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Review Essay

The Tokyo Round and Beyond

INTERNATIONAL TRADE AND THE TOKYO ROUND NEGOTIATION by
Gilbert R. Winham. *Princeton, New Jersey: Princeton University
Press, 1986. Pp. xiv, 449. \$45 (cloth), \$13.50 (paper).*

Judith Hippler Bello†

Professor Gilbert R. Winham's *International Trade and the Tokyo Round Negotiation* is a comprehensive political history of the vast network of negotiations launched by a ministerial trade declaration in Tokyo in 1973 and concluded in 1979. The book's publication in 1986 is auspicious, since in September 1986 another ministerial trade conference—this time in Punta del Este, Uruguay—culminated in a new declaration launching an even more sweeping "round" of multilateral trade negotiations (MTNs). Winham's reconstruction of the major developments of the Tokyo Round, in particular his insightful analysis of the processes through which consensus was sought and often but not always achieved, provide useful background for an understanding of the current Uruguay Round negotiations and perhaps some foreshadowing of future developments.

I. Background to the Tokyo Round

Winham places his subject in historical context by describing the establishment of the General Agreement on Tariffs and Trade (GATT) in 1947. The agreement began as a set of rules on international trade. After the U.S. Congress refused to approve the charter of a planned International Trade Organization, however, the GATT became an organization as well as a body of rules. It aims to facilitate trade through openness and transparency of rules and procedures and to establish non-discriminatory trade practices among nations. While the GATT itself has been amended over the years, the rounds of MTNs held under its auspices have been a major force in the effort to liberalize trade. The first

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six rounds focused exclusively on reducing tariffs, the most visible and easily quantifiable barriers to trade. Of these, the sixth, or Kennedy, round was particularly important: unlike the five earlier rounds, which had consisted primarily of piecemeal horse-trades on specific tariffs, it produced across-the-board tariff cuts on most manufactured goods.

The seventh, or Tokyo, round departed in a fundamental way from its predecessors. Winham explains that while it too pursued tariff reductions, its main goal was to reduce the less visible but often more pernicious non-tariff barriers (NTBs) to trade. Discriminatory government procurement, inconsistent and unnecessarily trade-distortive health and safety standards, and protectionist customs valuation methods are no less harmful to free trade than blatant tariffs. The Tokyo Round culminated in the adoption of a series of codes prescribing rules aimed at reducing these NTBs or at least at making them more transparent. These codes deal primarily with dumping, subsidies and countervailing measures, government procurement, product standards, licensing, and customs valuation.

Winham sets out the major issues at stake, identifies key governmental and individual actors, and notes the developments in negotiations for each major subject of the Tokyo Round. After charting the progress of the Geneva talks and the causes of major delays, he describes how the hurdles to progress—such as an unfavorable economic and political environment and procedural and substantive disagreements—were overcome, or, as in the case of the failed Safeguards Code, proved insurmountable. Finally, and most interestingly, Winham traces the relationship between the internal political developments within some of the participating governments and the multilateral and bilateral negotiating positions that these governments took.

II. Continuing Agricultural Trade Problems

The discussion of the negotiations on agricultural trade illustrates both Winham's approach throughout the book and the relevance of his observations to the current Uruguay Round negotiations. With marked understatement, Winham notes: "So it is that problems not fully resolved in international negotiations often cause difficulties at a later date."¹ Though he is here referring to negotiations on customs valuation, Winham makes precisely the same point when analyzing the Kennedy and Tokyo Round negotiations on agricultural trade.

1. G. WINHAM, *INTERNATIONAL TRADE AND THE TOKYO ROUND NEGOTIATION* 227 (1986) [hereinafter cited by page number only].

Winham then discusses the reasons why agricultural issues tend to reappear and be so divisive.² First, agriculture tends to be viewed as a social rather than an economic problem because of the implications of agricultural production for the geographic distribution of populations. For example, a "failed" agricultural policy often results in population migrations from rural areas to cities, exacerbating existing urban problems. Second, agricultural interest groups are over-represented in the electoral politics of many democratic countries and are able to exercise a disproportionate degree of influence on their own behalf. Agricultural interest groups have been an effective lobby in economic and trade affairs, thus ensuring a dominant role for agriculture in the economic policy-making of most trading nations.

