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A TRIBUTE TO JOHN JACKSON

*Debra P. Steger**

It is indeed daunting to be asked to contribute to this tribute to Professor Jackson. He has been described by Professor David Kennedy as “presid[ing] over the field of trade law in the United States,” as “largely invent[ing] the field,” and as “founding and developing a field or school of law.”¹ In addition to his formidable accomplishments in having international trade law recognized as a field of study, he is known predominantly for his role as an educator. His former students are everywhere in international trade law practice: in Europe, the United States, Canada, Japan, Southeast Asia and Latin America. At the World Trade Organization (“WTO”) Secretariat, where several key legal posts are held by his former students, we are often referred to as the “Michigan Mafia.” It is no surprise that John’s students are sought after—they come with a guaranteed seal of approval!

I first met John at a conference in Vancouver, Canada in 1979. That meeting inspired me to attend the University of Michigan Law School in 1980 to study towards an LL.M. Although I came to the University of Michigan with the objective of specializing in antitrust law and government regulation of business, generally, I left with an all-consuming passion to study and practice in the field of international trade law. The main source of my inspiration was the seminar I took with John.

As an educator, he is unequalled. In his classes, as in his numerous text books, he demonstrates an uncanny ability to reduce extremely difficult concepts or problems to simple, comprehensible forms. His readable, comprehensive texts have served not only to put international trade law on the map as a legitimate legal discipline, but also to educate legions of government officials and lawyers in the United States and around the world about the complexities of the General Agreement on Tariffs and Trade (“GATT”) and now, the WTO.

For me, the seminal book on the study of the GATT is his 1969 text, *World Trade and the Law of GATT*.² In that book, he took an extremely complex set of issues and documents on the workings of the GATT and created a new field of international law. His book, *The World Trading*

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1. David Kennedy, *The International Style in Postwar Law and Policy*, 1994 UTAH L. REV. 7 (1994).

2. JOHN H. JACKSON, *WORLD TRADE AND THE LAW OF GATT* (1969).

System: Law and Policy of International Economic Relations,³ first published in 1989 with the second edition published in 1997, has helped to cement the study of the GATT as a legitimate field of public international law.

Although John is very well-known for his accomplishments as a legal academic, his achievements in shaping and designing the world trading system are less well-known. Indeed, he can be credited with having sown the seeds of the idea to establish a World Trade Organization. Strengthening and improving the institutional structure of the GATT system has long been a passion of John's. At the end of the Tokyo Round, he warned us about the problems that the fragmentation of the Tokyo Round Codes and the GATT would bring.⁴ In 1989, he wrote an important treatise entitled *Restructuring the GATT System*,⁵ which outlined the structural weaknesses of the GATT system and called for a new "constitution" for the world trading system based on the establishment of the WTO as an international organization. In the fall of 1989, the Royal Institute of International Affairs (the publisher of his treatise) held a conference in London to discuss his ideas. This book, and the conference, caught the attention of key Ambassadors in Geneva as well as the then Director-General of the GATT, Arthur Dunkel.

Inspired, once again, by John's convincing and eloquent prose, I wrote a paper advocating some of the ideas put forward in his book which was circulated to certain officials in the Department of External Affairs and International Trade in Canada, including to certain advisors in the office of the then Minister for International Trade, the Honourable John Crosbie. Although most of the Canadian government officials involved in the Uruguay Round took the view initially that these ideas were far too ambitious and would never be accepted by the United States or Japan, the idea of establishing an international organization caught the attention of the Minister, Mr. Crosbie. Convinced of the need to have a rules-based system with a strong institutional structure, he also believed that establishing a WTO would enhance the image and improve public understanding of the world trading system.

I was asked by the Canadian Senior Coordinator for the MTN, Germain Denis, to draft a Canadian position paper explaining why a World Trade Organization was necessary in order to administer the

3. See JOHN H. JACKSON, *THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS* (1989) (2d ed. 1997).

4. See, in particular, John H. Jackson, *The Birth of the GATT-MTN System: A Constitutional Appraisal*, 12 *LAW & POL'Y INT'L BUS.* 21 (1980); and John H. Jackson, *Government Disputes in International Trade Relations: A Proposal in the Context of GATT*, 13 *J. WORLD TRADE L.* 1 (1979).

5. See JOHN H. JACKSON, *RESTRUCTURING THE GATT SYSTEM* (1989).

agreements resulting from the Uruguay Round as well as to prepare a draft charter for a new international organization. In performing these tasks, I sought the assistance of my former professor and mentor, John Jackson. He very quickly agreed to act as a consultant for the Government of Canada, both in preparing a document outlining the basic reasons for establishing an international organization and in drafting a model organizational agreement. John contributed significantly, both in writing and personally, to the Canadian Government's formulation of its proposal to create a World Trade Organization. John was the "guru of honour" at a special brainstorming meeting hosted by Minister Crosbie, and attended by Sylvia Ostry and a few high-level Canadian officials, in Saint John, Newfoundland, in the Spring of 1990.

Two of the background papers I prepared, one setting out the reasons for why it was imperative to establish a World Trade Organization and another on the need for an integrated dispute settlement system, were circulated as Canadian proposals at a G-13 Ministerial Meeting in Mexico in May 1990, the first of several high-level meetings held in the lead-up to what was supposed to be the concluding Ministerial Meeting for the Uruguay Round in Brussels that November. That was followed by a Quadrilateral Senior Officials Meeting (consisting of Canada, United States, Japan and the European Community), hosted by Canada, which took place at Ambassador John Weekes' residence in Geneva in July of 1990. At that meeting, three Canadian papers: on the reasons for establishing a WTO, on the need for an integrated dispute settlement system, and on the difficulties of implementing the Uruguay Round agreements within the existing structure of the GATT system, were discussed.

