

SERVICES, INTELLECTUAL PROPERTY AND THE MAJOR  
ISSUES OF THE URUGUAY ROUND

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I am not going to talk services or U.S. competitiveness. I would really like to talk about the politics of the Uruguay Round and the politics of trade in the United States. But first, as the third speaker, there have been some things said that I want to pick up on so we can have a little discussion later. I am speaking particularly of Mr. Hunnicutt's paper which has so much in it that I was taking notes all the way through his presentation. I agree with much of it, but that is no fun. Therefore, I will raise a couple of questions from the other side.

He presented a terrific paper from a lawyer's point of view, but I think one of the problems with American trade policy is that it is dominated too much by legal thinking and uninformed economic thinking. I think that this is true particularly with regard to unfair trade practices. If there is one thing one should tell a group of lawyers who are going to go out and represent clients on either side of the trade issue, whether for protection or open markets, is that trade flows between countries are overwhelmingly determined by macro-economic policies and not by unfair-trade or fair-trade policies. Most economists would estimate that the bilateral trade flows between the U.S. and Japan would change only 10 to 15 percent at the most if all the unfair trade practices on both sides were eliminated. Trade deficits stem from the fact that we are spending too much and not investing enough. We are consuming more than we are saving and the Japanese are doing the reverse. I just read a paper that one of the advisory committees wrote to Ambassador Hills which made the point that the Japanese "over save". If we could "over save" a little more we would be in better shape.

Second, trade law does not have a lot to do either with our trade balance with the rest of the world or with U.S. competitiveness. If one takes the 1988 Omnibus Trade and Competitiveness Act as an example, it is largely irrelevant to our trade balance with the rest of the world and it is probably counter-productive to U.S. competitiveness. I'll come back to those points in a minute.

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One final point that Mr. Hunnicutt raised at the end was Peter McPherson's speech at the American Enterprise Institute. I thought at the time, and I think now, that I have never heard a speech with more gall. For a Department of State or USTR representative to get up and lecture the developing countries on special and differential treatment when we're sitting here with textile quotas, automobile quotas, steel quotas, machine tool quotas and the semi-conductor cartel with the Japanese, strikes me as hypocrisy in the extreme. I agree indeed with Mr. Hunnicutt and with Mr. McPherson that from an economists' view the policies of special and differential treatment and import substitution are nonsense. But so are the same kinds of policies that developed countries have put in place.

Now let me talk a little bit about the Uruguay Round and why it is unique. When one looks back on the Uruguay Round, two particular points about its politics become quite clear. One is the fragmentation of the system of actors and the emergence, as Mr. Hunnicutt and Mr. Kakabadse mentioned, of new players. There is an important set of statistics that underlies this. These statistics have to do with the emergence of new countries among the top twenty exporting and importing countries from 1970 to 1984. Six new countries appeared in that list in 1984. These are the top exporting countries in the world: Taiwan, South Korea, Hong Kong, China, Mexico, and Singapore. They replaced Poland, Denmark, Czechoslovakia, East Germany and Austria. Similarly, a group of new countries appeared on the list as the largest importing countries. This list included South Korea, Singapore, Hong Kong, China, Taiwan, and Saudi Arabia. The point is, that in both exports and imports new actors exist on the trading scene. Though they began to appear in the Tokyo Round, it is in this current Round that you will see the emergence of these countries as players in the game. Their participation is clearly in their economic self-interest. That leads me to a second point.

In most cases, though not all, it is no longer meaningful to talk about issues in the GATT as North-South issues. In a few cases you will probably find the developing countries formally acting together, but the interests of the so-called Gang of Four—Taiwan, Korea, Hong Kong, and Singapore—are very different from those of India and Brazil because the former countries pursue different economic and trade policies than do the latter. The differences between the whole group of countries at the top of the economic spectrum and those at the lower end of the economic spectrum are very marked. It is very hard to tell the players without the score card. You would have to find out what is the particular economic and political situation

within a particular country. One of the things that represents hypocrisy by the developing world is for a Taiwan or Korea to prance into a negotiation and argue that it is a developing country in relation to a particular sector when that country is competing both on a world wide basis and at a comparative advantage as to that product. In other words, these countries should be treated like any other country in particular sectors, but not across the board.

