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**PETER SUTHERLAND DISMISSES FEARS THAT THE
WORLD TRADE ORGANIZATION WILL INFRINGE
NATIONAL SOVEREIGNTY AS UNFOUNDED**

Fears that the World Trade Organization may infringe national sovereignty were dismissed as unfounded by Mr Peter Sutherland, Director-General of GATT, today (Monday 30 May). Speaking at the University of St Gallen Symposium in Switzerland, he described the signature of the Uruguay Round agreements in Marrakesh in mid-April as the beginning of a new phase of the unending effort to extend the openness of trade and the rule of law.

Mr Sutherland stressed, however, that the first priority was the ratification of the agreements by the national legislative procedures to bring the results of the Round into force by the agreed target date of 1 January 1995. He emphasized that the results would produce not only the most important single stimulus to global trade and the world economy, but also the most significant strengthening of the effectiveness and credibility of international trade rules.

Whilst acknowledging GATT's achievements over the last 47 years, Mr Sutherland drew attention to the problems arising from the incomplete institutional framework of the GATT. With the Uruguay Round agreements, the multilateral trading system had been fundamentally expanded beyond the traditional area of goods for the first time to encompass trade in services and intellectual property protection.

Describing the establishment of the World Trade Organization as "the crowning achievement of the Uruguay Round", Mr Sutherland explained some of the legal and institutional improvements, and how the reinforced dispute settlement procedures under the WTO would give each member greater opportunities to secure the respect of its rights.

In concluding, Mr Sutherland strongly urged all governments and interest groups to do all they could to ensure that the WTO became a reality on 1 January 1995.

The full text of Mr Sutherland's speech is attached.

**THE WORLD TRADE ORGANIZATION
AND THE FUTURE OF THE MULTILATERAL TRADING SYSTEM**

Address by Peter D. Sutherland to the St. Gallen Symposium

St. Gallen, 30 May 1994

The St. Gallen Symposium has always taken a close and welcome interest in the GATT and its rôle in helping shape the international economic environment. Your interest is particularly timely this year, when the multilateral trading system stands poised for the most significant improvements it has seen since the GATT was established in 1947.

The signature of the Uruguay Round agreements in Marrakesh in mid-April was of course anything but a conclusion. It may have marked the formal end of the negotiations under the Round - the most ambitious trade negotiations ever - but in fact it opened a new phase of the unending effort to make trade more open, a phase which will be every bit as challenging - and as crucial - as the negotiations of the last seven years.

First the agreements must be ratified. Then they must be implemented in the fullest and most consistent way. And then both governments and the private sector in all the countries involved have to use to the fullest the new opportunities these agreements give to extend the openness of trade and the rule of law.

Ratification is clearly the first priority. Most of the 122 countries who signed in Marrakesh did so subject to ratification in line with their various national legislative procedures.

The timing of this process is critical. 1 January 1995 has been established as the target date for the Uruguay Round results to enter into force. Any slippage would be very costly - costly not only in economic terms but also in terms of the stability and credibility of the multilateral system.

So much has been achieved, but so much is still at stake. The economic impact of the Round is impossible to calculate with any precision, not least because trade in services is notoriously hard to measure adequately. Any estimates should thus be treated as very conservative. Even so, a provisional analysis by the GATT secretariat puts the global value of the market access package at \$755 billion in additional trade annually by 2002.

When the GATT was set up nearly fifty years ago developed-country tariffs on industrial goods averaged around 40 per cent. Now - with the 38% overall cut agreed in the Uruguay Round - they will average around 4 per cent. And the proportion of industrial products entering duty-free to developed countries has more than doubled, from 20 to 43 per cent. Tariff elimination has focused particularly on products such as metals, machinery and chemicals where Swiss firms have significant trading interests. And the tariff cuts are complemented by a major increase in the security of market access through a higher level of tariff bindings.

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For the first time, trade in services has been brought under internationally agreed rules. The General Agreement on Trade in Services will extend to this - the most dynamic sector of the world economy - the principles, such as non-discrimination, which have enabled trade in goods to expand thirteen-fold under the GATT. There are already significant specific commitments in areas such as tourism, travel and business and financial services - and this is only the beginning of a continuing liberalization process whose importance for growth and employment cannot be overstated.

Taken together, the gains in these different sectors mean the most important single stimulus to global trade - and the world economy - for decades. A stimulus which should have the added advantage of not inducing renewed inflation. Neither the industrial economies, struggling to pull out of recession and deal with persistent unemployment, nor the developing countries, nor the economies in transition can afford any delay in realizing these benefits. The cheque is in your pockets - but it still has to be cashed.