On a parallel, but separate track, certain officials within the European Community were also beginning to think seriously about these institutional issues. The Italian Trade Minister at the time, Renato Ruggiero, currently Director-General of the WTO, made public statements in early 1990 supporting the idea of establishing an organization for international trade as part of the Uruguay Round agenda. The European Community officially circulated a proposal dedicated to establishing a Multilateral Trade Organization in the fall of 1990, prior to the November Ministerial Meeting in Brussels.

Promoted vigorously by both Canada and the European Community, the idea of establishing a World Trade Organization, or a Multilateral Trade Organization, as part of the Uruguay Round negotiations proved to be a hard sell initially with other countries. The most that Canada and the European Community were able to achieve at the Brussels Ministerial Meeting, which later failed largely over the agricultural talks, was a

commitment in the Draft Final Act to negotiate an agreement leading to the establishment of an organization for the new trading system *after* the Uruguay Round was over. However, as the Uruguay Round negotiations were not concluded at Brussels in 1990, the idea was picked up in the negotiations in Geneva in 1991, and a draft Agreement Establishing the Multilateral Trade Organization was included in the Dunkel Draft Final Act which was produced in late 1991. In the fall of 1991, the then Director-General, Arthur Dunkel, established an Institutional Group, combining the previous Negotiating Groups on Dispute Settlement and Functioning of the GATT System ("FOGS"), which was chaired by Ambassador Julio Lacarte-Muró of Uruguay (now a Member of the WTO Appellate Body and its first Chairman). At Ambassador Lacarte's insistence, officials from the European Community and Canada prepared a draft text of an Agreement Establishing the MTO, which served as the basis for negotiations in the Institutional Group in December 1991. Professor Jackson contributed a comprehensive draft text of an institutional charter to the Canadian Government late that year, but, unfortunately, by that time, the other text was already in play. The Canada-EC text was co-sponsored by Mexico, but several other countries (most notably the United States and Japan) were extremely reluctant about the idea of establishing an organization as part of the Uruguay Round package. They also disagreed strongly with some of the provisions in the Canada-EC draft text, in particular, those relating to decision-making, waivers, amendments and non-application of agreements.

Institution-building is not easy in the complex system of multilateral trade negotiations. After some further refinements of the draft Agreement Establishing the MTO in the Legal Drafting Process conducted from January to May 1992, the idea of establishing an international organization began to attract wider acceptance among the participants in the Uruguay Round. When the United States, under the influence of a new administration in December 1992, decided that it could not support the idea of establishing an international organization, because of domestic concerns about sovereignty, almost all of the other Uruguay Round participants took the firm position that the draft Agreement Establishing the Multilateral Trade Organization was a fundamental part of the Uruguay Round package and could not be tinkered with. Thus, what was only a "glimmer in the eye" of Canada and the EC before the Brussels Ministerial Meeting came to be supported by all Uruguay Round participants (except for the United States and Switzerland) by December 1992.

The two institutional agreements we negotiated in the final years of the Uruguay Round: the Marrakesh Agreement Establishing the World Trade Organization and the Understanding on Rules and Procedures Governing the Settlement of Disputes (“DSU”) are not perfect agreements. Indeed, if we had taken more of John’s suggestions, I am sure that the WTO would have, for one thing, a more workable system for making important decisions, such as amending the agreements or adding new agreements. However, we cannot re-write history, and we are very fortunate that John continues to write and to put forward ideas that offer pragmatic solutions to difficult institutional problems facing the WTO.

An early advocate for the development of a “constitution” for the world trading system, John continues to be the leading legal academic promoting further constitutional refinements in the WTO. In particular, he has emphasized that the rules for amending the provisions of the WTO Agreement and for adding new agreements require too high a threshold of acceptance by WTO Members to be workable. Also, he has questioned whether the rules on decision-making, in particular, the emphasis on consensus decision-making as a rule may lead to possible stalemate and inability to act. While the decision-making rule of consensus ensures inclusiveness—*i.e.*, that all WTO Members are included in most decisions, it can also lead to deadlock. Another institutional weakness of the current system is the lack of an adequate management structure that would allow the Ministerial Conference or the General Council to establish negotiating priorities and to manage issues in an effective manner.

Never one to rest on his laurels, John continues to be on the cutting edge of new ideas and new ways to improve the multilateral trading system. He was one of the first to recognize the critical importance of the relationship between trade and environmental policies to ensure that they are coordinated and not conflicting. He also has been a leading voice in the American Bar Association for participation of private counsel in WTO dispute settlement proceedings, greater transparency in WTO matters generally, and enhanced participation of “stakeholders” other than Member governments, including non-governmental organizations.

Not satisfied with having developed a new field of international law, and having been the inspiration behind the establishment (after almost fifty years) of the World Trade Organization, John is now actively working towards integrating, more effectively, the fields of international trade law and public international law. As a true internationalist, John has been instrumental, first, in establishing international trade law as a recognized field of study, and, second, in bringing international trade

law into the mainstream of public international law. He is now turning his efforts towards developing a more integrated international legal system, with fewer, more effective, governing bodies and tribunals. At the close of this century, it is truly fitting that we pay tribute to a man who has devoted his life to internationalism and the development of international economic law.