The making of the WTO: A unique success?



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The GATT had certainly been the most successful provisionally implemented international agreement ever, growing international trade tremendously and growing membership in parallel! But the OPEC-provoked oil crises of the 1970s and the ensuing stagflation in large parts of the world economy led to the recognition of the need for more fundamental changes to world trade and the idea of another big negotiating round following the Tokyo Round.

Not a simple undertaking, and one with lots of failed ministerial events. It started with a failed ministerial launch in 1982, followed two years later with a failed contracting parties event in 1984. The stubbornness of key representations to the GATT eventually led to the successful launch in 1986, four years after initial attempts.

The list of relevant ambassadors to the GATT for the successful launch is long, too long to try to mention them here. But it is this group of individuals and their respective staffs that played a key role throughout the negotiating process.

Tribute also goes to the diplomatic skills of then Director-General of the GATT, Arthur Dunkel, and his collaborators in the Secretariat.

An informal negotiating process referred to as the EFTA process (because it took place mainly during night sessions in the EFTA building) produced the first draft of a negotiating agenda for the Uruguay Round. Interestingly, the United States was not part of the process, but was kept closely informed about progress.

Arthur Dunkel was handed an informal draft that emerged eventually and managed in a formal GATT Council process to secure the authorization to submit it to the ministerial launch event in Punta del Este, with relatively few modifications. Despite attempts to modify the draft text further in ministerial sessions, it was eventually approved by ministers as the starting point of the Uruguay Round.

Broadly speaking, the basic objective was to satisfy textile/garment and agricultural exporters respectively by creating more open trading opportunities and less trade-disrupting state aid, and creating new multilateral rules for trade in services and intellectual property rights. A widely shared point was the idea of replacing unilateral dispute settlement legislation

of the US section 301 by exclusive multilateral dispute settlement procedures.

All of this was meant to happen within four years, with a ministerial mid-term event planned in Montreal in 1988. An additional complicating factor were the parallel accession negotiations of China to the GATT, which gave China a limited participating right in the negotiation process.

Unsurprisingly and despite endless negotiating sessions at the technical level in Geneva, progress was slow and tedious.

The basic objective was to satisfy textile/garment and agricultural exporters by creating more open trading opportunities and less trade-disrupting state aid, and creating new multilateral rules for trade in services and intellectual property rights.

At half-time in Montreal, no real progress was achieved, with one notable exception: tropical products. Under the leadership of the Malaysian chair of the respective negotiating group, an EU initiative known as the dark room process had produced a list of tariff concessions favouring exports of tropical products mainly of interest to developing countries.

The process had been informal and open only to participants who were prepared to participate with their own concessions in the process. Palm oil (Malaysian interest), cut flowers (Colombian interest), tea (Indian interest), coffee (African interest) are examples of products covered by this deal.

The idea was to agree formally the deal in Montreal before the opening of the ministerial session. The developing countries supported this idea for fear of losing an interesting outcome in a broader ministerial debate. The EU interest was to avoid a focus on tropical products not covered in the deal (bananas, rice, manioc, etc) because it was too close to wider agricultural interests. The US were against the deal for precisely the same idea: to put pressure on the EU by making their potential concessions subject to EU concessions in the wider agricultural sector.

In the end, the deal was secured after a tumultuous night session, where the Colombian ambassador threatened to quit the negotiating table because the EU tried to limit

the tariff concession for cut flowers ("I knew I could not trust the EU."). The EU rapidly withdrew its attempt to limit the cut flowers concession to save the deal. The US offer, however, was not retained because it remained conditional and not final, like all the other offers.

The ministerial event announced a first outcome even if it was without the participation of the United States. The rest of the ministerial process was unsuccessful despite nightlong ministerial sessions in crammed negotiating rooms, which tested the health of participants to the limits without, however, producing noteworthy outcomes.

Fast forward to the final ministerial meeting in Brussels in December 1990. The two years of ongoing negotiations had produced a consolidated text, comprehensively representing the negotiation agenda but littered with thousands of brackets reflecting disagreements among the negotiators. The Brussels ministerial meeting was planned for a full week, with parallel ministerial and government official meetings.

The different negotiating groups all started revising their respective texts, seeking to eliminate brackets and formulating real agreements. Ministerial sessions provided guidelines for individual negotiating groups, giving political direction for needed compromises.

Then on Day Four, the United States withdrew from the negotiating group on agriculture, creating a deadlock for the ministerial event. The conference was suspended and ministers did not even accept to preserve the status quo reached in the different negotiating groups as a basis for further work. This reflected the traditional "nothing is agreed until everything is agreed" rule.

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In hindsight, one would have to concede that ministers in Brussels were simply confronted with too many brackets, reflecting substantial differences among the negotiating countries, to stand a realistic chance of producing a comprehensive outcome. Lesson to be learned: present ministers with a limited number of issues and oblige officials to reduce differences to manageable options.

