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GATT-1947: A Living Legacy Fostering the Liberalization of International Trade

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The rounds of GATT/WTO negotiations are often where the emphasis is placed for progress on the liberalization of international trade. Given that the last successful round was completed in 1994 and the Doha negotiations have been stalled in 2008-2009, the prognosis for further liberalization is often gloomy. While WTO negotiation rounds have been an important facet of liberalization, other aspects of the multilateral trade architecture are also important in fostering trade liberalization – but are often overlooked. These institutional arrangements stem from the original GATT-1947 but remain intact. It is argued that the institutional arrangements for (1) non-discrimination, (2) recontracting and (3) accession also foster liberalization. These institutional arrangements are explained in the context of progress on international trade liberalization.

Keywords: accession, GATT, liberalization, most-favoured nation, recontracting, WTO

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The world may not realise from the long and complex document, necessarily technical in its terms, how much work and thought, negotiation and argument have entered into it. What I think the world will realise is the difference which the principles and provisions of this Charter, if adopted by the nations, can make to world trade and to the standard of living of all peoples as compared with the system which we knew in the nineteen thirties, with its strangling restrictions, its measures of mounting economic nationalism, and all that lurked behind these barriers in the form of uneconomic vested interests.

Harold Wilson
Member of the Preparatory Committee
International Trade Organization
Geneva, August 23, 1947¹

First let me answer the charge that the intention to create a new international organization with ambitions that are little short of revolutionary in the field of trade and commerce, is simply beyond practical possibility.... In answering this one may bear in mind that the experts of the 17 countries which have evolved the draft Charter are by no means starry-eyed, impractical theorists, they are the working experts of government departments, familiar with all the day to day problems of world trade.

Eric Wyndham-White
Executive Secretary Preparatory
Committee of the United Nations
Conference on Trade and Employment
Geneva, August 25, 1947²

With the Doha Round of the World Trade Organization stalled for more than a year at the beginning of 2010 and the accompanying gloom and glumness that currently surround the multilateral institutional arrangements for the conduct of international trade, it is important to revisit the enduring trade-liberalizing principles and arrangements that underpin the WTO. These have proven to be particularly robust over the 60-odd years since they were conceived and formalized in the General Agreement on Tariffs and Trade (GATT).

The negotiators and their political masters who were intent on creating a *new world order* based on multilateral institutions in the wake of the Great Depression and the Second World War had an ambitious agenda – to create institutions that would prevent both the economic chaos of the 1930s and war’s destructiveness. For them,

the sources of international conflict were fourfold: (1) political confrontation that escaped from the realm of diplomacy; (2) strategic devaluations; (3) large divergences in standards of living; and (4) *beggar-thy-neighbour* restrictions on international trade. To prevent war by keeping political confrontation within the bounds of diplomacy, the United Nations was created. The United Nations was the only post-Second World War multilateral institution with a pre-war predecessor, the League of Nations. The United Nations attempted to correct some of the major flaws of the League.

The other three organizations were without precedent. To reduce the need for, and strategic use of, devaluation, the International Monetary Fund was created. Divergence in standards of living was seen less as a development problem than a source of international conflict – both poor countries coveting the resources of the rich and the rich seeing the poor as easy conquests. The Italian adventure in Ethiopia and Japan's invasion of China were still very much in people's minds. The idea that there were different classes of countries with different economic development trajectories and constraints was not yet well recognized; rather, countries were seen as being at different stages along the same path to becoming industrialized and advanced. To transfer resources, first from countries relatively unscathed by the Second World War to those devastated by it, and subsequently from rich, advanced economies to poor, less-advanced economies, the International Bank for Reconstruction and Development (IBRD) was established. Of course, it is now better known as the World Bank.

The final organization, which had the objective of removing trade actions as a source of international conflict, was the International Trade Organization (ITO). The charter for this organization was hammered out between 1946 and 1948 with the final negotiations taking place in Havana, Cuba starting in late 1947. The seriousness with which the delegations took the negotiations can be seen from the hectic schedule in Havana, where the negotiations ceased only for Christmas Day 1947 and continued even on New Year's Day 1948 and through until the Havana Charter was agreed in March 1948. The expectations of the negotiators upon completion of the charter were summarized by the chief delegate of the Republic of China, Dr. Wunz King, in a speech delivered at the closing session of the Havana Conference on March 19, 1948:

Through the welter of no less than 800 amendments presented to the Conference, we have produced something which is in fact the synthesis of different schools of thought, and which is flexible enough for various types of economies to wend their way into a common workable pattern of trade relations.

