \textit{Wall St. J.-Eur.}, Nov. 16, 1990, at 1, col. 6; \textit{Fin. Times}, Nov. 29, 1990, at 4, col. 2.

\textsuperscript{260.} \textit{Wall St. J.-Eur.}, Nov. 16, 1990, at 1, col. 6.
tion of the liberalized world trading system into regional trading blocs that would restructure trade flows, keeping less industrialized countries out of mainstream trade. This fragmentation would work to increase political tensions between blocs and foster breakdown in diplomatic negotiations, potentially precipitating political, not just economic, aggression.\(^{261}\)

Although few believed that a failure would cause members to repudiate their existing GATT agreements, some did believe that a failure would indicate the beginning of the end of the GATT regime.\(^{262}\) That possibility created fear because no one was able to predict just how far the existing trade rules, which had been established over the last forty-three years, would unravel or just how protectionist the world would be willing to become.\(^{263}\) According to a recent World Bank study, had the UR resulted in an eventual removal of protectionism in agriculture, the total income of the less-developed countries stood to increase by 2 1/2 times the current level of all development aid given by industrialized countries.\(^{264}\) That an agreement in farm trade was not achieved, given its potential for great gains to some nations, indicates a frightful willingness on the part of other nations to remain protectionistic.

Most of the predicted consequences mentioned above are long-term. A short-term, immediate consequence was that only three days after the Brussels conference ended, the U.S. prepared to increase duties by 200%, as of January 1, 1991, on EC agricultural and beverage exports, such as liqueurs, mineral waters, artichokes and cheese.\(^{265}\) Also, the U.S. Congress included in the budget law enacted in November 1990 a provision that would require U.S. policy on farm exports to become more aggressively protectionist in case the UR talks failed. Specifically, the budget law demands that the Secretary of Agriculture must remove all spending cuts on agriculture put in place by the 1990 Farm Bill if there is no trade agreement reached by June 30, 1992, and that the Secretary must increase export subsidies on agricultural products if no agreement materializes by June 30, 1993.\(^{266}\)

Trade negotiators were generally aware of these predicted consequences of failure. Perhaps the single largest impetus at the end of the

\(^{261}\) Fin. Times, Nov. 29, 1990, at 4, col. 2.


\(^{264}\) Id.


Round for their continued efforts was the fear of the economic unknown: what would the world be like without a successful trade agreement? Nevertheless, even specters of the GATT's demise, of impending trade wars and of a stagnated world economy, did not rouse the necessary political will to give up protectionist farm policies in order to get liberalized trading benefits.

4.0 ANALYSIS

The analysis presented here relies not only on material published about the Round, but also on my interviews with delegates and with GATT staff who participated in the Round, as well as on my observations of some of the formal meetings. The important factors explaining why the impasse at the Brussels conference of the UR occurred fall into three categories: political, ideological and organizational. Political factors were chosen to analyze the impasse because they were the most visible and the most talked about. Ideological factors were chosen because these seemed most pervasive and probably, in the long run, accounted for the political factors. The category of organizational factors includes the influencing of delegates, by the GATT staff, to change their positions and the structure of contracting parties' trade delegations that facilitated such influencing. These factors were selected because they had a subtle, yet a very direct influence on the impasse.

4.1 Political Factors

Probably the single most important political factor influencing the failure of the Brussels meetings was the overall change in world politics since the start of the UR in September 1986. This overall change included a dramatic shift in East-West relations owing to the development of political democratization in Poland, Hungary and Czechoslovakia and the virtual end of Cold War politics with the Soviet Union. A concomitant and equally important shift in world politics was the relative loss of U.S. hegemony in the world economy. Demonstrative that the U.S. Congress perceived a loss of U.S. economic dominance, is the pas-

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268. This political democratization has had astoundingly quick and deep economic ramifications for the West. See, e.g., Sheedy & Dean, Gaining a Foothold in the Soviet Market: How to Establish a Representative Office, 25 INT'L LAW. 103 (1991); Slupinski, Foreign Investment in the Banking Sector and Emergence of the Financial Market in Poland, 25 INT'L LAW. 127 (1991).
269. Fin. Times, Dec. 8-9, 1990, at 6, col. 3; see Thurow, Int'l Herald Tribune, Oct. 10, 1990, at 10, col. 3. It is not by any means clear that the U.S. has lost or gained absolute hegemony in the world economy since the commencement of the UR. See J. de Genève, Nov. 28, 1990, at 5, col. 2.
sage of the 1988 Omnibus Trade and Competitive Act with its section "Super 301,"270 providing the U.S. Trade Representative with a unilateral measure to threaten retaliation against what she perceives as unlawful protectionism against U.S. goods in foreign markets.271 Also demonstrative of Congressional protectionism is the passage of the Textile, Clothing and Footwear Bill of 1990 in October 1990 (the President subsequently vetoed it), which sent an unmistakable message to the world and to the Round negotiators that the U.S. was not willing to sacrifice its southern textile mills to newly-industrializing Asian countries, such as Korea, Taiwan, and Malaysia. The U.S. Administration’s fears about economic encroachment played out in the intransigence with which all American negotiators, from Baker to Hills, and Yeutter to lower level delegates, approached the issue of agricultural export subsidies. Originally the U.S. demanded zero subsidies after ten years of reduction, and capitulated only after 3 1/2 years of hitting heads with the EC (which did not want to reduce export subsidies at all), with a revised demand not appreciably different: a 90% reduction in export subsidies after ten years. If the EC bore the brunt of criticism about not budging on its position, U.S. behavior was no model of compromise and cooperation either.273

Besides the perception that the U.S. had lost economic status, two other political factors274 directly accounted for the impasse at Brussels: lobbying by interest groups and the relative rise in political and economic importance of some of the less developed countries, particularly those of Latin America.275 The EC Commission and delegates were lobbied by European farmers, mainly French and German, who staged demonstra-

270. See supra note 28.
271. Carla Hills wielded the sword of the § Super 301 in May 1989 by naming Japan, India and Brazil as violators. The EC, Canada, Mexico, Argentina and the Nordic countries criticized the U.S. action at the next GATT Council Meeting. See generally Recent Developments, supra note 67.
274. See J. de Genéve, Sept. 7, 1990, at 6, col. 1. It should be noted that another political factor was the U.S. outpouring of personnel, money and energy to liberate Kuwait. However, this factor did not become important until the end of November after the Security Council countenanced the potential use of force in the Persian Gulf. Therefore, it may be more important for explaining why the U.S. did not push for a quick resolution of the Round after the Brussels impasse than for explaining why the impasse occurred. The U.S. greatly valued its contributions to the Gulf War and remained staunch against the protectionist demands of Germany and Japan, who were perceived as derelict in their duty to free Kuwait.
275. This short list neither attempts to be inclusive nor to leave out other obvious political factors, such as the difference in urgency each side felt for the need of agricultural liberalization. That the U.S. was in a hurry to get farm liberalization over yesterday and the EC was only willing to
think about it tomorrow translated into a repeatedly unacknowledged and undervalued difference in the extent and timing of such liberalization.

