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ARTICLES

GATT 1994: FOOL'S GOAL?

CLAIRE MOORE DICKERSON*

In this volume, the Editors of the *Journal of Legal Commentary* have united an impressive panel of experts on international trade generally, and on the General Agreement on Tariffs and Trade (GATT) in particular. Some have addressed its theme and purpose, and some discuss this theme and purpose as applied in practice. In order to help the reader situate these articles in context, I am offering a brief summary of the theme and purpose of GATT, and of the concepts manifested by GATT in its attempt to further that theme and purpose. When appropriate, I refer specifically to articles in this volume.

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I. THEME AND PURPOSE, AND FUNDAMENTAL IMPLEMENTING CONCEPTS, OF GATT

A. *Theme and Purpose of GATT*

Having heard so much about General Agreement on Tariffs and Trade (GATT), what is its theme? GATT is a reflection of the cynical assumption that we humans, at least if acting collectively, will behave only according to our perceived self-interest. If we are to reorder behavior, we must first reorder perceived self-interest. And, interestingly, we have to do it in such a way that the individual politicians' self-interest is respected, so that they will have an incentive to convince their constituencies that GATT is in the nation's collective self-interest.

If perceived self-interest is the theme of GATT, its purpose is to create a vehicle that will allow the individual nations and their populations to impose on themselves the discipline¹ not to abuse short-term opportunities at the expense of long-term benefits. The Bunting paper² offers a historical perspective, but GATT's long-term purpose is contained in the phrase mentioned by Professor Dillon in the context of environmental protection: comparative advantage.³ That is, GATT represents the member-nations' acceptance that comparative advantage can increase worldwide prosperity.⁴ Comparative advantage stands for the proposition that, even if one country can produce more efficiently a particular product in absolute terms, it may be that the other country can produce that product more efficiently than it can any other prod-

¹ OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988, CONF. REPORT NO. 576, 100th Cong., 2d Sess., at 16-18 (1988) (stating that principal trade negotiating objective for unfair trade practices was "... to improve the provisions of GATT ... in order to define, deter, discourage the persistent use of, and otherwise discipline unfair trade practices having adverse trade effects, including forms of subsidy ..."); see Curtis R. Reitz, *Introduction: International Economic Law*, 17 U. PA. J. INT'L ECON. L. 29, 31 (1996) (recognizing role of overseer of international governments in disciplining themselves); see also BLACK'S LAW DICTIONARY (6th ed. 1990) (defining discipline in this context as "[i]nstruction, comprehending the communication of knowledge and training to observe and act in accordance with rules and orders").

² Gerald A. Bunting, *GATT and the Evolution of the Global Trade System: A Historical Perspective*, 11 ST. JOHN'S J. LEGAL COMMENT. 505 (1996).

³ Sara Dillon, *Trade and the Environment: A Challenge to the GATT/WTO Principle of "Ever-Freeer" Trade*, 11 ST. JOHN'S J. LEGAL COMMENT. 351, 356-57 (1996).

⁴ See, e.g., CHARLES P. KINDLEBERGER, *INTERNATIONAL ECONOMICS* 17-21, 27, 33 (5th ed. 1973). The most famous, early proponent of comparative advantage was the 18th century economist, David Ricardo. *Id.* He posited that a country would export the product in which it had the greater (comparative) advantage and import the product in which it had a comparative disadvantage for maximum global efficiency. *Id.*

uct. If the perspective taken is of the world as a whole, as opposed to a nation or an even smaller, more fragmentary political subdivision, it is in the best interests of the collective to have the second nation produce that particular product. However, in order for the first country not to produce the particular product in competition with the second country, the former will have to exercise discipline, shunning relatively certain short-term gain in search of greater, longer-term benefits for itself and, incidentally, for the aggregation of world economies.⁵

That is a problem. Politicians seek to manipulate their constituents' perception of self-interest: Ross Perot's argument against free trade in another context was to call it a "giant sucking sound,"⁶ referring to the loss of jobs by workers in the United States. This compelling perspective was subsequently a focus of Patrick Buchanan during his ultimately unsuccessful, but initially spectacular, campaign for the 1996 Republican presidential nomination. Facing this rhetoric⁷ and an upcoming election, a politician would be hard pressed to ask constituents to give up the short-term benefits of perceived job security for the greater, long-