Upon his return to Geneva and faced with a serious crisis as a result of the failed ministerial event, Arthur Dunkel discreetly persuaded the ambassadors to continue negotiations, with a clear deadline by which he would seek to bridge open questions not solved by the negotiating groups.

This was a smart, novel approach, which many members did not really take seriously, but which eventually led to a first draft Final Act, known as the "Dunkel paper". It would, however, still take two more years before the Round was effectively and successfully concluded.

Why so long? The Dunkel paper provided a basis but members needed to fine-tune some of the language suggested by the Director-General, advised by the chairs of the various negotiating groups.

In particular, the agricultural issues needed to be settled between the United States and the European Union, often called the "majors" by other contracting parties. This was eventually achieved in an understanding referred to as the Blair House Deal of 1992 (reference to a Washington government building) and which helped other interested agricultural exporting countries, known as the Cairns Group, to rally around the approach.

The specific market access negotiations also required additional time. They are traditionally negotiated bilaterally before eventually being consolidated at multilateral level in individual members' market access schedules. There are schedules for trade in goods and trade in services. The latter had to be designed for the first time in the Uruguay Round as a result of adding the General Agreement on Trade in Services to the GATT. This was challenging because some sectors like telecommunications or postal services were still state monopolies in many countries, others like financial services were reserved for nationally established operators for prudential reasons.

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The solution found was to establish a general "access to and use of" provision, providing non-discriminatory access to existing service providers. Market access for foreign service

providers in telecommunications, financial services and maritime services were only to start after the completion of the Uruguay Round.

An interesting additional negotiating issue came up after the Brussels meeting: the creation of a proper institutional agreement to replace the provisional implementation of the GATT. For five decades, the GATT had been operated on a provisional basis, due to a refusal by the US Congress to ratify an International Trade Organization Treaty negotiated in Havana.

My Ambassador, Tran Van Thinh, asked me in 1991 whether I felt capable of drafting such an institutional agreement for a multilateral trade organization. He felt it was time to give trade a comparable institutional role as enjoyed by the IMF and the World Bank to complete the international economic governance. I had the pleasure of preparing a first draft with a Canadian colleague, Doug George, and the Mexican ambassador, Alejandro de la Pena.

We introduced the draft to Julio Lacarte, Uruguayan ambassador and chair of a negotiating group on institutional issues. Julio had been a participant in the Havana Charter negotiations back in 1947 and supported our idea.

It proved difficult to codify a consensus into a legal form. Still today, majority voting foreseen in different articles of the GATT and the GATS can only be decided on a consensus basis, opening the door to damaging decision-blocking situations.

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I vividly recall the final month of the Uruguay Round. It started with two full day and night negotiations between the EU and the US teams in Brussels. Then USTR Mickey Kantor had insisted on this bilateral contact before continuing to Geneva. Not only did the two delegations spend intensive negotiation time together but we then proceeded in the

same commercial flight to Geneva to continue negotiations with all our partners.

Services negotiations were still hotly argued, with the US seeking to improve access for audiovisual services while the EU was trying to defend a cultural exception. The EU had a television directive that required at least 51 per cent of EU content for any TV operator in the EU. The US wanted the directive to be amended and to obtain full access for audiovisual products on new media, such as video on demand and other precursors of the Internet. The US had even mobilized President Clinton to personally call on Chancellor Helmut Kohl and President François Mitterrand to change the EU position.

The stalemate went into the last negotiation night and a bilateral talk between EU Trade Commissioner Leon Brittan and USTR Mickey Kantor. At 3 o'clock in the morning, Leon Brittan informed me of the outcome. Not only did Mickey Kantor not accept our audiovisual offer, that would have committed access for everything except feature films (which we argued were part of cultural identity), he would also withdraw the US audiovisual offer and threatened bilateral trade measures against the EU's audiovisual policy. He also refused any US offer on maritime transport, refusing to modify the Jones Act dating back to 1920. Leon Brittan instructed me to adjust our services offer accordingly.

In the night, we withdrew not only the audiovisual offer from our schedule but we added two defensive MFN exceptions to allow us to take measures against any discriminatory threats against EU audiovisual products.

The outcome was then presented to and accepted by EU member states in an early morning coordination session and forwarded to the GATT Secretariat to meet a 10 o'clock deadline. It was only then that I learned from the Secretariat that the US had not withdrawn their audiovisual offer. It was late to reconsider the EU position by then, much to the delight of those member states who had most strongly argued for a cultural exception. There are risks in negotiating against the clock until the very last minute!

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We learned eventually that the American Motion Picture Association had intervened and asked Mickey Kantor to change position, fearing problems with its most important export market, the EU!

That very evening, the Uruguay Round Final Act with its schedules was gavelled with rapturous applause by all participants in the Trade Negotiations Committee! This was an exceptional generation of trade officials, stubbornly hanging in and eventually securing a tremendous outcome: the creation of a broader, rules-based institution for international trade!

And just perhaps, there may be some suggestions there for the present trade negotiators on how best to face today's challenges!