Further, this list focuses on the political factors external to the negotiating context. Even though I observed some of the formal negotiation sessions, I am uncomfortable including my observations in the analysis section of the main body of this paper. I was neither a systematic, long-term or legitimate observer and my observations go more towards describing influences within the negotiating context.

For example, I interviewed both EC and American delegates of the agriculture negotiations. In the interview with the American delegate, a man identified as an expert in agriculture working for the government and who periodically came from Washington to sit in on NGAgri meetings as requested by the delegation, joined the interview. I believe the delegate invited him to join us for two reasons. First, as I was a neophyte, interviewing a farm expert would be immensely helpful (and it was; and I am very grateful to that delegate for having him join us). Second, because I was an outsider to the negotiating community, the “American” way to control the negotiating environment as well as the press and world opinion is to give the most expert answers. Another aspect of the American way to gain control is to table the most detailed, complex and statistically sophisticated proposals and to devalue non-economic and social objectives when they interfere with trade liberalization. The U.S. delegates’ approach to my interview reminded me much of the old TV series Dragnet: they gave me nothing but the facts.

When asked about the EC social policy of trying to preserve a rural/urban demography and a farming work force, the American delegates waved this off, imputing economic motives to preserve the CAP, which, they said, maintains for the EC an unfairly-acquired comparative advantage in farm products, raw and processed. The theme of devaluing the stated non-economic motive for preserving the CAP by the EC also ran through a later interview with a high-level GATT staff member working in the Agricultural Division.

Even though the EC did indeed have a strong economic motive to maintain an unfairly-acquired comparative advantage in agriculture by trying to incorporate its CAP into the GATT, the U.S. as well as the GATT staff seemed unwilling to accept that the EC, Japan and Korea might have had reasonable and valuable non-economic motives for not wanting to liberalize farm trade in a hurry. By not acknowledging the EC's perceived need to preserve a much-valued cultural myth that farming as a way of life originates and renews a society’s most revered values of self-preservation, discipline, purity and strength, the U.S. forced the EC to increasingly romanticize farming and to crusade for it. Although the interview with the EC delegate was more personal, it was also more restricted by etiquette because this delegate was much higher up in the delegation hierarchy than the Americans I had interviewed. Where the Americans were overly efficient, the EC delegate was obfuscatory. Our interview occurred just before the October 15th deadline for tabling farm proposals. He was sensitive to my being an American and that the press was beginning to blame the EC for unnecessary delay in reaching an acceptable farm proposal.

If the U.S. delegates had been unwilling to consider social motives for preserving protectionist farm support policies, that was the primary topic of interest to the EC delegate. In fact, he was uncomfortable in discussing reduction of farm support at all and especially uncomfortable in discussing the concept of rebalancing. See supra notes 151 & 152 and accompanying text. Some of his unwillingness was no doubt due to his not wanting to prematurely reveal to me any details of the not-yet-agreed upon EC proposal for farm liberalization. Although he did not admit it, he implied that the political machinery of the EC was almost overburdened and too complex, which became apparent in the Brussels conference. I believe much of his unwillingness to talk facts, as the Americans had done, was due to his belonging to a de-centered and fragmented political culture that frowned on giving facts and hard answers.

Another factor that affected the internal politics of the negotiating arena was the cultural difference in the negotiating style between the U.S. and the EC as reported in the press. At Brussels, the U.S. and the EC farm delegates had no personal chemistry, making it harder to agree. My observa-
tions designed to elicit popular support.\textsuperscript{276} The U.S. delegates were lobbied by large business organizations in a behind-the-scenes manner designed to promote the successful conclusion of agreements in services, investment measures (TRIMS) and intellectual property (TRIPS).\textsuperscript{277} This difference in lobbying pressures on the two major actors of the Round precipitated the need for a more-than-modest agreement in agriculture.\textsuperscript{278}

For example, in a services negotiating session or a Council meeting, even though the U.S. and the EC may have been on the same side of an issue, they quibbled over each other's comments. The verbal exchanges between the U.S. and Australia, the U.S. and New Zealand, the U.S. and Canada, who had several unresolved, major disputes pending resolution in the Council were generally spoken in a friendly tone and often with humor. \textit{See, e.g.}, GATT, DS7/R* (Sept. 18, 1990) (outlining Canada-U.S. subsidies-countervailing duty dispute on Canadian pork imports into the U.S.); GATT, L/6994 (June 29, 1990) (describing U.S. recourse to art. 23 for Canada's refusal to lift import restrictions on yogurt and ice cream). However, the verbal exchanges between the U.S. and the EC, who also had several unresolved but acrimonious disputes pending resolution in the Council were generally spoken in strained tones, with little humor and much barb. The U.S. delegates in particular spoke in a haughty, condescending manner. \textit{See, e.g.}, Wall St. J.-Eur., Oct. 25, 1990, at 1, col. 5; Fin. Times, Nov. 15, 1990, at 4, col. 2 (discussing EC's ban on U.S. pork and beef imports for alleged violations of sanitary standards); \textit{see also} J. de Genève, Nov. 21, 1990, at 4, col. 4 (the U.S. threatens retaliatory measures against the EC on EC imports of mineral water, cheese and cognac because the EC has not paid the U.S. compensation for Spain and Portugal's tariffs on corn since their entry into the EC in 1986).

I found it curious that in every meeting I attended the seating arrangement always placed the EC and the U.S. on opposite sides of the room. It was also curious that the U.S. and EC delegations did not socialize much with each other after entering the negotiating room and before the meeting began, an activity I believe of much valence for indicating the "chemistry" among players. Normally, the U.S. delegates socialized most readily with those seated nearby, such as the delegates from Sweden, Switzerland, Uruguay, or with those delegates who might saunter over to the U.S. seats to discuss an issue, such as an Australian, a Canadian, or a Hungarian. Once in the meeting room, neither the U.S. nor the EC approached each other's area. It is important to note that even though there was little socializing among the American and Japanese delegations in the meeting rooms, during meetings delegates from both parties spoke to and of each other with respect and without condescension.

Because most negotiation is done informally and because I was unable to participate in informal negotiating, what I am implying may be an artifact of my limited ability to observe. If my observations are accurate, however, as evidenced from within the negotiating arena, they support the premise that the U.S. and the EC perceived that each was the other's rival.