In reading, through pages after pages of the Charter, I cannot but feel that whatever its shortcomings, it does represent a delicately balanced document. The obligations assumed under the provisions of one section of the Charter are conditioned upon the fulfilment of those in the other. The seemingly inconsistent obligations have been integrated into a single whole in such a manner that the manifold interests are well taken care of. All this is designed for the single purpose of the promotion of the well-being of the people through the expansion of world trade, the maintenance of full employment, and the encouragement and achievement of economic development. The rights and obligations of the Members are so interwoven that any upsetting of the balance will have to be redressed by compensatory remedies (King, 1948).

According to Eric Wyndham-White (1947), quoted at the start of this article, only 17 countries participated in the final negotiating process in Havana. While the United States and the UK were very influential, a number of other developed countries were heavily involved, including, in particular, Australia, Czechoslovakia and Norway. A number of Latin American countries were engaged in the process as well as host Cuba and Haiti from the Caribbean. China and India also had an important presence. As Dr. King reports above, there were more than 800 amendments put forward in the negotiating process. Clearly, it was a very active negotiation process with a number of divergent views. This small number of countries, however, managed to produce a set of institutional structures to foster trade liberalization that have stood the test of more than half a century and now bind more than 150 member states of the WTO. It is not apparent whether the durability of the institutional fostering of liberalization was by design or the result of serendipity, but global economic performance over the long term has certainly benefitted.

Of course, while the U.S. Administration was heavily involved in negotiating the ITO and signed off on its charter, subsequently it became apparent that the charter would not be ratified by the U.S. Congress, and it was never put forward to that body for approval – hence, the ITO was stillborn. Its GATT sub-agreement, however, became the *de facto* multilateral trade institution although legally it was a temporary organization with its bureaucracy provided by the extension of the arrangement put in place to provide administrative support for the ITO negotiations. The GATT began with only 23 member countries.

The GATT-1947 had many shortcomings that were tinkered with through each subsequent round of negotiations. Its major institutional shortcomings had become particularly apparent by the time the launch of the Uruguay Round was being contemplated, and during the round the new WTO was negotiated and the GATT recast as a new agreement, the GATT-1994. The GATT as an organization passed into history. Of course, the WTO, while an improvement on the old GATT organization, *Estey Centre Journal of International Law and Trade Policy*

still has a number of institutional problems. The institutional arrangements that foster long-term liberalization were, however, transferred largely intact into the new WTO and continue to exert a major liberalizing influence on the global economy. While criticizing the WTO almost constitutes an industry in itself, little is written about the institution's ongoing contribution to liberalization.

There are three aspects of the WTO arrangements that stem from the original GATT organization that are particularly important in fostering liberalization: (1) non-discrimination; (2) recontracting; and (3) accession. The former is quite often discussed, but seldom in conjunction with the latter two. In many treatments of WTO principles and institutional arrangements the importance of the recontracting and accession mechanisms for liberalization are not even mentioned.

Non-discrimination has two major aspects: (1) the most-favoured-nation principle and (2) national treatment. The most-favoured-nation principle is the more important of the two in terms of broadly based liberalization. National treatment means that member countries agree to treat goods of foreign origin no differently than domestically produced goods – except, of course, that tariffs and other trade barriers can be applied to them. Hence, national treatment relates primarily to domestic regulatory and taxation issues. As domestic legislation and regulatory regimes are generally harder to control than commitments on trade barriers, the effect is somewhat muted. Further, given that trade barriers can remain on goods accorded national treatment, markets can remain closed even when national treatment is respected.

The most-favoured-nation principle, on the other hand, fosters broadly based liberalization. This principle was, however, more important in the earlier negotiating rounds of the GATT, when tariff concessions were the result of multiple bilateral offers. The most liberalizing concession on a particular tariff line (or other trade barrier) wrested from a country in the bilateral offer-counter offer process had to be extended to all other member states. In essence, that meant that concessions on market access arising from the weakest bilateral bargaining position became the market access condition for all members. Institutionally, this is a very strong mechanism to foster liberalization. Of course, over time access that is better than most-favoured-nation access has been allowed in certain circumstances – for developing countries under the Generalized System of Preferences and for members of preferential trading arrangements. There has, however, been no retreat from most-favoured nation as the underlying principle for market access. As the number of member states has risen, the bilateral offer-counter offer system has been to a certain degree replaced by more formula-based negotiations regarding tariff concessions whereby, for example, higher tariffs will be cut by a higher rate than lower tariffs. These formula approaches apply,

however, to the broadly based negotiating rounds such as the Doha negotiations. The most-favoured-nation principle, however, remains a major liberalizing force when combined with the institutional arrangements for accession. This aspect of the most-favoured-nation principle will be returned to later in the discussion of accession.

