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The Commonwealth Trade Forum, convened by the Commonwealth Business Council, was held in London on July 7-8, 2003. The conference was held in Senate Council rooms at the University of London (pictured above).



Attached is an article by **Hugh Corbet** (above) which is based on his presentation at the forum in London.

About the Author

Hugh Corbet, president of the Cordell Hull Institute in Washington, DC, was previously Director of the

COMMONWEALTH TRADE FORUM...

Role of Rules in the WTO System

Hugh Corbet

TODAY the multilateral trading system, administered by the World Trade Organization, is going through another difficult period – rather depressing so soon after the success of the Uruguay Round negotiations in pulling the system back from the brink of collapse in the early 1980s¹ and embarking it on a broader, stronger and more equitable path.

When the eighth and last negotiating round under the General Agreement on Tariffs and Trade was being concluded there was awareness among negotiators and observers that only a start had been made in remaking the world trading system. Much remained to be done to strengthen the system. That was why the Uruguay Round agreements contained “a built-in agenda” and a provision – in the Marrakesh Agreement establishing the WTO – for ministerial conferences to be held at least once every two years. Many in the trade policy community talk of “the rules-based trading system” established after World War II to distinguish it from what prevailed in the inter-war period, looked back upon as a power-based system, with small countries pushed around by bigger ones. But what prevailed in the inter-war period was no system. It was, by the 1930s, the law of the jungle.

After the first World War, governments were not able to restore the *système des traités*, the system of bilateral commercial agreements (developed in the period 1840-80) that prevailed in Europe and to some extent beyond until the outbreak of hostilities in 1914. What made it a system was the *unconditional* most-favored-nation (MFN) requirement in nearly all the agreements. Come the peace, however, there weren't any people left in governments who understood what made the pre-1914 system work.

No Consensus on the WTO's Purpose

In November 2001, the first WTO round was launched at the second attempt – two years after the Seattle fiasco. But the Doha

Trade Policy Program at the Sigur Center for Asian Studies, George Washington University (1992-97), and earlier was a guest scholar at the Woodrow Wilson International Center for Scholars and the Brookings Institution (1990-92), all also in Washington.

For nearly twenty years, Mr Corbet was the Director of the Trade Policy Research Centre in London (1968-89), where he also founded and edited *The World Economy* (1977-89).

In 1982-88, Mr Corbet convened inter alia, in different parts of the world, eight "informal" roundtable meetings of trade ministers, senior officials, business leaders and independent experts from twelve to eighteen countries at a time. The meetings were part of the international effort to launch what turned out to be the Uruguay Round of multilateral trade negotiations of 1986-94.



Jan Tumilir

"Regimes like the multilateral trading system, which require constant management by diplomacy, are certain to deteriorate over time. They are bound by precedent, but their precedents, created by negotiations rather than by law, are unprincipled and

Round negotiations were launched in a somewhat a half-hearted way, very much "on the run" and without an inter-governmental consensus on their purpose or, for that matter, on the purpose of the WTO itself.

How do the key players see the WTO system these days? In the United States there is a tendency, especially on Capitol Hill, to regard the multilateral trading system as a device for securing access to foreign markets for American exports, not for promoting trade liberalization as a positive-sum game. In the European Union the system is traditionally viewed as the framework within which it handles its relationship with the United States.²

For four decades, Japan saw the system as a defense against the bilateral pressures of the United States and the European Union to open its markets, but is turning to bilateral negotiations now there is a multilateral commitment to open markets for agricultural products. As for developing countries, many appear to regard the WTO system as just another development agency, providing benefits (rights) without requiring obligations.

It sometimes seems that only China sees the WTO as a framework of internationally agreed rules providing a stable institutional environment for the conduct of trade and investment, as well as a guide to the development of domestic commercial laws aimed at promoting "transparency", "stability" and "predictability", hallmarks of the multilateral trading system, along with "non-discrimination".

On the future of WTO rules, meaning the WTO system and the Doha Round negotiations, there are four points worth elaborating.

