The Genesis of the GATT

This book is part of a wider project on the economic logic behind the General Agreement on Tariffs and Trade (GATT). This volume asks: What does the historical record indicate about the aims and objectives of the framers of the GATT? Where did the provisions of the GATT come from and how did they evolve through various international meetings and drafts? To what extent does the historical record provide support for one or more of the economic rationales for the GATT? This book examines the motivations and contributions of the two main framers of the GATT, the United States and the United Kingdom, as well as the smaller role of other countries. The framers desired a commercial agreement on trade practices as well as negotiated reductions in trade barriers. Both were sought as a way to expand international trade to promote world prosperity, restrict the use of discriminatory policies to reduce conflict over trade, and thereby establish economic foundations for maintaining world peace.

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The Genesis of the GATT

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Executive Summary

This book examines the rationales for concluding the General Agreement on Tariffs and Trade (GATT) in 1947. We do this mainly by evaluating the historical record, that is, the various phases of the negotiation of the GATT, and also the views, positions, and ambitions of the key negotiating partners. Our goal is not to provide a detailed account of the negotiating history of each and every GATT provision. However, we study the negotiating history of the most representative GATT provisions and, based on this discussion, aim to advance our understanding of the common intent of the GATT negotiators. This volume sets the stage for subsequent American Law Institute (ALI) volumes that will examine the role of economic theory in interpreting the GATT.

Our book consists of three parts: the first examines the diplomatic origins of the GATT in terms of the post-war economic planning by officials in the United States and the United Kingdom; the second studies the evolution of the provisions of the GATT text from the primary negotiating documents to their modern content; finally, the third advances some preliminary thoughts on the historic validity of the various economic- and international-relations explanations for the GATT.

Although we refer to existing historical accounts, we also rely extensively on primary historical sources. The first part uses official memoranda of important bilateral and multilateral discussions as well as the diaries and memoirs of participants. The second is based on the various negotiating documents from the London (1946), the New York (1947), the Geneva (1947), and the Havana (1948) conferences, as well as the Review Session (1955) and the negotiation of Part IV of the GATT on trade and development (1965).

We seek to put the negotiation of the GATT in its historical context. We focus on the particular and time-specific economic problems that confronted
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policymakers in the mid-1940s, as well as how state interests – and even personalities – played a role in shaping the GATT. In comparison to modern-day trade delegations, the small composition of national delegates 60 years ago is remarkable. Back then, a handful of remarkable personalities participated directly or indirectly in the negotiation of the GATT: Will Clayton and Harry Hawkins from the United States; James Meade, Lionel Robbins, and John Maynard Keynes from the United Kingdom; Norman Robertson from Canada; and Alexandre Kojève from France. These remarkable personalities produced a text dealing with highly complicated issues that has managed to withstand the test of time for more than 60 years now. We hope our work sheds new light on some of the possible reasons for this success.
Preface

This book is the first in a series sponsored by the American Law Institute (ALI) on the foundations of world trade law as found in the General Agreement on Tariffs and Trade (GATT) and other agreements dealing with trade in goods under the auspices of the World Trade Organization (WTO). The project is entitled Principles of World Trade Law and aims at illustrating the basic principles guiding trade liberalization. The ALI appointed Henrik Horn, Petros C. Mavroidis, Kyle W. Bagwell, Gene M. Grossman, Robert W. Staiger, and Alan O. Sykes as reporters. Douglas A. Irwin has been invited to act as a coauthor in this first volume.

This book sets the stage for the subsequent volumes by exploring the circumstances that gave rise to the GATT in 1947. It examines the origin and evolution of specific provisions that comprise the GATT, as well as present government documents and negotiate drafts relating to the creation of the GATT. In the course of our research, we have accumulated many intellectual debts that we wish to acknowledge. We are grateful to Lance Liebman and Elena A. Cappella of the ALI for their support of this project. We are indebted to Todd Feldman at ALI for expert editorial assistance. Judith M. Cole and Sandrine Forgeron at ALI helped to organize a meeting at the Columbia Law School on November 8, 2007, in which we were able to receive valuable feedback on our work. We are greatly indebted to the conference participants for their helpful advice and comments: Steve Charnovitz, William Davey, Richard Gardner, Merit Janow, Anne Krueger, Åke Lindén, John Odell, and Joel Trachtman. We also received useful feedback on our work at a meeting sponsored by the John S. Dickey Center for International Understanding at Dartmouth College, and we thank colleagues – particularly Stephen Brooks, Jennifer Lind, and Benjamin Valentino – for useful feedback. We also benefited from the comments of participants at seminars in Washington, DC, sponsored by the American Enterprise Institute, the World Bank, and the International Trade Commission, particularly Claude Barfield,
Preface

Bernard Hoekman, Gary Horlick, John Jackson, Brink Lindsay, and Amy Porges. In addition, we wish to thank Susan Aaronson, Marc Bacchetta, Kyle Bagwell, Chad Bown, Geoffrey Carlson, “Coach” Vince Deluca, Wilfred Ethier, Bernard Gordon, Susan Howson, Harold James, Mark Koulen, Francine McKenzie, David Palmeter, Andrés Rodríguez-Clare, Simon Schropp, Robert Staiger, Richard Toye, Joel Trachtman, and Thomas Zeiler for helpful comments, encouragement, and assistance.

We are further indebted to John Dickson, Luigi Stendardo, and particularly Bruno Ventrone (all at WTO) for being continuously available and for helping us trace documents of utmost importance for this research project. Yahaira Alonzo, Luis Bello, Alexander Blechman, Kory Hirak, and Ashley “Pere-Pere” Pineda responded beyond the call of duty when preparing this book. We are further grateful to Susan Aaronson for providing us with many documents from the U.S. National Archives, which we have supplemented with our own research visits there. We also thank James Miller and Richard Toye for generously sharing with us their unpublished manuscripts on closely related topics. Finally, Irwin thanks the Rockefeller Center at Dartmouth College, and particularly its director, Andrew Samwick, for financial support for the archival research in this volume.
Foreword

The American Law Institute has sought since 2001 to assist the development of coherent and economically rational legal principles governing world trade. We have published three volumes analyzing recent decisions by the World Trade Organization. The chapters analyzing decisions, each the cooperative work of an economist and a lawyer, point the way to interpretations of the relevant treaty that would supply predictability and fairness valuable to nations and to economic actors.

Having focused on specific decisions by the WTO, we have now begun an effort to craft general principles governing this vital area at the intersection of law and economics. Engaged in our work are leading scholars of the field. As is always our practice, their drafts will receive constructive criticism from other engaged experts. Meanwhile, three distinguished professors have prepared this volume, a history of the General Agreement on Tariffs and Trade that supplies important background information for understanding where trade policy and trade law are today. Some aspects of the subject are dry, but this is also a riveting account of growing international interdependency and cooperation as World War II ended and of remarkable personalities, including the great John Maynard Keynes.

The large American Law Institute effort on trade law was conceived and is led by Professor Henrik Horn of the University of Stockholm and Professor Petros Mavroidis of Neuchatel University in Switzerland and Columbia University in New York. This book was authored by Professor Mavroidis, along with Professor Douglas Irwin of Dartmouth College in New Hampshire and Professor Alan Sykes of Stanford University in California. We are immensely grateful to them and to the many individuals who have suggested improvements when they read earlier drafts or attended conferences discussing earlier drafts. We also appreciate...
the generous financial support for our trade-law work from the Jan Wallander and Tom Hedelius Foundation in Stockholm and from the Milton and Miriam Handler Foundation in New York.

Lance Liebman
Director
The American Law Institute