The recontracting process in the GATT, and subsequently the WTO, is a very positive force for liberalization. What is central to the recontracting process is that there can be no backtracking from previous commitments. In other words, each *Round* of negotiations starts from where the previous round left off and can only lead to further liberalization. Tariffs are *bound* at previously agreed levels and can only be lowered in the next round, never raised. Members who feel they have made a mistake, or have given too much in previous rounds, cannot use subsequent rounds to reverse what they have conceded previously. That means that the contracting parties – the member states – can agree to a new round of negotiations without fear of risking the concessions already achieved. This is not the case, for example, with the North American Free Trade Agreement (NAFTA) (Kerr, 2002a). As a result, both Mexico and Canada fear re-opening the NAFTA because they know that many in the U.S. Congress perceive that the United States gave too many concessions in the original NAFTA negotiations and would like to claw them back if the treaty were re-opened for negotiation – recontracting is not confined to moving further along the path of liberalization. Given their unequal bargaining power relative to the United States, Mexico and Canada perceive agreeing to re-open the NAFTA for negotiation as far too risky.

The result is that the NAFTA increasingly looks like a *one shot deal* which has now been fully implemented and can yield no additional future benefits. As a result, progress on further economic integration in North America is stalled even if there might be considerable benefits from additional liberalization. Further, enthusiasm for the entire North American project has waned given the impasse, with the United States and Canada actively looking elsewhere to find new partners for preferential trading arrangements – in most cases with countries that have much less to offer in terms of economic benefits given that they are more distant, often smaller and have economies that will mesh less well than those of the United States and Canada. Mexico increasingly sees its preferential access eroded as the United States expands its trade agreements to Mexico's developing-country competitors and perceives it has no way to further capitalize on the benefits of deeper integration with the United States. Similar observations can be made regarding a range of regional and preferential trading arrangements.

The *no backsliding* through recontracting is an institutional arrangement that is still strongly supported by many members of the WTO. This has been evident in the Doha Round, where an Indian proposal on the tariff rates that could be applied in the proposed *special safeguard* would have led, in certain circumstances, to tariff rates that would have exceeded the current bound rates. This proposed *backsliding* became a major issue in the negotiations and is blamed for the suspension of the round. Other WTO members would not agree to any *backsliding*.

Of course, the recontracting process institutionalized in the WTO is not automatic. The member states must approve the commencement of a new round. Further, they must agree to an agenda for negotiation, meaning that some aspects of the WTO may not be opened for negotiation. In the Doha Round, for example, the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade, among others, were not opened for further negotiations. It took considerable pressure on the United States to have, for example, antidumping opened under the Doha Round *Rules* negotiations (Kerr and Loppacher, 2004).

Of course, liberalization may also not take place because the member states cannot come to an agreement. All eight GATT rounds were completed successfully. Each successive GATT round tended to take longer than the one before it – with the Uruguay Round taking from 1986-1994. Over time both the complexity of the issues dealt with in the multilateral negotiations and the number of countries participating in the negotiations have increased. One would expect that both increasing complexity and more participants would tend to extend the time that negotiations take. Given the unequal technical capacity of the WTO member states, complexity may also make reaching an agreement inherently more difficult (Kerr, 2007). The Doha agenda has added a further degree of complexity and there are many more member states than there were in 1994. Viewed in this light, the failure to have, as yet, successfully concluded the Doha Round over the 2001-2009 period does not seem surprising. Of course, the Doha Round may fail and liberalization from this source not arise. This does not alter the importance of the institutional structure of the recontracting process as a positive force for liberalization. By effectively making all previous concessions *sunk costs*, the recontracting arrangement means that countries evaluate a proposed new round solely from its potential for further liberalization, and not as putting past concessions at risk.