⁵ See generally E. E. SCHATTSCHEIDER, POLITICS, PRESSURES AND THE TARIFF 31-66, 282-93 (1963). In this 1935 study, Schattschneider concluded that interest groups had directly and adversely influenced the tariff through the legislative process that resulted from the disastrous Smoot-Hawley Tariff Act of 1930. *Id.* When short-term political gain dominates, the legislative outcome can be unfortunate. *Id.*

⁶ Ross Perot, 1992 Presidential Debate #3, East Lansing, Michigan (October 19, 1992). When discussing the North American Free Trade Agreement [hereinafter NAFTA], an agreement that, like GATT, supports free trade, Perot suggested, "You implement NAFTA, the Mexican trade agreement, where they pay people a dollar an hour, have no health care, no retirement, no pollution controls, et cetera, et cetera, et cetera, and you're going to hear a giant sucking sound of jobs being pulled out of this country right at a time when we need the tax base to pay the debt and pay down the interest on the debt and get our house back in order." *Id.*; see also ROSS PEROT & PAT CHOATE, SAVE YOUR JOB SAVE OUR COUNTRY: WHY NAFTA MUST BE STOPPED NOW! 41 (1993).

⁷ See Nancy Hill-Holtzman, *Dueling Presidential Campaigns Make Local Stops; Pat Buchanan: A Thousand Show Up to Support the Candidate, Who Vows to Continue in the Race But Skirts Third-Party Speculation*, L.A. TIMES, Mar. 22, 1996, at B1 (reporting continued opposition to GATT by Pat Buchanan during his campaign for Republican nomination in 1996 presidential election); see also Clifford Cobb, Ted Halstead & Jonathan Rowe, *Hear Our Fiscal Scream!*, STAR-TRIB. (Minneapolis-St. Paul), Oct. 2, 1995, at A5 (noting opposition to GATT, organized by environmentalists, anti-corporate populists and social conservatives); Douglas Turner, *Region's Success Under GATT Depends on Taxes, Regulation*, BUFFALO NEWS, Jan. 22, 1995 (listing GATT opponents such as Ross Perot, Pat Buchanan and Ralph Nader as well as organized labor unions). For essentially the same result in the context of NAFTA, see Howard Fineman, *The Phony War, Bob Dole vs. Bill Clinton Politicking Will Turn Off Voters*, NEWSWEEK, Mar. 25, 1996 (naming Ralph Nader and Jesse Jackson along with Perot and Buchanan as alliance that opposed NAFTA).

term good of anticipated world-wide prosperity.⁸ It is, indeed, in recognition of the political difficulties that the United States Congress adopted a streamlined system, dubbed "fasttrack," for the adoption of international trade agreements.⁹ While fasttrack has expired, its one-time existence embodies a recognition that the micro pressures on politicians are inconsistent with the adoption of agreements that, by definition, require the sacrifice of certain short-term benefits in favor of presumed longer-term ones.¹⁰

What would happen if the discipline were not externally imposed by an international agreement like GATT? Would all long-term benefits be unattainable? Would we be relegated to the chaos of short-term gains? Not necessarily. The concept is that individual nations must deal with each other as trading partners on an infinitely iterative basis. This means that international trade is a perfect situation for game theory: nations will tend to want to cooperate, because the consequences of retaliation are too dire.¹¹ However, game theory when dealing with multiparty transactions is far more complicated than the simple bilateral cooperation model. Besides, if game theory really worked predictably and reliably we would not need commercial law, courts or bailiffs. Therefore, an external discipline is necessary if nations and

⁸ See *Business: The Editorial that Spurred GATT Debate*, S.F. CHRON., Nov. 28, 1994, at B5 (commenting on Sen. Ernest F. Hollings' exercise of right to delay GATT bill as chairman of Commerce Committee); see also Keith Bradsher, *NAFTA Hit for Delaying GATT OK*, SAN DIEGO UNION & TRIB., Apr. 6, 1993, at C1 (noting that GATT was scheduled to reach floor of House and Senate shortly before 1994 Congressional elections). With respect to free trade generally, albeit partly in the context of NAFTA rather than GATT, see Judith H. Bellow & Alan F. Holmer, *U.S. Trade Law and Policy Series No. 23: Reflecting on the NAFTA as a Turning Point in American Foreign Policy*, 28 INT'L LAW. 425, 429 (1994). The author points out that President Clinton had put NAFTA at issue in 1994 election. *Id.*; see also B. Drummond Ayrers, Jr., *Perot Followers Unhappy with GOP, Look to 1996*, L.A. DAILY NEWS, Apr. 9, 1995, at N4 (noting Perot's influence in overwhelming Republican win in 1994 Congressional election); David E. Rosenbaum, *Big Push on Trade: Lining Up the Votes; Senators Plan Return for Vote on Trade Pact, After Elections*, N.Y. TIMES, Sept. 30, 1994, at A1 (reporting Senator Hollings' tactical move to hold up Congressional recess with GATT/NAFTA issue during 1994 Congressional election period).