Exactly the same point applies when you look beyond the purely economic benefits to the improvements that the Round brings to the rules of international trade and the system through which they operate. It amounts to the most significant strengthening of their effectiveness and credibility in fifty years. And this is not some abstract or theoretical achievement - it is nothing less than a reinforcement of the rule of law in international economic relations, a reinforcement for which the need is both urgent and universal.

The more a firm - or a country - extends its economic horizon beyond its national borders the more it needs the security of a rule-based multilateral system. Large and powerful traders need it as much as smaller ones - when your scope of operations is global, there is no substitute for global rules and a global system for resolving disputes.

This is why the establishment of the World Trade Organization can be seen as the crowning achievement of the Uruguay Round. Let me develop this point by outlining what the WTO is - and what it is not.

II

First of all it is a natural evolution of the GATT, not a radical or revolutionary new departure. In many ways it simply completes the original design of which the GATT was conceived as a part. The architects of the post-war international economic order had foreseen the creation of three institutions: the International Monetary Fund, the World Bank and the International Trade Organization (ITO). The Fund and the Bank were established, but the International Trade Organization never came into being. All that remained of the ITO was its chapter on commercial policy, which entered into effect for 23 countries in 1947 as the General Agreement on Tariffs and Trade, the GATT.

The GATT was originally conceived to be a provisional agreement to be reconsidered upon the establishment of the International Trade Organization. As a result, the GATT does not contain a complete institutional design. Although there are many GATT provisions which require joint action by its contracting parties, such as in the settlement of disputes or for accessions, there is no specific institutional framework to make such decisions, apart from the provision that the contracting parties should meet from time to time. There are no specific directions on how these meetings should be organized and who should service them. The GATT does not explicitly create a legal entity through

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which the contracting parties can act as a collectivity, for instance by concluding treaties with states, agreements with a host government or contracts with private persons.

Over time the problems arising from the incomplete institutional framework of the GATT have been largely overcome through pragmatic arrangements. The GATT contracting parties, using their competence to give effect to the GATT provisions involving joint action, decided to establish more and more sub-organs. These include a permanent Council of Representatives, which meets every month, and a Committee on Budget, Finance and Administration. And, by the force of circumstances, the GATT CONTRACTING PARTIES acted as a legal entity: for instance they approved a headquarters agreement with the Swiss authorities, and rented the building on Lake Geneva that houses the GATT Secretariat.

Learned jurists may differ on the question of whether the GATT is an international organization in a formal legal sense. The administrators of that institution, I can assure you, are as fascinated by that issue as birds are by ornithology. The fact that counts for them is that the GATT has been acting consistently as an entity legally separate from its contracting parties and has been treated as having legal capacity. Although never designed to be an international organization, the GATT has without any doubt evolved into one.

III

This, of course, begs the following question: if the GATT already operates as an international organization why did the Uruguay Round negotiators consider it necessary to create a new organization to replace the GATT? Could they not have entrusted the task of administering the results of the Round to the GATT? The answer is no, for a very simple reason.

In addition to the agreements covering trade in goods, basically updating the GATT, there are two further agreements resulting from the Uruguay Round: the General Agreement on Trade in Services or GATS and the Agreement on Trade-Related Aspects of Intellectual Property Rights or TRIPS. The agreements on services and intellectual property protection are the first-ever multilateral agreements on these issue areas, and their provisions, as you can well understand, differ fundamentally from those in GATT's traditional domain of trade in goods. Thus, trade in services covers not only the cross-border movement of services but also the commercial presence of enterprises, giving the GATS an investment dimension which the GATT has never had; and in the field of intellectual property rights domestic regulatory standards, not foreign policies as in the GATT, are covered. The agreements on goods, services and intellectual property protection are the three pillars of the WTO, and the WTO is the legal umbrella which ensures that all of these agreements are legally binding as a single undertaking on all Members of the WTO. Obligations are enforced by dispute settlement procedures common to all agreements, and are administered under the authority of a common institution.