Liberalization of the international economy, however, does not come solely from the progress that is generated from the successful completion of WTO negotiation rounds. Accession is also a major source of liberalization. The process of accession built into the GATT, and subsequently the WTO, does not require simply that

countries desirous of becoming part of the WTO accept the existing set of WTO rules, it requires also that countries that wish to accede successfully negotiate the terms with existing members. What the countries that were involved in the Havana Charter came up with is typical of the understated nature of the drafting process:

A government not party to this Agreement, or a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for by this Agreement, may accede to this Agreement on its own behalf or on behalf of that territory on *terms to be agreed between such government and the contracting parties* [emphasis added] (Tariff Agreement Committee, 1947).

Thus, the process of accession is a negotiation. It is a one-sided negotiation process whereby countries that wish to accede to the WTO must grant concessions from their pre-accession trade regime while the existing member states of the WTO do not have to make any concessions. While countries that wish to accede to the WTO often decry the inherent unfairness of this negotiation process, it cannot be denied that it is a great liberalizing force. The negotiations are bilateral – between the country wishing to accede and individual existing member states. Once a bilateral agreement is reached with one existing member, the concessions it has made to the one existing member must then be extended to all other member states based on the most-favoured-nation principle. In the process of accession, a number of these bilateral arrangements will be negotiated, and in each case the concessions made extended to all other members. In theory, a country could have to reach a bilateral agreement with each existing member. In reality, negotiations with a few major trading countries will yield benefits for most member states through the most-favoured-nation principle. Once the accession negotiations are completed and a new member state accepted, all existing members must extend their most-favoured nation arrangements to the new member. Given that the domestic trade regimes that apply to non-members are often much more restrictive than those extended under most-favoured nation, liberalization may be considerably enhanced.

While acceding countries may not like the process, many have chosen to engage in it. Sometimes the negotiations are extremely difficult and politicized. For example, China's accession process took more than 15 years and China continues to chafe under its terms of accession (Kerr and Hobbs, 2001). China, however, must have seen the benefits of membership as outweighing the costs of the concessions it was forced to make. After all, a country can choose at any point not to join the WTO. In China's case, prior to accession its access to the U.S. market was reviewed each year, and keeping its access required both economic and political concessions that China found

difficult to accept. Joining the WTO removed the ability of the United States to capriciously threaten China's market on an annual basis – the multilateral rules of the WTO were much preferred by China to the domestic rules of the United States.

Thus, while the process of liberalization appears to have stalled over the 1994-2009 period since the completion of the Uruguay Round, in fact a great deal of liberalization has been taking place. More than 75 countries, including China, have joined the WTO over the period. Each has liberalized its trade regime to some extent as a result of the accession negotiations. The cumulative liberalization is extensive.

Of course, with each new member, benefits of joining the WTO increase. While the number of countries that existed was much smaller in 1947 – decolonization had only just begun at that time – the rate of expansion in membership from the original 23 members cannot be explained solely by the arrival of new independent countries. The larger the size of the club governed by WTO rules, the greater the benefits of being a member. In addition, the rules are getting stronger. Membership rose only slowly in the years after 1947 but has increased more rapidly in later years. Of course, this process will slow as the number of countries remaining outside the WTO becomes small (Kerr, 2002b). Still, Russia and some other large economies such as Iran are not, as yet, members of the WTO.

The small number of countries that negotiated a set of rules for the ITO, including the GATT, could not have envisioned a WTO of 150-plus members – just as Henry Ford probably did not foresee the wide-ranging effects mass market automobiles would have, from freeways, to air pollution to junkyards. Like the automobile, trade liberalization has brought many benefits, but the WTO's detractors have no shortage of problems they can identify. The institutional architecture associated with the most-favoured-nation principle, recontracting and accession has proved particularly robust in fostering ongoing liberalization over the long term. While there have been a large number of additions and changes to the multilateral agreements and organization over time – some of which have worked well while others have proved a disappointment – the trade-liberalizing institutional core has been retained intact. It is often, however, forgotten and not well understood.

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Endnotes

1. See Wilson, 1947. From a speech given upon the completion of the draft charter of the International Trade Organization (including the General Agreement on Tariffs and Trade).
2. See Wyndham-White, 1947. Eric Wyndham-White went on to a long career as the first Executive Secretary of the General Agreement on Tariffs and Trade (GATT) from 1948-1965 and then the first Director General of the GATT from 1965-1968.

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