⁹ 19 U.S.C. §§ 2191-2193 (1995). See generally Harold H. Koh, Symposium: *The Uruguay Round and the Future of World Trade: The Impact of the Uruguay Round on United States International Trade Law*, 18 BROOK. J. INT'L L. 143, 143-44 (1992) (discussing fasttrack procedure and its perceived goals).

¹⁰ Indeed, Representative Rohrabacher's article in this volume takes particular aim at fasttrack because the pressures that politicians can bring to bear have been changed. See Dana Rohrabacher, *Pennies for Thought: How GATT Fast Track Harms American Patent Applicants*, 11 ST. JOHN'S J. LEGAL COMMENT. 491, 493 (1996).

¹¹ See, e.g., Jonathan Macey, *Chicken Wars as Prisoners Dilemma: What's in a Game?*, 64 NOTRE DAME L. REV. 447, 449 (1989) (describing three basic types of game theory models). See generally ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (1984) (discussing game theory).

their populations are to achieve the touted benefits of comparative advantage. This discipline must be politically viable. Thus, the purpose of GATT is to serve as an effective external discipline that is politically safe for individual politicians to propose to their constituents.

B. Fundamental Implementing Concepts of GATT

The way in which GATT seeks to achieve this minor miracle is elegantly indirect. It is, I believe, this indirection that makes GATT politically viable. Once the broad concepts have been proposed to and adopted by a national population, the result in favor of comparative advantage follows inevitably (although, as noted above with reference to Professor Dillon's article, not necessarily without controversy).¹²

The three implementing concepts articulated by GATT are: Most Favored Nation (MFN), National Treatment Obligation (NTO) and transparency. These concepts operate as a self-executing, ratchet system. Such principles were first contained in GATT 1947 and were enhanced at each of the subsequent Rounds. The most recent changes were formalized at the end of the Uruguay Round.¹³

MFN means that any member of GATT must treat all member-nations no less well than it treats any other member.¹⁴ This obligation is automatic and generally unconditional, that is, no GATT member can extort any concessions in exchange for equal treat-

¹² Dillon, *supra*, note 3 at 357.

¹³ In order to understand the structure, appreciate that the operative document of GATT 1947 is the General Agreement, but the operative document of GATT 1994 is the Agreement Establishing the World Trade Organization. The General Agreement on Tariffs and Trade: Multilateral Trade Negotiations Embodying the Results of the Uruguay Round of Trade Negotiations, *reprinted in* 33 I.L.M. 1125 [hereinafter GATT 1994]. The Uruguay Round was concluded on Dec. 15, 1993. *Id.* Instruments resulting from the negotiations included the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, *opened for signature* Apr. 15, 1994, GATT Doc. MTN/FN (1993), 33 I.L.M. at 1143 (1994) (whereby signatories agreed "to submit, as appropriate, the WTO Agreement for the consideration of their respective competent authorities with a view to seeking approval . . . and . . . to adopt the Ministerial Declarations and Decisions"); Agreement Establishing the World Trade Organization, *opened for signature* Apr. 15, 1994, 33 I.L.M. at 1144 (entered into force Jan. 1, 1995) [hereinafter WTO Agreement]. See generally, Curtis R. Reitz, *Enforcement of the General Agreement on Tariffs and Trade*, 17 U. PA. J. INT'L ECON. L. 555, 597 (1996) (noting that drafting strategy of GATT 1994 was to expand upon GATT 1947, not replace it). Substantive obligations are contained in the annexes to that Agreement. See WTO Agreement, *supra*, at Annex IA, 22 I.L.M. 1154.

¹⁴ The General Agreement on Tariffs and Trade, art. I, Oct. 30 1947, 55 U.N.T.S. at 196-200 [hereinafter GATT 1947].

ment of all members. This, in turn, means that when one GATT country, in a bilateral arrangement, for example, gives a break in tariffs to another GATT country, the first must offer that same advantage to all members of GATT. And, like a watch, the ratchet is one-way: once the advantage has been offered, it cannot be taken back. MFN, in other words, is the heart of the engine that inexorably pushes the world economies towards a unified, global system of comparative advantage.