The other distinguishing feature of this Round is the movement into entirely new policy areas. The movement away from tariff negotiations and into negotiations that concern the individual economic, social, and regulatory policies of particular countries will be the chief characteristic of this round. I am referring to the so-called non-tariff barriers of how one regulates banking, insurance or telecommunications. These are issues that are much closer to national sovereignty, and that's what makes them very difficult. These are also issues that are very easily covered with nationalistic rhetoric. The French are masters at talking about cultural sovereignty when they really just want to exclude others. The United States is becoming a master in talking about security issues when it really wants to exclude other countries and other companies. The so-called new issues that GATT is dealing with across the board, whether relating to intellectual property or services, are issues that are very different in quality and kind from the issues that the GATT negotiating process has attempted to deal with before.

Now, I would like to discuss the U.S. negotiating goals and relate these to the negotiating goals of other countries and how they mesh. The United States has a number of goals, of which the order of priority has changed somewhat. Certainly, as you have heard this morning, some breakthroughs have occurred in the new issues of services, intellectual property, trade related investment issues and the older issue of agricultural subsidies. Clearly, we are more advanced in the movement toward a so-called post-industrial society or economy, and we have moved much farther into the services sector. Therefore, it is in our national interest to have some set of rules which allow us to deal with other countries on a rational and legal basis.

The same thing is true for intellectual property. We are a country whose comparative advantage is still in high technology. Issues concerning intellectual property involve the protection of high-tech sectors for a short period because of the high cost of developing a product. This is true whether it is a pharmaceutical product or a new computer. Also, the product's cycle, or the time for which one has a monopoly

over the production and sale of that property, is becoming shorter. Therefore, it is important to protect, at least to some degree, one's investment.

Let me now turn to the politics of the negotiations. The service sector members were almost unanimously in favor of the multilateral negotiation. This was a shift in terms of our policy with respect to both the service industries and those high-technology industries which felt their comparative advantage would depend upon protection of intellectual property. Politically, when Bill Brock began to push for the GATT negotiations, he had behind him the services sector and a number of companies, mostly in pharmaceuticals and electronics, that were pushing for some multilateral regime to protect their intellectual property. The rest of manufacturing industry was divided. The agriculture industry was divided, at least at the beginning. Labor was very much opposed to the negotiations. We had never entered a multilateral negotiation with such division among the various economic sectors.

The third area which I will only mention in passing is investment. The companies in this sector tend to be supportive of the multilateral negotiations, depending on the company's product. These are the so-called multinationals. I refer to those American companies that already possess a global strategy. Intellectual property and services became symbolic of the priorities of the United States while agriculture was such a thorny issue. Clayton Yuetter, the U.S. trade negotiator, could not return from the Uruguay Round and sell an agreement to Congress until he achieved some breakthroughs in services or intellectual property.

The other nations, as you would expect, have other priorities. It is almost unprecedented to have the kind of progress that there has been in terms of compromise on those foreign priorities in the Uruguay Round. Usually, negotiations are conducted in an atmosphere of crisis, which is what happened in Tokyo. There, the negotiators put the agreement together at the last minute. There was a crisis where one was unable to make any kind of grand compromise, and then at the end of a series of 24-hour meetings a package was put together which gave something to everyone. Now, the "something to everyone" has to include both developing and developed countries. It must deal, for example, with agricultural products for the lesser developed countries. One of the most important issues of all for the developing countries as a group is the so-called "safeguard issues". This label has to do with the kind of extra-legal GATT trade practices that the developed countries have put in place over the last 20 or 30 years.

These practices relate to quotas, temporary marketing agreements, orderly marketing agreements, and the wide variety of tactics that developed countries have used in basic industries such as textiles, steel, and automobiles, to impede the nation's changing comparative advantage to other countries.

In order for us to gain the compromises that we want in intellectual property and in services, there is going to have to be some give on the safeguards issue, as well as on agriculture as against the E.C. and Japan. On these issues the United States stands with some of the agricultural companies.

Another complication is the alternatives to GATT or to a multilateral solution. Our political process is perfectly capable of accommodating and pursuing contradictory forces at the same time. While we will continue to take the lead in the multilateral negotiations, we have also flirted with another set of solutions which are embedded in provisions of the trade bill, antidumping legislation, and the increasing concern about foreign investment in the United States. Each of these is contradictory to not only our policy in GATT but ultimately to U.S. national interests.