\textsuperscript{276} \textit{See supra notes 210 \& 228. See also} Fin. Times, Sept. 18, 1990, at 36, col. 4 (for a general understanding of how determined French farmers are to hold on to their way of life); Fin. Times, Oct. 11, 1990, at 18, col. 1 (discussing a demonstration by French farmers at President Mitterand's inauguration of an Airbus manufacturing facility at Toulouse where they burned tires and bales of straw and spread liquid manure); Press Release, Reuters News Service, \textit{Angry French Farmers to Shut Borders to Beef Imports,} Nov. 29, 1990, Paris:1145 GMT (stating that French farmers, angry over falling beef prices, planned to block beef imports from eastern Germany and Eastern Europe).


\textsuperscript{278} I do not mean to imply that the EC was not lobbied by its service industry; it was. \textit{See, e.g.,
Throughout the UR, the U.S. Administration maintained the all or nothing attitude that an acceptable package could only be a composite of agreements in all areas, especially agriculture, and that an acceptable agricultural package had to comprise total or almost total reduction of farm export subsidies. By doing this, and by spearheading the new and complicated area of services as a necessary item on the Round agenda, the U.S. Administration set itself up as a target for lobbyists from multinational corporations and large financial institutions. These lobbyists linked their concessions to the requirement that less-developed countries maintain “developed-style” market access, that is, totally transparent and open markets. In turn, the developing exporters linked open market access for the developed world’s banking and services (especially telecommunications) industries with open market access for their agricultural products in the developed world. Thus, the developing exporters were more or less willing to open their service markets to U.S. firms only if agricultural trade were significantly liberalized, and if the developed exporters reduced export subsidies enough to create a chance for the less-developed exporters to trade farm products on a more equal footing. Consequently, U.S. service industries included agricultural liberalization as a necessary condition in their lobbying to the U.S. Administration.

It is no accident, therefore, that two weeks before Brussels the U.S. declared that it could not support unconditional MFN treatment in the service agreement. The U.S. was reacting to pressure it was getting from its domestic corporations. An example of this pressure was AT&T which perceived that the sectoral annex for telecommunications would result in a technology drain without a corresponding economic gain.
The U.S. continued this stance until Brussels, where it began to soften and finally to concede that unconditional MFN ought to be written into the services agreement.\textsuperscript{284} Given the link that the developing exporters made between open access in the agricultural and the service markets, the U.S. service industry lobbyists had tremendous potential to hasten the breakdown in agriculture.\textsuperscript{285}

Why did the U.S. cling to a big agreement or bust philosophy, which discouraged compromise that might have produced a modest agreement, when faced with the very real possibility of achieving no agreement — especially when several of the never-negotiated-before areas were difficult to conceptualize let alone talk about in traditional trade terms?\textsuperscript{286} The U.S. Administration, fearing that a protectionist Congress might gut or scuttle a modest UR farm liberalization result, bound itself to this philosophy by law. With Congress passing the fast-track provision\textsuperscript{287} requiring the President to present to it by March 1, 1991, a total package of results from the UR in exchange for a Congressional hands off policy of no tinkering,\textsuperscript{288} the Administration bound its own hands by adopting a too am-

\begin{itemize}
\item \textsuperscript{284} See Clairmonte, \textit{Debacle of the Uruguay Round: An Autopsy}, \textit{ECON. & POL. WEEKLY} at 2589 (November 24, 1990) (discussing that the process by which multinational corporations conduct business and create markets is all about hiding behind a veil of forced liberalization while constructing a wholly managed system of world trade that concentrates profit flow away from less developed countries and predicting that this hypocrisy will be responsible for the failure of the Round).
\item \textsuperscript{285} See supra note 284.
\item \textsuperscript{286} For example, in the services area, conceptual difficulties arise in trying to define what the entity to be traded is; what passing a boundary means when the exchange consists of electronic impulses sent across fiber-optic wires or radio waves; and how ought the trade of information measured and quantified to ensure that an equivalent quantity of a different service, such as the constructing of a hotel, has been reciprocated between any two trading partners. Also, what if quantifying comparable and equivalent amounts of reciprocated services is impossible, how are trading partners to know that they have been accorded the same most favored nation status in the services areas as other members have. For a discussion of these conceptual difficulties see UNCTAD, \textit{Services and the Development Process, TD/B/1008/Rev. 1 at 5-13 (1985); Bernier, Binette & Grenon, \textit{Labour Mobility and Trade in Services} 19 (1988); Peketekuty, \textit{International Trade in Services: An Overview and Blueprint for Negotiations} 31, 63, 87, 103, 135 (1988); Akehurst, \textit{The Economics of Services: An Introduction}, in \textit{The Economics of Services} 1, 2 (G. Akehurst & J. Gadrey ed. 1987); Economist, GATT and Services, July 14, 1990, at 72; Saxena & Bhat, \textit{Issues in Liberalization of Trade in Services: An Indian Position}, 13 WORLD COMPETITION L. & ECON. R. 75, 82 (1990).
\item \textsuperscript{287} Specifically, fast-track authority arises from the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C § 2903(b) Application of Congressional "Fast Track" Procedures to Implementing Bills.
\item \textsuperscript{288} Id. Fast track authority may be extended to implementing trade bills after May 31, 1991 and before June 1, 1993 if and only if the President requests such an extension of Congress in a written report which, among other things, describes all the trade agreements to be implemented and the U.S. Legislature has not voted to disapprove such an extension. Id. See supra note 287.
\end{itemize}
bitious philosophy, and the special interest lobbies in services tied the
knots.

Besides their own behavior, the EC's intransigence and lack of
movement and the U.S.'s locking-into a total package or bust position,
the behavior of some of the developing country exporters precipitated the
impasse at Brussels by reinforcing the perception that the relative hege-
monic status of the U.S. and the EC had changed. From my observa-
tions, the most astute, assertive and active players among the less-
developed nations included India, Korea, Egypt, Hungary, Poland,
Mexico and the Latin American Four: Argentina, Brazil, Chile and Ur-
uguay. Focusing on agriculture, this list whittles down to the Latin Amer-
ican Four.

Several pieces of evidence demonstrate that these countries perceive
themselves as having a heightened political status in the world commu-
nity. First is the "Young Turks" phenomenon underway in the govern-
ment bureaucracies of many Latin American countries including those
named above plus Mexico, Colombia and Venezuela. Having been
trained in top universities in the U.S., a cadre of Latin American young
men have returned home to occupy positions of authority in their gov-
ernments. Because this cadre remains in touch with a few North Ameri-
can academic gurus, an established network center as well as a
networking process is constantly being affirmed and enhanced. The
new elites have similar views about the preferred pathway of economic
development and its timing. Not only are Latin American state
machineries populated by those with a free-trade world view, since the
new elites belong to the same ideological club as many North American
counterparts, they feel qualified to play the trade game in the same park
as the developed world.