First, the current situation is a bit like the "talks about talks" prior to the Uruguay Round negotiations, when the governments of the major trading powers were having trouble getting their ducks in a row – in achieving agreement on the direction a new GATT round should take.

Second, there is a continuous need to keep the rules of the multilateral trading system under review, for there is a continuous tendency for governments to chip away at the system's institutional foundations – its principles, rules and procedures.

Third, it takes a crisis for governments to identify, understand and face realities. So the forthcoming Cancún ministerial conference may confront governments with the dangerous situation developing as a result of years of neglect by the major trading powers after the Uruguay Round negotiations, including some items of "unfinished business", were concluded.

Fourth, the next year or two might be an opportunity to re-think the WTO system and, in the process, address the mischievous

cumulatively erode the foundations of the regime.”
– Jan Tumlir, Director of Research and Analysis at the GATT Secretariat (1968-85), at the annual international conference of the Western Economic Association, Las Vegas, June 1984

“The WTO provides a stable institutional environment for international trade and investment, enabling firms to know where they stand vis-à-vis their government and the governments of other countries so that they can plan for expansion or, if need be, for adjustment – thereby facilitating economic growth and development.”

– Hugh Corbet at the Commonwealth Trade Forum, convened by the Commonwealth Business Council, London, July 7, 2003

Trade Policy Roundtable

The Cordell Hull Institute's Trade Policy Roundtable is sponsored by seven international law firms in Washington, DC: Akin Gump Strauss Hauer & Feld, Arnold & Porter, Hogan & Hartson, O'Melveny & Myers, Sidley Austin Brown & Wood, Steptoe & Johnson and Wilmer Cutler Pickering Hale & Dorr.

nonsense put out by many anti-globalization groups and labor unions.

Getting Ducks in a Row

When efforts were being made in the early 1980s to launch a new GATT round, the United States began by pressing for the GATT to be extended to trade in services, to trade-related investment measures and to the trade-related aspects of intellectual property rights.

Some of us believed such an approach was necessary. In fact, since the early 1970s the Trade Policy Research Centre in London, of which I was the director, had been doing studies, producing articles and holding international meetings on the need to extend the multilateral trading system to trade in services. (In some accounts I still get the credit for initiating that debate.³)

By the early 1980s, though, there appeared to be little point launching a new trade-liberalizing round of multilateral trade negotiations if the results were not likely to be durable because they would not be underpinned by a framework of principles, rules and procedures that was respected by governments – particularly the governments of the major trading powers.

Since the late 1960s, adherence to GATT principles, rules and procedures had been steadily deteriorating as governments resorted increasingly to non-tariff devices of various kinds, especially subsidies and “voluntary” export restraints – instruments of what was called the “new protectionism”. Thus something had to be done about strengthening the GATT system, which was falling into disarray, although it was not generally realized at the time.

Over the period 1982-88, the TPRC convened, in different parts of the world, eight “informal” roundtable meetings of trade ministers, senior officials, business leaders and independent experts, assembling 50 or so around the table from a dozen or more countries at a time. The meetings were part of a behind-the-scenes international effort to build a consensus in support of what turned out to be the Uruguay Round negotiations. Discussion was based on a series of study-group reports aimed at stimulating fresh thinking.

By 1985, according to a survey among trade officials, governments were beginning to recognize that strengthening the GATT system was a higher priority than pursuing trade liberalization.⁴

Strengthening the Open Trading System

In 1985 the United Nations asked the TPRC to draw together its study-group reports, which Martin Wolf and I did, resulting in a report entitled *Trade Routes to Sustained Economic Growth*, published in 1987.⁵

The report, circulated in 1986 among delegations in Geneva prior to publication, urged a systematic review of the GATT's articles. That proposal was taken up in preparations for the Uruguay Round negotiations with the addition of a negotiating group on GATT Articles. At the GATT ministerial conference in Punta del Este, which launched the negotiations in September 1986, the negotiating group was asked to review GATT articles that were not the subject of other negotiating groups.