This represents a radical change in the conduct of multilateral trade relations. To understand why, we have to return to the past. Both the Kennedy and Tokyo Rounds ended with agreements setting out new rights and obligations. For example, the Tokyo Round ended with agreements on anti-dumping, subsidies and countervail, customs valuation, technical barriers to trade, to name just a few. In these agreements, contracting parties committed themselves to transparent regulatory import regimes with procedural guarantees for exporters. But many countries did not accept those additional commitments; there was no obligation to do so. However, even those countries which had not signed on to the new agreements benefitted from the more transparent and secure treatment for their products due to the

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operation of GATT's most-favoured-nation clause, and also due to the practical need to apply import regulations uniformly. The outcome was a society of trading nations where the members of society had increasingly different levels of obligation.

Although the GATT's most-favoured-nation principle had achieved a greater liberalization of trade by multilateralizing the results of bilaterally agreed commitments, this experience showed it could also have the effect of permitting free-riding, of thus reducing the incentive to participate in negotiations aiming at greater trade liberalization. This was particularly true for those areas of trade policies where governments face the greatest domestic opposition. Two basic principles of the GATT system, non-discrimination and reciprocity, worked to some extent at cross purposes. More generally, the experience of the Tokyo Round raised serious questions about the GATT's ability to adapt to new needs by simply adding to its legal system new agreements among which each contracting party can pick and choose.

The solution which was worked out in the Uruguay Round was the replacement of the GATT legal system by a new system, the WTO. The benefits of the new system will go only to the participants that have signed on to the obligations to liberalize trade in goods, services and to provide intellectual property protection. In this manner, the negotiators succeeded in combining the principle of non-discrimination, which is an essential feature of any multilateral trading system, and the principle of reciprocity, without which wide-ranging trade liberalization would politically not be possible. The sword that cut the Gordian knot was the WTO Agreement. Without a replacement through that Agreement of the whole of the GATT legal system, including its institutional, organizational and procedural aspects, the combination of non-discrimination and reciprocity would not have been possible.

IV

What will be the powers of that new Organization? Press reports describing the WTO as "a powerful new trade watchdog that will tightly regulate trade", may make legislators wary. Fears have been expressed that the WTO can take decisions that will legally bind its Members without their accord and thus infringe their national sovereignty.

These fears are without foundation. The WTO does not have the power to impose new trade policy obligations. Let me illustrate with an example. Amendments of the WTO Agreement that alter the rights and obligations of Members are effective only for those Members that have accepted them. While it is true that certain institutional and procedural provisions may be amended with effect for all Members, a change in the dispute settlement procedures may only be made by consensus. Another example: a State may accede to the WTO on conditions approved by two-thirds of the WTO members. Does this imply that even those WTO Members voting against are forced to accept those conditions? It does not. Each WTO Member is free to decide not to apply the WTO Agreement to the new Member. Thus, the WTO's individual members are protected against the imposition of an obligation to establish trade relations under the WTO with another State on terms they do not wish to accept.

Indeed, compared with the formal provisions of the GATT in these areas, the amendment and non-application procedures of the WTO offer much more protection against unwanted change. In many instances in which the GATT requires merely a majority of one-half or two-thirds of the contracting parties, the WTO now requires a three-fourths majority or even unanimity or consensus. Any legislator worried about the legislature's prerogatives has reason to support the change-over from the GATT to the WTO system.

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While the WTO has no power to impose new policy obligations on its Members, the WTO Agreement does give each of its Members greater opportunities to secure the respect of its rights by other Members. The Agreement establishes dispute settlement procedures that are speedy and automatic, and that permit a review of the reports and recommendations of dispute settlement panels by a standing Appellate Body composed of seven persons of recognized authority and demonstrated expertise in law and the matters covered by the WTO Agreement.

Perhaps the most significant change is the end of the current practice of consensus for the adoption of rulings of dispute settlement panels. Under the current practice, contracting parties have the option of refusing the rulings of panels; this option will vanish. This change has been described as revolutionary, but not all commentators have used this term in a positive sense. Some have even interpreted the right to refuse an interpretation of its obligations as the ultimate prerogative of a sovereign nation: to be above the law when it chooses to be.

There are two aspects of this question to which I wish to draw your attention. The first is that all Members of the WTO, without exception, give up their right to block panel rulings. This means that, for each individual Member, the counterpart of its commitment is a quid pro quo on the part of its trading partners, surely a very valuable benefit.

The second aspect to highlight is that the changes to the GATT dispute settlement procedures in the WTO are really not as revolutionary as some would wish us to believe. They represent the next logical step in an evolution, now spanning four decades, of the GATT's dispute settlement procedures towards greater automaticity.