This perception of a heightened status of the Latin American Four
is supported by their representing and shaping the interests of the less-
developed world by their membership within the Cairns Group. The

289. Korea is generally regarded as newly-industrializing.
291. Id. at 44.
292. Id. at 45.
293. This is a North-South coalition of agricultural exporters including the developed, middle
powers of Australia, Canada, and New Zealand, the upper middle income countries of Argentina,
Brazil, Chile, Malaysia and Uruguay, the emerging market economy of Hungary, the lower middle
and low income countries of Colombia, Fiji, Indonesia, the Philippines and Thailand. Classifications
are those of the World Bank. Higgott & Cooper, Middle Power Leadership and Coalition Building:
Cairns Group has been a surprise in the international trading game.\textsuperscript{294} The diverse constitution and strong unity of the group has made it a formidable third force in agriculture. Moreover, it exercised this force intelligently, not by adopting policies that drove the EC and the U.S. farther apart, but by offering initiatives that built confidence in the major players' proposals.\textsuperscript{295}

This conciliatory approach notwithstanding, most surprising was the behavior of the Group during the last month of the UR. Spurred by Brazilian and Argentinean anger and frustration over the lack of movement by the EC, the Group began threatening to walk out of the agricultural meetings and of the Round.\textsuperscript{296} The Cairns Group became increasingly less a "middle way"\textsuperscript{297} and more actively anti-EC,\textsuperscript{298} and genuinely more activist in demanding farm trade liberalization. Although sympathetic to the U.S. position, at the end of the Round, the Cairns Group never joined the U.S. bandwagon nor became swallowed up by the U.S.-EC maelstrom. The Group retained its own agenda for opening up closed agricultural markets, for providing easier access for less-developed countries, and maintaining its own timetable for liberalization. Latin American countries may have already believed in their new status in the world economy when they first joined the Cairns Group, but

\textsuperscript{294}Australia, the Cairns Group and the Uruguay Round of Trade Negotiations, 44 INT'L ORG. 589, 604 (1990).

The Cairns Group organized itself in the summer of 1986 just prior to the commencement of the UR in response to the "1980s as a period in which they [had] been adversely affected by the growth of illiberality in agricultural trade in general and the policies of the U.S. and the EC in particular." \textit{Id.}

\textsuperscript{295}Kahler & Odell, Developing Country Coalition-Building and International Trade Negotiations, in RULES, POWER AND CREDIBILITY 115, 121 (J. Whalley ed. 1988). The surprise arises from the fact that a manufacturing exporters coalition led by the newly-industrialized "Tigers" of Hong Kong, Korea, Malaysia, Singapore, and Taiwan and including Indonesia, Thailand, Mexico, Brazil and Costa Rica did not spring into being during the Round. Such a coalition could have easily doubled as an agricultural exporters group with the addition of Uruguay and Argentina. \textit{Id.} However, "Australia's willingness to provide creative and decisive leadership to stop the subsidy madness" was the key to the Group's creation and preservation. \textit{See} Higgott & Cooper, \textit{supra} note 293, at 604-05, 612.

A surprise also arises from the fact that the economic diversity of the Cairns Group members has not hindered its progress in becoming a force to be reckoned with in the agricultural meetings. \textit{Id.} at 605. But, both the middle powers and the smaller exporters held the strong, communal perception that the U.S. and the EC were victimizing "us all alike." \textit{Id.}

\textsuperscript{296}J. de Genèве, Nov. 24-25, 1990, at 11, col. 1.

\textsuperscript{297}Higgott & Cooper, \textit{supra} note 293, at 628.

\textsuperscript{298}J. de Genèève, Dec. 6, 1990, at 5, col. 1.
their membership throughout the UR allowed them to act on that perception and to work on increasing their political clout both within the less-developed community and the world at large.

Since the Uruguay Round is still in limbo as of this writing, it can be argued that even if the Latin American Four experienced a relative increase in political clout due to the membership in the Cairns Group, with the ending of the Round that clout will diminish. However, the real strength of the Cairns Group does not lie in its being responsible for a successful farm agreement, but rather it lies in the Group’s ability to move the U.S. out of its intransigence over 100% reduction of export subsidies to formulate a very Cairns Group-style last proposal. The strength of the Cairns Group and of the Latin American Four was their ability to move the world a little further into a beyond hegemony trading park.

4.2 Ideological Factors

The ideology of liberalized trade underpinning the GATT has always operated as a two-faced god, allowing members at one and the same time to subscribe to the goals of open and transparent trade in order to gain access to markets previously closed, as well as to preserve comparative advantage by blocking export subsidies. Since the GATT began as an almost private club for the developed world (and remained so until the 1960s), major trading partners have created liberalized trade agreements by offering bilateral trading concessions to their major suppliers or with their major competitors, which is both a classic example of altruistic behavior for selfish reasons, and a classic example of the give-to-get reciprocity principle at work. These bilateral concessions would then be made available to third party GATT members through the action of the nondiscrimination (MFN) norm.

As the GATT membership grew to include a majority of less-developed nations, and as GATT interests expanded beyond the mere reduction of tariffs to include the whittling away of a variety of non-tariff barriers on strongly protected trade areas, the give-to-get philosophy persisted but changed in the 1970s to accommodate the needs of poorer

300. As used here the term ideology underpinning the GATT refers to a viewpoint about the worth of GATT consisting of a set of expectations and observations about what trade liberalization does for GATT members as well as a system of beliefs and values about how the market ought to operate in order to achieve the goal of trade liberalization.
GATT members who adopted the variant reciprocity norm of give-a-little-to-get-more. With a relaxation of the taut balancing between what less developed nations expected to give in terms of trading concessions and those concessions they expected to get, regional associations proliferated in which some GATT members created enclaves of preferred trading that are for all practical purposes outside of the GATT. 301

The give-to-get reciprocity norm did not work in the area of agriculture during the Round. From the EC perspective, the U.S. offered only ultimatums—no concessions. From the U.S. view, the EC offered nothing. Given the lack of compromising spirit on either side, those “offers” persisted through the Round until the end.