The second major concept of GATT is NTO. A GATT member is forbidden from treating domestically produced goods more favorably than imported goods.¹⁵ Discrimination can be blatant, by the imposition of tariffs, for example. It can also be more subtle, for instance, by imposing higher taxes on the sale of goods that tend to be imported, rather than of domestic manufacture. Because there will be domestic pressures to treat domestic goods fairly, the NTO concept is a self-executing method of moving toward lessened barriers to entry of goods. And combined with MFN, the NTO concept irreversibly spreads any benefit to all members of GATT.

The third important concept of GATT is transparency.¹⁶ The idea is simple: if a member-nation imposes a limitation whose cost the traders from other nations cannot quantify, the traders will not be able to respond appropriately. Consequently, GATT generally prohibits quotas because a prospective importer will not know whether its ship will arrive in time to fit under that barrier. Tariffs, on the other hand, are permissible so long as the taxing nation complies with its MFN and NTO obligations, because tariffs are transparent in this sense.

There are exceptions to each of these fundamental concepts. To a significant extent, the exceptions are recognitions of the combined power of MFN, NTO and transparency. In addition, they represent a recognition of political realities. For example, it is possible to have MFN exceptions in favor of developing countries.¹⁷ Otherwise, the latter would not join GATT. There are also

¹⁵ *Id.* art. III.

¹⁶ *Id.* art. XI(1). See generally Patti Goldman, *The Democratization of the Development of United States Trade Policy*, 27 CORNELL INT'L L.J. 631, 664-66, 665 n.117 (1994) (discussing importance of United States working toward more transparent system of international trade).

¹⁷ *E.g.*, GATT 1947, *supra* note 14, art. I(2) & Part II: Generalized System of Preferences; WTO Agreement, *supra* note 13, art. XI:2. Explicit under GATT 1994 in various

exceptions when a technical violation of MFN is considered to be favorable to the development of a unified global trade: free trade agreements and customs unions are expressly permitted, even though they necessarily mean that certain countries will be favored.¹⁸ If these trade arrangements were not permitted, the power of the GATT concepts would work against the GATT purpose just as surely as scaring away potential members would defeat GATT.

There is also a famous category of exceptions that apply in an effort to allay the political fears of potential members. So-called "safeguards" allow a member-nation to retaliate in specified ways if another has violated GATT.¹⁹ Further, member-nations are allowed to impose a special tariff, a "countervailing duty" in the event that another nation is unfairly using its domestic strength so as to support its exports.²⁰ The exception exists although the subsidy is a reverse ratchet otherwise in violation of MFN, and is directed against imports, otherwise in violation of NTO. Similarly, the antidumping exception to the GATT fundamental concepts allows selective retaliation by the imposition of a specific duty in the event that an importer is using its individual strength, as distinguished from the governmental power inherent in a subsidy.²¹ Again, this duty is a violation of both MFN and NTO, but is a protection that each nation would insist on before joining a multinational agreement, and is in furtherance of free trade and the principles of comparative advantage.

agreements annexed to the WTO Agreement, and in the WTO Agreement itself in Art XI:2. *Id.*

¹⁸ See GATT 1947, *supra* note 14, Part III, art. XXIV. Article XXIV sets out conditions under which preferential trading agreements involving GATT members may qualify for an exception from the most favored nation obligation. *Id.*; see also Understanding on the Interpretation of Article XXIV of GATT 1994, 33 I.L.M. 28, 34. This understanding does not change the content of article XXIV, but instead offers an assessment method for evaluating the "general incidence of the duties and other regulations of commerce applicable before and after the formation of a customs union." *Id.*

¹⁹ See GATT 1947, *supra* note 14, art. XIX(1); GATT 1994, *supra* note 13, Multilateral Agreements on Trade in Goods, Agreement on Safeguards, art. II. The Agreement on Safeguards is aimed at the re-establishment of multilateral control over safeguards which are set out in art. XIX of GATT, but not at the elimination of those safeguards. *Id.*

²⁰ See GATT 1947, *supra* note 14, art. VI(1),(3); GATT 1994, *supra* note 13, Agreement on Subsidies and Countervailing Measures. This agreement recognizes the need for consistent resolution of disputes arising from government subsidies. *Id.*

²¹ See GATT 1947, *supra* note 14, art. VI(1), (2); GATT 1994, *supra* note 13, Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, *opened for signature* Apr. 15, 1994, *reprinted in* U.S.T.R., Final Text of GATT Uruguay Round Agreements Including the Agreement Establishing the World Trade Organization 168 (1994).