Winham goes on to examine the dynamics of the longstanding adversarial relationship between the United States and the European Community (E.C.) on agricultural issues.³ As an agricultural exporter, the United States has long been a principal *demandeur* of agricultural concessions. Conversely, as a net importer of agricultural products since the late nineteenth century, Europe has long sought to protect domestic producers by resisting freer trade in agriculture. Opposing economic interests have been reinforced by ideological differences; while the United States, particularly under the current Administration, has traditionally been suspicious of the role of government in economic activity, most European countries are accustomed to active and extensive governmental intervention of this kind. Winham notes that recent developments have exacerbated existing U.S.-E.C. differences on agriculture. As its farm economy has deteriorated and agricultural exports have declined, the United States has become more aggressive in its demands for less unfair governmental interference in agriculture and for more access to foreign markets. At the same time, the E.C.'s Common Agricultural Policy (CAP) has proven instrumental in cementing the expanding European Community.⁴ The CAP has also enhanced the influence of the Commission of the European Communities, which sets the target price for commodities under CAP,⁵ vis-à-vis other E.C. agencies. As a result, there has been even sharper resistance to suggestions that the policy be modified.

After exploring in general the reasons why agricultural trade problems recur and characterizing in particular the U.S.-E.C. relationship on agri-

2. Pp. 146-55.

3. See pp. 148-51.

4. See p. 95.

5. See p. 149.

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cultural issues, Winham provides background information on the need for agreement in the agricultural area at the time of the Tokyo Round. He notes that the successes of the Kennedy Round in achieving across-the-board tariff cuts were largely confined to manufactured products. With regard to both trade coverage and tariff reductions, concessions were less extensive for agricultural than for industrial trade.⁶

Winham explains the failure of the Tokyo Round to achieve any fundamental changes in agricultural policy. A central U.S. objective in the negotiations was to subject agricultural products to the same kind of discipline applicable under the GATT to industrial goods. Liberalization in the agricultural sector was the ultimate goal. Yet an equally central E.C. objective, particularly in the procedures surrounding the negotiations, was to ensure that agriculture be treated separately under the GATT. The E.C. was unwilling to accept a position in which it might be forced to trade off agricultural for non-agricultural concessions.⁷

These sharp differences existed from the outset, but were papered over in the ministerial declaration launching the negotiations. Because the dispute clearly could not be resolved head-on, the participants simply postponed dealing with it. For the Americans, the declaration stated that the negotiations “shall cover . . . both industrial and agricultural products”; for the Europeans, it stated that the negotiations “should take account of the special characteristics and problems in this sector.”⁸ As Winham notes, each side thus preserved its position and simply projected the dispute forward into subsequent working-level negotiations. The overall progress of the talks suffered under this burden.

As it turned out, the negotiations stalled for nearly two years—from 1975 to 1977—in large part because of U.S.-E.C. differences regarding agriculture. The two sides disagreed not only on the substance of the negotiations, but also on how the talks should proceed. In accordance with its view of the uniqueness of agriculture and agricultural trade restrictions, the E.C. wanted a special negotiating group to be the exclusive forum for agricultural issues. On the other hand, the U.S. preferred that agricultural issues also be addressed in the groups dealing with tariff and non-tariff measures, for example, in the Subsidies and Standards Code negotiations.⁹

The parties' inability to bridge this procedural impasse effectively blocked all major progress in the Tokyo Round. According to Winham,

6. See pp. 154-55.

7. *Id.*

8. P. 95.

9. See pp. 156-57.

the problem was finally resolved in 1977, due to the newly elected U.S. President's commitment to overall success in the Tokyo Round and his consequent willingness to make concessions on particular issues. President Carter moved to break the deadlock by dispatching his Special Trade Representative, Robert Strauss, to Brussels to meet with several E.C. commissioners. According to Winham, Strauss's mission was to reinvigorate the negotiations by setting a timetable for their completion. He won the E.C.'s support by accepting its demand that agriculture be negotiated separately in view of its "different social and economic aspects."¹⁰ While this compromise was praised for "breath[ing] life" into the moribund negotiations,¹¹ it also ensured results in the agricultural sector that fell far short of original U.S. aims.