To understand why the reciprocity norm did not work in the area of agriculture during the Round, it is necessary to look at the reason why liberalizing farm trade was on the UR agenda. 302 Agriculture is:

... peculiarly difficult to solve because social values and priorities confront conflicts of economic interest. The essential dispute sets primary-product producers, mostly in the Third World, against industrial agricultural interests—the factory farmers who dominate North American farm production, and both of them against Europe’s small-scale family farmers. 303

For decades, especially from the early 1960s, the major players had buoyed up farmers with many kinds of financial support, especially export subsidies, in an attempt to make farming more productive, not necessarily more efficient. 304 This state policy of subsidizing farmers ultimately backfired. 305 Farmers produced more because they knew they would be paid higher-than-market prices for their produce. However, in the late 1970s and early 1980s when the world demand for farm produce dropped, 306 it meant that the prices of farm produce dropped and that,

301. See supra note 70.
302. See Fin. Times, Nov. 13, 1990, at 40, col. 1 (arguing that the ultimate objective of putting agriculture on the UR agenda was to abolish farm subsidies and agricultural protectionism, which was “an economist’s dream” because “experience shows that governments faced with domestic or international problems change their policies towards agriculture to suit their interpretation of the situation at the time”).
306. Id. at 17. “The growth in world agricultural output was interrupted by a massive land retirement program in the U.S. and a drought there in 1983 that reduced yields on the fewer acres. The U.S. output reduction was enough to cause the sharpest recorded decline in the IMF index of food production since 1970.” Id. But price increases were only modest and in 1985, the U.S. reinstated direct export subsidies to farmers. But even so, U.S. support prices on products were lowered.

The plunge in world prices has created a trade crisis in agriculture. In countries that do not
consequently, the subsidies and other kinds of farm support became akin to a "paycheck" to keep farmers on the land and employed. Subsidies became an entrenched insurance policy to prevent mass unemployment in a sector, which would most probably result in large scale movement into already burdened cities. Major subsidizers found themselves on an export subsidy treadmill that would have required a scary leap into liberalization land to get off.

Liberalization of farm support has several effects, most of which are painful, and this makes them scary as well. These effects differ depending on whether a country is exporting farm produce, and if so, if it is subsidizing it, or whether a country is importing. If the major exporting subsidizers, the U.S. and the EC, reduced their farm support, the short-term effect would be that prices of previously subsidized products would rise, often dramatically, within the domestic market. EC liberalization would increase prices in dairy, sugar, ruminant meat and wheat markets, while U.S. liberalization would increase cereal prices. The likelihood of finding a foreign market for those products diminishes if there are other exporters who are able to deliver those same products to the world market at a cheaper price; thus, trade volume would not greatly increase with liberalization.

The medium-range effects of liberalization are generally the most frightening, both to the farmer and to the state. Without price supports and export subsidies, inefficient farmers with a small profit margin who experience a fall in the market are unable to earn a living at farming, go bankrupt, join unemployment lines, often move to cities, and add to the municipal and federal social services rolls. The state loses its comparative advantage as an agricultural products exporter and experiences a deficit in trade dollars. With higher food prices comes a slow but genuine rise in the cost of living, as well as often unforeseen infrastructural

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307. Interview with GATT Staff (Nov. 14, 1990). A member of the GATT staff working in the Agricultural Division told me that the very small and inefficient French and German farmers were little more than "civil servants" and ought to be recognized outright as such.

308. INTERNATIONAL AGRICULTURAL TRADE RESEARCH CONSORTIUM, BRINGING AGRICULTURE IN THE GATT: ASSESSING THE BENEFITS OF TRADE LIBERALIZATION 6-7 (1988) [hereinafter ASSESSING BENEFITS].

309. Id.

310. Id. at 7.

changes. The long-term effects are generally more positive: food prices stabilize, the domestic consumer eventually gets cheaper food and the state, relieved of an enormous annual farm subsidy burden, can work to improve its trade imbalance by creating a more favorable climate for other areas of trade that are both unsubsidized and more productive than farming. Most benefits would accrue to taxpayers and consumers.\textsuperscript{312}

In developing farm exporting countries (that generally do not subsidize) the effects of liberalization would generally be positive, even though domestic prices would rise in response to developed countries' liberalization.\textsuperscript{313}

The benefits arise from the fact that most developing exporter countries generally have overvalued official exchange rates, and if these were lowered as the developed countries liberalized their farm trade, then the prices of food from developing exporters would be cheaper on the world market.\textsuperscript{314} These countries would experience an increase in the volume of trade. Again, consumers would be the ultimate beneficiaries of farm trade liberalization.\textsuperscript{315} However, "on balance, the net export earnings of these developing countries would increase."\textsuperscript{316}

For farm products importers, liberalization would generally be bad news for a considerable period as the market gradually rebounded: "[t]he higher prices from liberalization would lead to a small reduction in their real income [and] some countries are likely to face substantial short-run adjustments with liberalization."\textsuperscript{317} This is precisely why the developing importers' agricultural proposals during the UR requested special treatment for liberalizing farm trade.\textsuperscript{318}

This overview is admittedly simplistic, but it points to the dilemma that the major subsidizing states face: what price farm trade liberalization? And, what and how much support to give up in order to get how much liberalized trade? On the one hand, subsidizing states would no longer be paying huge sums of money to produce food;\textsuperscript{319} consumers

\begin{itemize}
  \item \textsuperscript{312} ASSESSING BENEFITS, supra note 308, at 10.
  \item \textsuperscript{313} Goldin & Knudsen, The Implications of Agricultural Trade Liberalization for Developing Countries, in AGRICULTURAL TRADE LIBERALIZATION: IMPLICATIONS FOR DEVELOPING COUNTRIES 475-80 (OECD, Goldin & Knudsen ed. 1990).
  \item \textsuperscript{314} Anderson & Tyers, How Developing Countries Could Gain from Agricultural Trade Liberalization in the Uruguay Round, in AGRICULTURAL TRADE LIBERALIZATION: IMPLICATIONS FOR DEVELOPING COUNTRIES 41, 44, 52-53 (OECD, Goldin & Knudsen ed. 1990).
  \item \textsuperscript{315} Id. at 53.
  \item \textsuperscript{316} ASSESSING BENEFITS, supra note 308, at 13.
  \item \textsuperscript{317} Id.
  \item \textsuperscript{318} See supra note 167 and accompanying text.
  \item \textsuperscript{319} In 1989, the EC spent 10,000 million dollars on export subsidies, 20 times as much as the
would eventually be paying their own bill for the food they consumed. This price would reflect the rise and fall of the market, that is, the fair price. Additionally, developing exporters would have a crack at the world market in farm produce. On the other hand, developed nations would face a painful lag period in which unwanted and unwelcome changes befell the structure of their economy and society.