At the first meeting of the negotiating group on GATT Articles, so one story goes, the representative of Hong Kong – proud of British colony's free trade and non-discriminatory credentials – began the discussion by mentioning Article I, which expresses the principle of non-discrimination, the one system-forming principle of the multilateral trading system. The principle used to be considered the cornerstone of the GATT system. From the early 1970s, however, it was "more honored in the breach than in the observance". If ever a GATT article needed reviewing it was Article I.

At the end of the meeting, the chairman said he would read the list of articles to be reviewed. He began with Article I. "No, no," cried the representative of Hong Kong, "I didn't mean that Article I should be reviewed." After a brief discussion, Article I was taken off the chairman's list – to the relief of all present.

Well, I am told the story is apocryphal, but Article I was not reviewed. And that might have been just as well. Thinking through whether to abandon or to reassert the principle of non-discrimination, given the number and size of the departures from the principle, would probably have blown the minds of trade ministers and their colleagues back home.

One wonders what it has to take to get governments to do anything about anything where trade policy is concerned. In considering the future of WTO rules it is hard to be optimistic. It seems that things have to get worse before they will get better.

The economist who thought most seriously about the strengths and weaknesses of the international economic order, as established after World War II, was Jan Tumlir who died in 1985.⁶

For eighteen years he was the director of research and analysis at the GATT Secretariat. Arthur Dunkel called him "the resident philosopher". In one of his last papers, Tumlir wrote that...

"Regimes like the multilateral trading system, which require constant management by diplomacy, are certain to deteriorate over time. They are bound by precedent, but their precedents, created by negotiations rather than by law, are unprincipled and cumulatively erode the foundations of the regime."⁷

Tumlir used to say that it is hard to arrest a crisis before it has run its course. So perhaps we can take heart from the current *impasse* in the Doha Round negotiations.

It Takes a Crisis to Face Realities

Nobody can pretend that the prospects for the Cancún ministerial conference in September are good. There are fears of it being “another Seattle”. So an effort is being made to lower expectations. By time it begins the managers might get the media to understand that the mid-term review of the WTO negotiations in Cancún is only one stage in a process that has a long way to go. Indeed, if expectations are lowered enough, the ministers might even be able to declare the event a success!

The fact remains, however, that governments have missed one self-imposed deadline after another in a negotiating schedule that ministers presumably thought was realistic when they launched the negotiations. Now issues are piling up for ministers from 146 countries to settle in five days. It is a tall order. Maybe the mini-ministerial meetings we hear about – in Sydney, Tokyo, Sharm el-Shaik and now Montréal – are figuring out a procedure for settling the issues. And hopefully ministers will have an “exit strategy” in the event it is too hard to reach a consensus on how to proceed.

If the Cancún ministerial conference is not able to reach agreement on the modalities for negotiations on extending the WTO system to investment regulations and competition laws, enabling the Doha Round negotiations to proceed on both tracks, there might be some sort of pause to reflect on the consequences. That is what happened at the Montréal ministerial conference in December 1988 when ministers could not agree on an approach in the Uruguay Round negotiations to liberalizing agricultural trade and the Cairns Group countries walked out. Four months later the negotiations were resumed, only to come to grief at the Brussels ministerial conference when, again because of the European Union’s intransigence, the Cairns Group walked out a second time.

Maybe the Doha Round negotiations are reaching the point when it becomes clear they cannot be concluded by the end of 2004. In any event, negotiations in 2004 are not going to be plain sailing. It is usually difficult in a U.S. presidential election year to make substantial progress in trade negotiations – given the need for the chief U.S. trade negotiator to consult with Congress. So in Cancún ministers could do worse than make a virtue of necessity by agreeing on “a pause for reflection” at the political level while technical work continues among the delegations in Geneva.

Need to Re-think the WTO System

The current *impasse* in the Doha Round negotiations, particularly over agriculture, has been building almost from the start. In



The **mockingbird** is the state bird of Tennessee. Cordell Hull represented a

district of Tennessee in the Congress of the United States, and was elected a senator from there, before becoming U.S. Secretary of State (1933-44).