Originally, the GATT dispute settlement procedures relied completely on consensus at every step of the process. When a country lodged a complaint against a trading partner, it was generally necessary to obtain the agreement of the trading partner to establish a panel. Once that was done, the complainant had to secure the agreement of the trading partner on the names of the panelists. Even the adoption of the panel's report needed the approval of the trading partner. This absence of automaticity contributed, at times, to delays and discouraged, occasionally, the lodging of legitimate complaints.

Over the past forty-five years, each of these procedural steps has gradually become independent of the consent of the defending party - first as a practical matter, then under formal rules. In practice, the contracting parties have refrained, to the utmost of their political possibilities, from unilaterally opposing the establishment of a panel or the adoption of its report. This practice has developed due to the well-founded fear that any such unilateral opposition would trigger a chain reaction of tit-for-tat refusals that would bring down the GATT dispute settlement system.

The WTO rule, according to which adoption of a panel's report will no longer require the agreement of the defending party, constitutes for these reasons not a new departure but a formalization of a well-established tradition. There is, however, a new element - independent review by the an appellate body before the panel's recommendations become legally binding. This is an additional safeguard against possible mistakes now missing in the system, to ensure that greater automaticity comes with a greater confidence in the results of the dispute settlement system.

The automaticity of the WTO dispute settlement system cannot be assessed without looking at the trade rules that will be enforced through that system. The rules of the WTO do not straitjacket

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governments. The aim of the WTO rules is open and liberal trade, but governments remain free to protect individual sectors through certain instruments. Not all tariffs have to be bound and procedures for temporary safeguard measures or the renegotiation of previously made market access commitments are available to all Members. This flexibility also applies to the commitments negotiated in the framework of the Agreement on Services annexed to the WTO Agreement. Resort to safeguard and renegotiation provisions is of course not easy because it generally requires negotiations and compensation. Given this flexibility of the trade rules, the real issue behind most legal disputes is not whether the defendant party has the right to protect a particular sector but whether it has the right to do so with the instrument chosen or without compensating the trading partners with whom it has negotiated a market access commitment. If the GATT dispute settlement procedures have gradually become automatic, and if the Uruguay Round negotiators were able to agree to formalize automaticity, it is no doubt in part due to the fact these procedures - apply to substantive rules that offer flexibility to take into account political needs.

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In concluding my remarks, let me assure you that I firmly believe that the creation of the WTO will be endorsed without delay by national legislatures - that history will not repeat itself. The Uruguay Round results constitute an important body of international rules, and mechanisms to enforce those rules, which will help create the basis for an expansion of the world economy in the decades ahead.

In today's highly integrated world economy almost every enterprise depends, directly or indirectly, on the availability of imported goods and services and on access to foreign markets. A stable world trade order is therefore essential to enable enterprises to plan and to invest.

The creation of a new world trade order requires the creation of a new institution to administer that order. The Uruguay Round negotiators have realized that stability in trade relations can be attained only if the mutually agreed rules and market access commitments are supplemented by procedures ensuring their proper enforcement and an institutional framework ensuring their proper administration. The creation of the WTO is an essential part of the package they have negotiated: it made it possible to turn separately negotiated agreements into a single undertaking which liberalizes trade to an unprecedented extent. Both the enforcement procedures of the WTO and its institutional structure, through strongly resembling that of the GATT, will rest on more solid legal foundations. The WTO will **not** create unwanted new obligations. It will administer obligations mutually agreed among its Members on the basis of reciprocity, and it will serve as a forum for negotiating further such obligations. To function properly, the world trade order requires a common sense of purpose among its Members. The WTO is the instrument to foster that common purpose. The negotiators of the Uruguay Round package reached the conclusion that the WTO is an essential means to all these ends. I am convinced that the legislators who are now examining this package will reach the same conclusion.

The WTO and all the other achievements of the Uruguay Round represent a major investment by the world as a whole - an investment of time, of effort and of willingness to co-operate for mutual benefit. The returns from this investment will help the world to find better answers to the longstanding problems of growth, employment and sustainable development. They will also provide a basis for developing the global trade and economic agenda of the future. And above all they will give a new confidence and a new stability to the multilateral system which remains the only credible assurance against protectionism and the economics of destruction. But whatever an individual country, sector or interest group may find in the Uruguay Round's outcome, whatever it may want the WTO to take up, all is in suspense until the agreements enter into force. I strongly urge all the governments involved, and everyone who has a stake in this great investment, to do all they can to ensure that it becomes a reality on 1 January 1995. The world must not be kept waiting.

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