Winham's account of the treatment of agriculture in the Tokyo and earlier rounds of multilateral trade negotiations is thus particularly timely. One of the principal U.S. objectives in spearheading the drive for the latest round of MTNs was again the desire to subject agricultural trade to the same regime imposed on industrial trade. This goal was embraced wholeheartedly by a group of fourteen countries, led by Canada, Australia, and Argentina,¹² that formed an alliance in August 1986 to fight European and U.S. agricultural trading policies, particularly the extensive use of subsidies. These countries share the U.S. goal of ensuring that agricultural issues be accorded high priority in the Uruguay Round. As a result of the efforts of the United States and these fourteen countries, the Uruguay Declaration includes the improvement of agricultural rules as a key agenda item. The failure of past rounds has thus served as a prologue to the round currently in progress; we can only hope that Winham and other political scientists and historians will not have to document a similar failure to resolve these important issues in the Uruguay Round.

III. The Distribution of Authority for Concluding Trade Agreements

Winham's book is highly relevant not only to the substance of the Uruguay Round but also to the procedures framing the current negotiations. For example, he describes the legal procedures used in the United States to effect a working partnership between Congress, which has the constitutional authority to regulate commerce with foreign nations, and the

10. P. 166.

11. P. 165.

12. The other 11 countries are: Brazil, Chile, Colombia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, the Philippines, Thailand, and Uruguay. These 14 nations account for nearly a quarter of the world's farm exports.

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executive, which has the constitutional authority to conduct foreign affairs.¹³ Winham recounts how Congress's institutional inability to withstand constituent demands for protectionism resulted in the Smoot-Hawley Tariff Act of 1930. That bill and its ensuing foreign counterparts closed markets around the world and contributed substantially to the Great Depression. To insulate itself from such constituent pressures, Congress in 1934 enacted the Reciprocal Trade Agreements Act. Winham describes this development as this century's watershed event in U.S. trade policy-making, since Congress's delegation of authority to the President to negotiate trade agreements inaugurated an era of relatively open trade.¹⁴

The nature and scope of this delegated authority have changed since 1934. Most recently, the Trade Act of 1974, which gave the Executive authority to participate in the Tokyo Round, emphasized two main features: (1) traditional authority (since expired) to proclaim reductions in U.S. tariffs in exchange for concessions agreed to by trading partners; and (2) authority (effective until January 3, 1988) to submit non-tariff trade agreements, negotiated with Congress's blessing, for its approval under fast track procedures.¹⁵ While fast track procedures do not guarantee congressional approval of a negotiated agreement, they at least ensure expedited treatment by limiting the time for consideration in congressional committees and on the chamber floors and by precluding amendment of the implementing legislation accompanying the agreement. Earlier U.S. trade negotiators were hampered by their inability to foresee the extent of changes in U.S. law that could be required by new non-tariff agreements. Another obstacle was the need to balance Congress's role as regulator of foreign commerce with the President's role as conductor of foreign affairs.

Winham relates how some members of Congress were concerned by the fast track, complaining, in the words of one Senator, that it simply is "not the way we make laws."¹⁶ That concern remains today. During a Senate Finance Committee session last October, a retiring committee member expressed strong reservations about the fast track. In his view, Congress had, with this procedure, delegated too much of its legislative power over trade by ascribing greater authority to the Senate Finance

13. This subject is covered in more detail in I. M. Destler's recently published *AMERICAN TRADE POLITICS: SYSTEM UNDER STRESS* (1986), and in Harold Koh's *Congressional Controls on Presidential Trade Policymaking After I.N.S. v. Chadha*, 18 N.Y.U. J. INT'L L. & POL'Y 1191 (1986).