II. MAJOR TRENDS OF CHANGE WORKED BY GATT 1994

The major trends brought about GATT are in three categories. The first is the movement of GATT toward a more structured form through its dispute resolution procedures. The second is GATT 1994's focused attention to so-called "non-tariff barriers" (NTBs).²² The third is the reach of GATT 1994 beyond trade in goods to trade in services.²³ The outside authors who have contributed to this volume, and two of the student Notes, have focused on the first two of these trends. The third trend is obliquely touched on by a student Note on Child Labor. The Article on Textiles serves as a good reminder of the tension between nationalistic and global perceptions of self-interest, and of the role that GATT plays in the crossfire.²⁴

A. Dispute Resolution Procedures

The first two Articles discuss the significant impact of GATT 1994 dispute resolution procedures. Before the Uruguay Round, GATT members arrived at decisions by consensus.²⁵ In other words, each country effectively had an absolute veto. What is added by the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) is a system of panels and appeals that culminates in allowing the winning disputant to retaliate by the withdrawal of concessions;²⁶ in other words, it is self-executing, even if the loser does not accept the result.

²² See generally THE GATT URUGUAY ROUND: A NEGOTIATING HISTORY 705, 706 [Vol. 1] (T. Stewart ed. 1993) (noting that non-tariff barriers were first formally addressed during Tokyo Round negotiations to GATT 1947).

²³ See Agreement on Trade-Related Investment Measures, MTN/FA 11-A1A-7 in Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, MTN/FA, Dec. 15, 1993, Special Distribution (UR-93-0246). Some would also include the Agreement on Trade-Related Investment Measures (TRIMs) as a shift in trends. I have left it out because it covers only measures relating to the sale of goods (see TRIMs, art. 2), and goods have always been the focus of GATT.

²⁴ Kitty G. Dickerson, Ph.D., *Textile Trade: The GATT Exception*, 11 ST. JOHN'S J. LEGAL COMMENT. 393, 395-98 (1996).

²⁵ See Edward Moy, *Commentary: Regional Politics and Their Place in Building on Environmental Order*, 2 BUFF. ENVTL. L.J. 161, 206 (1994) (noting that sufficient political consensus could result in GATT art. XXV-type waiver as opposed to majority vote).

²⁶ Understanding on Rules and Procedures Governing the Settlement of Disputes [DSU], in Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Dec. 15, 1993, art. 22(3), 33 I.L.M. 1125, 1130 (1994).

B. *Non-Tariff Barriers*

GATT 1994 was the result of the most recent set of discussions, the Uruguay Round. Its major theme, a subtheme of the overall GATT, was to address the NTBs. The earlier rounds of GATT, by their application of the MFN, NTO and transparency fundamental concepts, had significantly reduced the use of trade barriers in the form of tariffs. What the Uruguay Round turned to, then, was non-tariff barriers that have the same impact as tariffs.

Environmental regulations are an example. The United States is frequently accused of using its stiff environmental regulations as a means of keeping imports out. A recent example involved Venezuela's successful use of the World Trade Organization's dispute resolution procedures to complain that U.S. regulations concerning the purity of petroleum products were in fact a trade barrier violative of GATT.²⁷ Professor Dillon's article is an interesting perspective, suggesting that GATT may be an inappropriate vehicle for protection of the environment.

Intellectual property has long fallen into the sphere in which NTB abuses occur. The developed countries accuse the developing countries of allowing the theft of intellectual property as a means of acquiring valuable know-how. The fear of losing control over their intellectual property has been a deterrent to exports by producers in developed countries. These issues of protecting intellectual property are of particular importance to the United States and have been one more vehicle for discussing national sovereignty in the face of GATT. We are fortunate to have five Articles and a student Note that consider various aspects of these issues.

Finally, this volume also includes a student Note on the extent of the safeguards available to United States producers pursuant to the legislation that adopted GATT 1994 for this country. Not only does the Note concern NTBs, but it also predicts application of the WTO's dispute resolution procedures.

²⁷ See, e.g., Richard W. Stevenson, *U.S. to Honor Trade Ruling Against It on Foreign Fuel*, N.Y. TIMES, June 20, 1996, at D4 (reporting that United States would honor adverse ruling after trade panel found that American environmental laws unfairly discriminated against gasoline imported from Venezuela and Brazil).