Fear of facing this painful lag in the area of farm support encouraged the U.S. and the EC to play "keep up with the Joneses" for years, in order to beat out not only each other, but all other exporting countries to the importing market. Ironically, during the UR some of the developed countries who had heavily subsidized farm trade, notably Sweden and New Zealand, took the scary leap off the export subsidy treadmill and experienced a painful landing. These countries felt compelled to do so because their perception was that they eventually would get much more than they gave.

The preferred GATT technique for promoting and insuring the reciprocity of concession-making in previously non-negotiated trade areas and preventing the cycle of export subsidies has been to strengthen GATT safeguards against market disruption and dumping. Specifically, to put more bite into Articles 18, 19, 23 and 28 of the Agreement, as well as the Subsidies and Anti-Dumping codes. Strengthening these safeguards was very much a part of the agenda of NGAgr and very much a priority of the Cairns Group developing exporters.

Nonetheless, the reciprocity ideology backfired in the UR with respect to agriculture. The EC perceived no get, only give (in other words, no reciprocity) in any farm proposal of the exporting nations. The EC saw only that it was giving up its comparative advantage as a food prod-


320. See Fin. Times, Oct. 19, 1990, at 1, col. 2 (quoting the Argentinean farm minister, Felipe Sola: "One of the principal causes of the international debt crisis was the 35 billion dollars a year that developing countries had lost as a result of their diminished share of world farm exports since 1970.").


322. That is, they perceived the long-term risk of not liberalizing their farm sector as far greater because subsidization was dangerously draining their economy. Unfortunately, the experience of such medium-sized countries neither persuades nor demonstrates the benefits of farm liberalization to major player exporters with large revenues, large deficits and large trading volume.


324. See supra note 88.

325. Ministerial Declaration (Punta del Este Declaration), supra note 92.

ucts exporter—regardless of how false the basis of that advantage—as well as giving up societal and infrastructural stability by plunging small, inefficient farmers into insolvency. Perhaps the more ignominious sacrifice was that the EC would almost certainly lose a share of that advantage to the U.S., its rival for hegemony in a decades-long subsidies war.

The EC perceived no real gain to all of this loss because without a real consumer movement in Europe to lobby for lower food prices, there was no social counterforce to the strong and visible farmers lobby. Further, the EC saw no gain in losing its population of small farmers and the rural areas of Europe.

It is understandable that Canadians, Americans, Australians and Argentineans could devalue the goal of preserving rural areas in Europe because the cultural ethos of all of these countries arises from their wild, wide open space. By contrast, in EC countries, rural areas are by no means untamed, wide or open, but almost totally under human control, often rolling hills are fenced or naturally partitioned. That the European psyche may have needed to preserve what little wilderness still exists in that environment helps to explain why the EC resisted intransigently, and sometimes ferociously, to an ending of farm export subsidies.

Liberalization ideology is at heart a give-to-get ideology. It always has the potential to backfire on trade negotiations if one or more of the major players perceives itself as giving and not getting. To have avoided an impasse, the U.S. and the Cairns Group could have offered to help defray all or some of the EC farm export subsidies over a number of years and to demand a concomitant phase-out of the subsidies over an acceptable period. Using the give-to-get ideology in this way would have been more diplomatic rather than legalistic, inasmuch as such a proposal resembles a contract to liberalize farm trade by paying the EC to consent to it. The advantages of this diplomatic-style proposal are its pragmatism and its high likelihood of success. This deal of subsidizing the subsidies would have offered a considerable “gimme” to the EC. A disadvantage of this proposal, however, is its implausibility, given the U.S.-EC competition and the Cairns Group independence, the fact that New Zealand had only recently removed its own export subsidies and that the Latin American Four believed that no agreement was better than a bad agreement.

327. Food consumers in Europe are generally resigned to relatively higher food prices for the greater goal of preserving the rural countryside and the small farmer; or at least that's the image that the EC Commission wants food consumers in Europe to believe about themselves in order to retain the CAP. Cf. supra note 102.
Another approach around impasse might have been to consider both the negotiating posture of the major players as well as the altruistic/selfish dialectic inherent in any trade liberalization agreement. Elements of a proposal directly acknowledging the EC's fear to leap from the subsidy treadmill might have included a longer than ten year period for zero reduction of export subsidies; a series of big, irreversible changes in the reduction of all farm support followed by periods of long rest during which the effects of each big reduction would be monitored;\textsuperscript{328} a provision that would incorporate some limited flexibility into modifying the tempo of liberalization, and very strong safeguard provisions that would prevent the reintroduction of farm support. However, this proposal would have the effect of creating a managed trade system for agriculture similar to the MFA for textiles that might persist for some time longer than the ten year phase-out desired by the U.S. and that, out of necessity, may have to incorporate some elements of the CAP into the GATT. Even though a managed trade system seems the most probable and workable approach, it is more than likely that the U.S., Canada and Argentina would not be receptive to the idea.\textsuperscript{329}

4.3 Organizational Factors

The way most members structure their delegations, as well as how the GATT as an organization works to move negotiations along, have also affected the outcome of the Brussels conference.\textsuperscript{330} The GATT staff

\textsuperscript{328} Specifically, it could be agreed upon to continue the negotiation process over a long period by putting into the GATT an on-going mechanism for monitoring the level of support and protection, for notification of violations and for dispute resolution. Tangermann & Miner, \textit{supra} note 323, at 15.

\textsuperscript{329} Hathaway, \textit{supra} note 104, at 143. For a comprehensive set of policy recommendations on what the negotiations ought to achieve in reducing import barriers and subsidies, see \textit{id.} at 147-53.

\textsuperscript{330} For the most part, I did not observe directly the effects of organization of the negotiations. This analysis relies mainly on inferences drawn from interviewing delegates about their experiences with GATT staff influencing. However, observing how the GATT staff played a critical but almost invisible role in some GATT Council meetings, several NG Services meetings and a few NG Agri meetings led me to ask some delegates about their observations and beliefs on the interaction between the GATT staff and some of the major player delegations. Most delegates implied that the GATT staff promoted the interests of some of the major players while downplaying those of others.

My sampling of delegates was small and not systematic. Latin America, the Cairns Group and Europe were over represented. I spoke with lower-level delegates who either assisted or did most of the negotiating on the floor and who generally did not have the decision-making power to change their nation's position on the floor without consultation with higher-ups.