"The mockingbird is known for fighting for the protection of his home – falling, if need be, in its defense. Mockingbirds are not intimidated by animals larger than themselves and have been known to attack eagles"

– Diana Wells, *100 Birds and How They Got Their Names* (Chapel Hill, NC: Algonquin, 2002)

Trade Policy Analyses

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anticipation of the current situation, Clayton Yeutter, the chairman of the Cordell Hull Institute, who played a major role in the Uruguay Round negotiations, recalled last summer that...

"The most successful of previous rounds of multilateral trade negotiations were those inspired by ambitious objectives. Somehow governments must now come together on a range of objectives that are lofty and imaginative enough to generate the political interest, momentum and commitment needed to achieve a worthwhile and durable outcome commensurate with the times."⁸

Okay, that's an American point of view, although a shrewd one. For a European point of view, consider what Peter Sutherland, the WTO's first director-general, had to say a couple of months ago. The "development" perspective of the Doha Round negotiations needs to be thought through more carefully, he said:

"Many of the objectives being pursued are understandable when set against the rhetoric of poor countries as victims of the WTO system. But do they make sense in terms of poverty reduction, the generation of competitive export sectors, the attraction of inward investment or integration into the global economy?"⁹

Underlying Purpose of WTO Rules?

The WTO provides a stable institutional environment for international trade and investment, enabling firms to know where they stand *vis-à-vis* their government and the governments of other countries so that they can plan for expansion or, if need be, for adjustment – thereby facilitating economic growth and development.

So there is a need to promote greater public understanding of the way the principles, rules and procedures of the multilateral trading system serve three constitutional functions:

- The first function of the WTO system is to protect governments from sectional interests that want the governmental power of coercion used in their favor – be they multinational enterprises, labor unions or non-governmental organizations.
- The second function is to protect citizens, including legal persons (companies), from governments.
- The third function is to protect governments from one another.

When multilateral rules are observed, fulfilling their functions as constitutional constraints, the managements of firms can get on with their business in a stable institutional environment.

¹ On the state of the GATT system in the early 1980s, two years after the completion of the Tokyo Round negotiations of 1873-79, see John Croome, *Reshaping the World Trading System: a History of the Uruguay Round* (Geneva: World Trade Organization, 1995), pp. 8-11.

² J.P. Hayes, *Making Trade Policy in the European Community* (London: Macmillan, for the Trade Policy Research Centre, 1993).

³ See, for example, Geza Feketekuty, *International Trade in Services* (Cambridge, MA: Ballinger, for the American Enterprise Institute, 1988), Appendix on "History of a Campaign: How Services Became a Trade Issue", pp. 295-99; and Ernest H. Preeg, *Traders in a Brave New World* (Chicago and London: University of Chicago Press, 1995), p. 37.

⁴ The poll was prepared for an Informal Meeting of Trade Ministers (a separate series from the TPRC one) in Stockholm, May 1985.

⁵ Amnuay Viravan *et al.*, *Trade Routes to Sustained Economic Growth* (New York: St Martin's Press, for the United Nations, 1987).

⁶ For an account of Tumlir's contribution to economic thought in this area, see Razeen Sally, *Classical Liberalism and International Economic Order* (London and New York: Routledge, 1998), ch. 8 on "Jan Tumlir: Democratic Constitutionalism and International Economic Order".

⁷ Jan Tumlir, "International Trade Regimes and Private Property Rights", *Contemporary Policy Issues*, Los Angeles, April 1987 (published posthumously). The full paper was originally given at the annual international conference of the Western Economic Association in Las Vegas, Nevada, in June 1984.

⁸ Clayton Yeutter, Chairman's Statement in Andrew Stoeckel and Hugh Corbet, *Opportunity of a Century to Liberalise Farm Trade*, Report of a Meeting at Airlie House, Warrenton, on May 21-22, 2002 (Canberra: Rural Industries Research & Development Corporation, 2002).

⁹ Peter D. Sutherland, "Avoiding Stalemate in the Doha Round Negotiations", Tacitus Lecture, Worshipful Company of World Traders, London, April 15, 2003.