C. GATS

The "G" in GATT could stand for "goods" if it did not stand for "general." Another of the agreements included in GATT 1994 is the General Agreement on Trade in Services (GATS). The purpose of GATS is to regulate services, not goods. For this reason it is a radical extension of the GATT principles: the "G" in GATS stands *only* for "general."²⁸ Cynically, GATS exists today because, increasingly, it is services rather than goods that the developing countries are exporting. The familiar fundamental concepts of GATT apply to GATS too: MFN²⁹ and transparency (any limitations have to be published).³⁰ NTO, however, applies not by default, but only if specifically included.³¹ This difference, and a particular exception to MFN, reflects the unhappiness of the United States with portions of GATS. Basically, the United States wants to be able to treat foreign service-providers less well than domestic ones.³²

What has not been touched by GATS directly, or by GATT through reference to goods illegally produced, is child labor. This is a difficult problem and the arguments in favor of not banning child labor through multilateral agreements such as GATS or GATT have included varying cultural norms³³ and economic realities of developing economies.³⁴ It will be interesting to see how the

²⁸ General Agreement on Tariffs and Trade, Multilateral Trade Negotiations (the Uruguay Round): General Agreement on Trade in Services [hereinafter GATS], Dec. 15, 1993, art. I(1), 33 I.L.M. 44, 48.

²⁹ *Id.* art. II.

³⁰ *Id.* art. III.

³¹ *Id.* art. XVII.

³² To this extent, MFN has been made conditional, a radical change from GATT. For example, the United States in its GATT statute, 19 U.S.C. § 3555(a), [§ 135(a) in Bill] specifies that it has the right to exclude financial services from MFN treatment. The reason is that United States treatment of foreign financial service-providers has been better than that of other countries, and the United States does not want foreign countries to be able to continue to be less generous to United States financial institutions than the latter are to foreign ones. *See, e.g., Statement of Administrative Action*, submitted to Congress by the Executive, in compliance with Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, § 1103, 102 Stat. 107, at the time when the bill was submitted to Congress, at it applies to GATS, at 297, 309.

³³ *See* Daniel S. Ehrenberg, *The Labor Link: Applying the International Trading System to Enforce Violations of Forced and Child Labor*, 20 YALE J. INT'L L. 361, 403 (1995) (stating that GATT provisions on unfair trading practices could be interpreted to prohibit use of child labor).

³⁴ *See* Barbara B. Woodhouse, "Who Owns the Child?": *Meyer and Pierce and the Child as Property*, 33 WM. & MARY L. REV. 995, 1060 (1992) (noting that child labor in United States in early 19th century was part of family's economic scheme; this scheme was increasingly condemned in United States in 20th century).

apparently disparate issues of child labor and of financial institutions are resolved in future Rounds.

III. CONCLUSION

GATT 1994 is a supremely practical document in support of a particular ideal. The genius of GATT 1994 is in its pragmatism: it recognizes that the politicians have to be separated from any negative short-term consequences of GATT's support of free trade if they are to view it in their self interest to support their nation's adoption of GATT 1994. GATT recognizes that in order to be effective, the politicians must further be separated from the implementation of GATT 1994's policies, especially when the policies prevent the nation from acting in its short-term opportunistic interest. Separation of the politicians, then, is the common thread. GATT 1994 achieves this result in the adoption phase by allowing the politicians, whose time-horizon can be viewed as the interval between elections, to tout the perceived advantages of free trade while projected negative consequences, such as job dislocations, will be felt after the relevant election. It achieves the separation in the implementation phase by creating a system that changes the basic calculus. Because of GATT 1994, it is no longer in a member-nation's short-term interest to act opportunistically: one member-nation's bad acts will lead virtually inevitably and automatically to costly retaliation.

Given the effectiveness of GATT 1994's practical side and therefore its effectiveness in promoting its ideal of global free trade, it is imperative to consider afresh whether the global free-trade ideal of that system is defensible. It is particularly important to do so since GATT 1994 continues the trajectory of the underlying philosophy beyond the elimination of tariffs and even beyond barriers to trade in goods alone. Late in 1994, the new head of GATT's organization predicted that, by the year 2005, the aggregate annual income gain derived from GATT 1994 by the world economy would be US \$510 billion.³⁵ Even if that assertion proves true, we must nevertheless ask whether free trade is an appropriate goal because this gain is not costless. Therefore, as do the authors of this issue, we must continue to question the trade-offs between

³⁵ Paul Lewis, *Top International Trade Official Urges U.S. to Approve Accord*, N.Y. TIMES, Nov. 22, 1994, at A20.

free trade and sovereignty, and between the power of the developed countries and the needs of the developing countries. We must, in short, follow our authors' lead as they question whether comparative advantage is an appropriate justification for free trade.