Also I interviewed some members of the GATT staff, asking them to discuss the staff's role in influencing the negotiations. Again my sampling was small and not systematic. Staff confirmed that influencing happened; they implied that it occurred only on an informal level and that its extent was hard to measure. The staff seemed to take influencing as a fact of diplomatic life.
exerts influence on those delegations who, by disagreeing from the
majoritarian position, prevent a consensus from forming. Staff influence
can take various forms and is most often adapted to the specific flow of
authority and the hierarchical structure of the dissenting delegation.331

Before I describe how the process of influencing works, I will briefly
discuss the role of the GATT staff in the negotiations. In every formal or
informal meeting of a negotiating group or a working party of that
group, GATT staff were present.332 Those staff seated at the Chairman's
table acted as the Chairman's secretaries, took notes of the proceedings
and, on occasion were largely responsible for drafting the Chairman's
texts that were disseminated to delegates to identify problem areas or to
summarize diverse positions. Often, these texts were used as the basis for
negotiating difficult issues in the final days of the Round.

In addition to the presence of the Chairman's secretaries, other
GATT staff, who I term floaters, also took notes. Floaters generally sat
in the chairs for observers situated along the walls and the back of the
conference room. Although their function is still unclear to me, floaters
were not usually from the corresponding GATT Division. It appeared to
me that floaters included GATT staff members from the Public Relations
Division responsible for producing the periodic publications, News of the
Uruguay Round, and the GATT Focus, which informed the diplomats
and the public about the progress of the talks. Floaters also included
staff from the upper echelon of the GATT Administration who probably
reported results of meetings in problematic negotiating areas, like agri-
culture and services, directly to the Administration.

Ostensibly, the GATT staff acted to influence the negotiations only
to move them along and to prevent impasse, which is always a possibility
because of the strong and unbending norm that negotiated agreements be

331. The delegates who discussed influencing with me, on the whole, agreed that most influence
was usually exerted on newly-industrializing and/or middle income developing countries whose del-
egates were considered competent and articulate and to whom people would listen.

332. I did not sit in on informal meetings, but at the formal meetings I attended, the Chairman
of the negotiating group always sat at a long table on a raised dais at one end of the room. Seated
with him at the table were his "secretaries," usually two members of the GATT staff. (For example,
for an NGServices meeting, the secretaries would be from the Services Division of the GATT.) It is
important to remember that these staff members are intelligent, well-educated and considered ex-
erts in their field. For example, it is not unusual for Chairman's secretaries to have advanced
degrees, to have done independent research and/or to have published in their area. Further, my
admittedly limited observations have led me to conclude that most GATT staff acting as Chairman's
secretaries were from the Anglo-Saxon world, with the preponderance from Great Britain, Ireland,
Australia, and New Zealand.
achieved solely by consensus. Although approval by majority vote is technically permitted, in practice all dissent must be dissolved by the taking of political decisions. The burden lies on those delegations who dissent from the majoritarian position (or who want specific language inserted or a particular goal recognized in an agreement) to convince the major players to take a political decision to strike a compromise. Without compromise, there is no consensus, and without consensus, there is impasse.

The norm of consensus arises from the assumption that total agreement forges the best compromise among all the differing views. Dissent is preserved only in the record of the negotiations, which are not reviewable by the general public, and not expressed in the body of agreements resulting from the negotiations. Consensus-making and dissent-dissolving assumes equivalent ability among all delegations to create and shape opinion. This was not the reality I witnessed at the meetings I attended. Ultimately, decision-making by consensus, with the ever present threat of impasse, encourages the GATT staff to lobby delegates to change their position. The interests of the major players provide the direction for that change.

Influencing can work in several ways. The GATT staff influence the trade talks indirectly by their text-drafting function. The Chairmans' secretaries typically draft the informal memos of the Chairman, which often review what has been discussed in the meetings, identify the sticky issues and act as springboards for moving the negotiations along to consensus. Also, the Chairmans' secretaries often write the working drafts of formal agreements. Delegates I interviewed told me that they had noticed on several occasions and in several different negotiation groups, none of which was agriculture, that memos or working drafts presented a biased view of all the positions taken, with the position of the major players being highlighted.

The GATT staff influence negotiations directly in the following way. By vocally dissenting on the negotiating floor, a negotiator may have argued forcefully, persuasively or persistently against the proposals or sug-

333. See supra note 42 and accompanying text.
334. Voitovich, supra note 41, at 22.
335. A consensus of the delegates and staff I interviewed identifies major players as the U.S., the EC, Canada, Japan and sometimes includes Switzerland, Sweden and the Nordics, Australia and New Zealand. Often, the category of major player depends on the area under negotiation. There is much overlap between the concept of Major Players and the OECD.
gestions of the major player(s). The GATT staff who act as Chairman’s secretaries will begin to lobby the delegate to change position under the following conditions: when the negotiator is the center of a small and vocal dissent that is clearly opposed to a large and adamant majority, which creates a situation of no-movement in the negotiations; when, but for an adamant one or two dissenters, a consensus in the negotiations would be reached; or when the area under negotiation is complex, containing many interlocking side issues, which all must be ironed out before agreement.

If personal lobbying is not effective or if the staff has chosen not to lobby the dissenting delegate(s), the staff can exploit the hierarchical authority structure of trade delegations in several ways. First, the staff may have the dissenting delegate excluded from the flow of information for that negotiating group, which tells delegates about meeting schedules and provides them with memos and working drafts. The paper flow may be sent to another, often rival, delegate in the same delegation who is more moderate or malleable. The new delegate, so encouraged, may begin to attend meetings of the negotiating group. Further, the staff may contact a higher-up in the delegation to lobby against the dissenting delegates’s behavior. As higher-ups are not as intimately involved in, or knowledgeable about, the issues of the day-to-day negotiations as the dissenting delegate, and because the GATT staff are generally perceived as neutral, often the higher-up may yield to pressure and request the dissenting delegate to have a change of heart. Sometimes, when the stakes are high, the staff contacts the highest levels of authority in the delegation or may seek contact with the Trade Minister at the country’s capital.

All delegates who spoke to me about the staff influencing emphasized that the staff played favorites and that their influencing was also for the interests of the major players. Most of these delegates were not from countries that the staff favored so their experience with staff influencing was they had felt pressured to change their position in order not to be considered obstructionist.

Since this description of influencing did not come from the negotiations on agriculture, but from those on services, dispute resolution and anti-dumping, where major and minor players crossed each other, and because only major players (the Cairns Group is viewed as a third major power) clashed in the agricultural negotiations, I have no information about how the GATT staff influencing directly affected the impasse in agriculture. Nevertheless it is valuable to discuss in general terms how staff influencing might have affected the overall process of negotiation.
during the UR. First, there is a widespread perception that the GATT staff is neutral, which comports with general expectations about the behavior of other international organizations, especially of the UN Secretariat. If this perception of neutrality is not accurate, as some delegates have indicated, then delegates should be advised of staff biases in order to better comprehend and withstand all the political pressures upon them that mold their position.