There is no greater symbol of the perverse nonsense present in Congressional discussions in the last two years than in the so-called Super 301 Amendment. Representative Gephardt wanted us to unilaterally force other countries to cut their exports to the United States by 10% per year. The 301 legislation, as it passed, may be considered a compromise in only one sense. It allows the President, at the end of a very destructive process, to get the United States off the hook. It says that we will force other countries to the negotiating table on the basis of unilaterally defined unfair trade practices. They must agree to change those practices within a three year period or face retaliation on part of the United States. We are defining what constitutes an unfair trade practice, the time for its elimination, and the retaliation if our demands are not met. It seems to me that this certainly breaks the spirit of GATT. If we go against the Koreans and others in telecommunications, we will have broken our pledge at the Uruguay Round not to roll back open markets. We would be rolling back the market in telecommunications if we go against a particular country which possesses potentially open markets.

American antidumping laws are increasingly being used as a means of stopping competition. They are a harassment tool. They are the symbol of the so-called due process protection at which the United States excels. Finally, the trade bill's flirtation with limiting foreign investment in the United States is not only counterproductive to our

GATT goal but is also against our own national interest. I now understand we have another such bill before Congress.

In summary, we have another road that the United States is traveling while we are simultaneously pursuing the GATT negotiations. I would argue that this road is not only counter to our leadership in GATT, but it is counterproductive to U.S. interests. We are not the only violator, nor are we the worst. The E.C. has a worse antidumping system than we do, though. I think that with regard to 1992 and the unification of Europe, it is still an open question whether the resulting Community will be more open or more protectionist. Their domestic content requirements are certainly trade destroying and deflecting. They have a much more extensive subsidy system than we do. The Air Bus is the classic example of where they have poured billions of dollars into a project that may not ever be profitable from the point of view of the market. We are now at a crucial turning point. In the next year or two, we will see whether the GATT negotiation will be successful because of the political will and desire to make it such, or whether we will move in the direction of a more fragmented and fractionalized system.

I personally do not think, as Lester Thurow said, that GATT is dead and that we are moving towards trading blocs. There is no conceivable trade bloc that I can imagine in Asia. The United States alone is not a trade bloc. Nor is there anybody with which we could align. The E.C. is the result of a long term process. One could argue a great deal of fractionalization and trade distortion still exists. Thank you.

*Mr. Hunnicutt*

I am afraid Mr. Barfield has not created much controversy by his statement, because I genuinely do not disagree with it and that could be demonstrated in lots of ways. In the mid 1980's when we had the Carbon Steel cases pending at the International Trade Commission, which was the largest amount of trade impact in the unfair trade allegations in U.S. history, if the I.T.C. and Commerce Department had affirmatively found unfair trade and counterveiled, or had imposed duties against everything alleged, it would not have amounted to 5% of U.S. imports. So it is clear that the unfair trade cases and the trade regulation regime including the escape clause are not the major determinant of the large flows of international trade. It may be that outside the GATT system, things like the Vienna Convention on the Sale of Goods or the adoption of the harmonized

code, these types of activities of the UNCITRAL Model Rules of Commercial Arbitration, that these may be contributing more to the opening up of world trade and increased economic activity than what goes on at the GATT. That is not to say that the GATT issues are not important and it also is not to say that from a political perspective, in terms of response in the United States, Japan, or Europe to the adjustments that are required in societies by changes in trade pattern, these adjustments certainly would be possible if the people and the decision-makers did not perceive a fairness in the system. This fairness goal is often promoted, particularly for the American mind, by having a set of rules and regulations that are understood and agreed to by the parties in advance. To that extent the escape clause, the dumping and countervail codes, and other GATT regulations are more important than simply the amount of trade that it packs.

Again, I do not necessarily disagree. As to special and differential treatment are we the pot calling the kettle black? Am I associating myself with Mr. McPherson's thoughts on the subject the pot calling the kettle black, I do not really think so. We have a lot of self-examination in the United States to do in terms of the semi-conductor cartel moving toward a carbon steel cartel and other arrangements which are not multi-lateralized much less even really GATT consistent if they are multi-lateralized. I do believe, however that the United States market is considerably more open and does not consist of the really pervasive restrictions that you would find in many developing countries. That is not to say that resolving the issues for the developing countries will have any more impact on the world economy than resolving of the minor issues relating to the U.S. economy because they are more important in terms of economic impact. In terms of the economic development of the developing world it is very important for them to understand that what we are trying to argue is in their interests that we are not competing with them.