14. See pp. 35-42.

15. See pp. 133-37.

16. P. 136.

and House Ways and Means Committees and denying all members the prerogative of formally offering and debating amendments to legislation submitted by the President.¹⁷

As introduced, the Senate omnibus trade bill¹⁸ reflects this concern about the fast track. The bill would provide the executive branch with less rather than more authority to implement trade agreements. It would encrust the original fast track procedure with an additional layer of congressional review to protect congressional prerogatives. It would thus preclude the President from using the fast track procedure to obtain legislation to implement trade agreements unless he first obtained congressional approval (itself on a fast track) of executive statements describing the policy to be pursued in international trade negotiations. Such approval, by concurrent resolution of both houses of Congress, would then entitle the President to use the fast track procedure for up to five years.

In my opinion, the Senate omnibus trade bill essentially offers only a fast track to a fast track. The new bill would skew heavily in Congress's favor the careful balance achieved between Congress and the President in the Trade Act of 1974. It would give Congress not just two but three bites at the trade negotiating apple: first, in enacting the bill; second, in subsequently considering executive policy statements; and third, in voting on any implementing legislation accompanying a trade agreement. Such additional congressional involvement gives Congress greater opportunities to pressure the Administration into offering fewer concessions to and seeking further concessions from other governments in the course of negotiations. The limited and delayed fast track authority proposed in the bill as introduced would thus undermine the confidence of America's trading partners that trade agreements negotiated by the Administration would be implemented by Congress. In the background would remain the specter of the Kennedy Round debacle in which the U.S. Executive negotiated two agreements—the 1967 Antidumping Code and the repeal of the American Selling Price method of customs valuation—which Congress later refused to implement.

However, because executive authority to reduce tariffs has already expired and authority to use the fast track procedures for non-tariff agreements expires early in 1988, new authority is needed for negotiations in the Uruguay Round and beyond. The Administration's competitiveness bill¹⁹ includes trade measures that would both provide tariff proclama-

17. Markup Proceedings on S. 1860, Comm. on Finance, 99th Cong., 2d Sess. (Oct. 1986).

18. S. 490, 100th Cong., 1st Sess. (1987).

19. H.R. 1155, 100th Cong., 1st Sess. (1987); S. 539, 100th Cong., 1st Sess. (1987).

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tion authority and make the fast track procedures for non-tariff agreements permanent.

IV. The Uruguay Round and Beyond

Winham makes several points relevant both to the current Uruguay Round and to its predecessors. First, he appropriately notes that trade negotiations are not confined to formal rounds. They continue in the interlude between rounds, with trading partners resolving issues and concluding agreements whenever and wherever possible. Trade negotiations actually comprise only part of the broader policy process in which they are rooted.²⁰

For example, multilateral negotiations about subsidies did not cease with the conclusion in 1979 of the Subsidies Code.²¹ Both before and since that time, the United States has steadily pursued the use of export credits—financing provided to a foreign buyer of domestic products—at subsidized interest rates. While the coverage of export credits by the Subsidies Code has been explored in U.S. countervailing duty cases,²² the United States simultaneously has sought to increase controls on the use of export credits by developed countries through negotiations in the Organization for Economic Cooperation and Development (OECD). These negotiations have led to the conclusion of the OECD Arrangement on the Use of Officially Sponsored Export Credits.²³

More generally, broad-based trade discussions occur regularly through such meetings as the 1982 Geneva Ministerial. While no one expected sweeping new agreements to be concluded at or as a result of that meeting, it obviously contributed to the ongoing trade dialogue and thus laid a foundation for later negotiations.

20. See p. 58. The continuation of trade negotiations outside the context of formal rounds prompted the Reagan Administration to propose that the grant of fast track authority for non-tariff barrier agreements be made permanent. In the section-by-section analysis accompanying its bill, the Administration noted:

In addition [to the Uruguay Round], the United States must also be prepared for negotiations outside the framework of that round and for the period after its conclusion. . . . The Administration, therefore, proposes . . . : permanent authority for the President to enter into non-tariff barrier agreements, subject to fast track approval by Congress of such agreements and implementing legislation

The Trade, Employment, and Productivity Act of 1987, H.R. Doc. No. 33, 100th Cong., 1st Sess. 433 (1987).

21. Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, Apr. 12, 1979, 31 U.S.T. 513, T.I.A.S. No. 9619.

22. See, e.g., Railcars from Canada, 48 Fed. Reg. 6,569 (Dep't Comm. 1983) (final determination).

23. Arrangement on Guidelines for Officially Supported Export Credits (O.E.C.D. 1986) (unpublished agreement on file with the *Yale Journal of International Law*).

Interim negotiations also continue through bilateral or multilateral agreements which can facilitate a future MTN round by serving as a model or test case. For example, an agreement concluded by the United States and Korea last year on the adequate protection of intellectual property rights has helped establish a standard in this rapidly developing area.²⁴ In 1985, the United States and Israel concluded a free trade agreement authorized by article XXIV of the GATT that should demonstrate the benefits of more open markets.²⁵ A similar free trade agreement between the United States and Canada is currently under negotiation. While a comprehensive, multilateral free trade agreement is an unrealistic goal for MTNs, bilateral free trade agreement negotiations—such as those with Israel and Canada—tend to prod the international trade community towards increasingly liberal multilateral agreements.

The recognition that trade negotiations continue both between and beyond rounds may lead one to question the significance of any particular round. Winham anticipates this inquiry and responds that the inauguration and pendency of a formal round serve several purposes. First, their size and sweep make large-scale negotiations highly visible, thus possibly affording some political advantages to the participants. Second, the existence of ongoing negotiations imparts urgency to the problems being addressed and enhances the authority of the process itself. Finally, the majesty of the endeavor heightens the legitimacy of the results.²⁶ These phenomena doubtless will affect the course of the Uruguay Round negotiations. Its participants will seek not only to improve old rules such as those dealing with dispute settlement and trade in agriculture, but also to establish new rules governing such areas as trade in services, trade-related investment measures, and adequate protection of intellectual property rights.

The dynamics of the new round are already emerging. Prior to the September 1986 trade ministerial meeting at Punta del Este, Uruguay, the United States expressed its view that trade in services should be a vital agenda item. However, a small group of developing countries strongly opposed its inclusion. But for the extraordinary visibility and significance attached to this meeting, these countries might flatly have refused to pursue the services issue. Instead, the developing countries

24. Agreement on Intellectual Property Rights, Aug. 28, 1986, United States-Korea (unpublished agreement on file with the *Yale Journal of International Law*).

25. Agreement on the Establishment of a Free Trade Area, Apr. 22, 1985, United States-Israel, entered into force Aug. 19, 1985, 50 Fed. Reg. 35,172 (1985), reprinted in 24 I.L.M. 653-57 (May 1985).

26. P. 25.

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were induced by the resulting pressure, and presumably by their reluctance to be stigmatized as “deal busters,” to agree to services negotiations under the auspices of a Group on Negotiations on Services, separate from a parallel Group on Negotiations on Goods. Furthermore, but for the same visibility and pressure the United States might have balked at the prospect of the services negotiations proceeding off the standard track. Services negotiations are subject in any event to the same timetable and review, and to final disposition by the same overseer (the Trade Negotiating Committee), as the goods negotiations.

Conclusion

As the Uruguay Round negotiations proceed, many of the issues that could not be resolved the last time will undoubtedly be on the table again. In the new areas of discussion, such as services and intellectual property, the parties will bring with them the same parochial interests and political philosophies that informed the Tokyo Round debates. There is, if anything, even more at stake in multilateral free trade negotiations in 1987—particularly for the United States—than there was previously. Certainly, the U.S. trade “crisis” has put these issues in the forefront of public political consciousness. All of these factors make an understanding of the Tokyo Round essential. Winham deserves congratulations for delving through the difficult-to-obtain primary source materials and producing an insightful and cogent analysis. His book should be required reading for U.S. negotiators in Geneva as well as for all scholars of international trade.

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