Second, probably what the GATT staff has been doing all along has been stacking the deck for the major players because proposals from them may have been the most liberalizing. If it helps to move negotiations through difficult periods by influencing delegates and if that influence is generally effective in producing long-term liberalization, then by openly acknowledging its influencing role, the GATT staff frees itself to lobby for whichever interest seems most likely to liberalize trade. However, as world politics and trade flows change, the major players have become increasingly more protectionistic. In order to meet its goal of advancing trade liberalization, the GATT staff needs to go with the flow of political power shifts and may have to support proposals that run counter to the interests of major players.

Third, the GATT staff is comprised of experts, generally economists, who do or facilitate research on world trade. This research is valuable and considerable, but often self-serving in that it promotes the GATT as an institution of paramount importance for making trade open and transparent. The view expressed in such research is that without the GATT, there can and will be no major trade liberalization efforts. Because of its expertise, the GATT staff can expect that its influence will carry much weight. Further, much of GATT research, imbued with the view that the U.S. and the EC act as the economic hegemonies, encourages and reinforces diplomatic behavior that grants special status to the offers and aims of these two players in trade negotiations.

Although its research and goals communicate a perspective that

337. See supra note 67.  
338. Of course, the assumption here is that trade liberalization is really what the GATT staff is after. If one believes that the goal of trade liberalization is a myth and that the real function of trade agreements is to preserve the economic and political status quo—which many believe underlies the realpolitik of multinational corporations who effectively put trading concessions into practice (see Clairmonte, supra note 284), then GATT staff influencing is just plain lobbying for majoritarian interests.  
339. Especially when there are no trade rounds in progress, the GATT resembles a research institute where staff compile statistics, construct hypotheses and deduce theorems about a wide range of trade topics.
may be a function of a past political reality, the GATT staff should openly express this perspective. Many delegates of the less developed countries were overwhelmed by the complexity of the issues in several of the new negotiating areas, particularly services, intellectual property (TRIPS) and investment measures (TRIMS), whereas many of the major players brought in experts from private industry who helped them formulate proposals and provided them with information. Where such gaps of understanding and information exist among negotiators of different delegations, the GATT staff should not fill in those gaps in such a way that excludes or precludes dissent and disagreement. It should be sharing its expertise and advice as well as revealing its biases and world view in order to make transparent its influence and its direction over the negotiations.

This suggestion may seem sacrilegious given the strong sentiment that secretariats of international organizations should be conduits, not casters, of opinion, but trade negotiations are too important and affect too many billions of lives to be played out in an underhanded manner. Besides, an open playing field is what GATT purports to be all about, and openly revealing, rather than reviling, the influencing of the GATT staff gives all delegates better command over the real rules of the game.

5.0 SIGNIFICANCE

Two interrelated key points surface in examining the events of the Uruguay Round and the impasse at Brussels. First, instead of dying, the GATT may emerge as a stronger treaty if it recognizes and incorporates some fundamental truths about the nature of all trade treaties. Second, an impasse in a heavily-subsidized area that precipitated a breakdown of the Round came as no surprise.

A fundamental truth about the nature of all trade treaties is that practical, workable and lasting trade treaties necessarily balance the altruistic motive of free trade and nondiscrimination with the selfish reality of national interest. No trade treaty or organization, not even the ITO, functions in a wholly altruistic way to give all members the same trading benefits through the action of nondiscrimination (MFN) alone. Although GATT members say they want the GATT to function in just

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340. Whether the factory where a Malaysian sleeve-sewer does piece work gets a contract from an American clothing manufacturer, thereby enabling her to work for the next two weeks, or what a Vancouver school child will pay at lunchtime for her Swiss yogurt, or what a Chilean farmer gets for his winter wheat, all represent in miniature how pervasive the effect of trade negotiations is on all of us.
that way, members behave differently, in ways that will allow them to capture or to protect an advantage in the marketplace. Members protect their trading interests by erecting barriers against the access of their domestic markets or by getting other members to remove their own barriers. Until there is world free trade with no barriers of any kind, every trade treaty will have to balance the altruistic motive to liberalize trade with the selfish practice to protect comparative advantage, and to balance the drive towards nondiscrimination among all trading partners with the need for reciprocity between trading competitors.

The process of liberalizing trade is not only about creating millions and billions of dollars in increased revenue. It is also about shifting the advantage in the trade of a commodity when the protection comes off, and is therefore a pleasure-pain game. Ignoring the fact that the GATT must balance these counteracting interests has resulted in an inefficient form of treaty, with extra Tokyo Round Codes that do not function in the same way for all members, and an inequitable process of organization with the hidden influences of the GATT staff and agreement by consensus that lop off dissent.

Although it is true that the impasse in the Uruguay Round highlights all the inefficiency and inequity in the GATT, the impasse does not necessarily presage its demise, but may point the way to needed change. Given the U.S. push for big, quick liberalization and the EC pull for tiny, slow liberalization and their general unwillingness to compromise, it was foreseeable that the agricultural negotiations would not achieve an agreement. Ultimately, the general sticking point was that GATT members wanted to achieve farm trade liberalization subject to GATT norms and disciplines. For example, GATT members at Punta del Este could have decided to create an agricultural agreement separate from the total package, as they had done for services, or they could have decided to go outside of the GATT entirely to create an agricultural agreement reminiscent of the Multi-Fibre Agreement for textiles trade. Either option would have done away with the possibility that failure to agree in agriculture would take the Round down. By choosing to negotiate agriculture in the Round using GATT rules, members took on the risk of impasse.

Agricultural trade is not easily negotiated because it is full of those nontariff barriers that are the most trade distorting and market protectionistic. Reducing and removing those kinds of barriers creates economic disequilibrium and other deep change. Thus, liberalizing farm trade under the GATT requires the ultimate reality-testing about what
the GATT is, does and strives for. It requires the recognition and acceptance that the GATT is all about making trade agreements in areas that are heavily protected by nontariff barriers that are primarily reciprocal and secondarily nondiscriminatory. Specifically, liberalizing farm trade in the Uruguay Round will require making an acceptable agreement that confronts the sticking points of the necessary reduction of export subsidies and the dismantling of the variable levy in ways that are perceived reciprocal by the U.S. and the EC. It will require considering all the reasons for farm liberalization, not just the economic benefits to some exporting nations, but also the gain and loss in political prestige in the major players, the increase in unemployment of EC farmers and the perceived need by the U.S. to liberalize quickly.

The lesson of the Uruguay Round impasse in agriculture is that because liberalizing farm trade under the GATT will have painful and uncertain effects, it must be done slowly, mindfully and flexibly. The GATT as a treaty and as an organization must change to recognize itself as a creator of trade agreements that must always juggle the goals of reciprocity and nondiscrimination.

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