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**Interview of Mr. Åke Lindén
conducted by Rosine Plank-Brumback
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1 **Rosine Plank-Brumback:** This is an interview of Åke Lindén for an oral history of the world
2 trading system being compiled by the Institute of International Economic Law, Georgetown
3 University Law Center. We are conducting this interview at the headquarters of the World Trade
4 Organization in Geneva, Switzerland. I am Rosine Plank-Brumback who has the pleasure of
5 conducting this interview. Thank you so much, Mr. Lindén, for participating in this project and
6 giving us your time. Your firsthand knowledge of four major GATT rounds of multilateral trade
7 negotiations, tariffs, market access issues, as well as your experience as the first head of the
8 Office of Legal Affairs at the GATT are of enormous value to scholars and researchers tracing
9 the evolution of the international trade regime and policy makers and diplomats formulating
10 future policy.

11 To begin this interview I would like you, please, to provide some information about your
12 personal background and career history and then we'll move to your recollections of trade

13 negotiations, particularly on market access, as well as your experience of dispute settlement, etc.
14 So where were you born and raised, and what was your educational background, and what
15 prepared you for an eventual career in the GATT?

16 **Åke Lindén:** I am Swedish by nationality. I was born in 1926 in Stockholm and I spent a good
17 part of my life in Sweden, not in Stockholm but in a place called Bofors in the western part of
18 Sweden about 300 kilometers west of Stockholm, where my father was originally a naval officer,
19 but he became then an official in the Bofors Company. That's a gun-making company,
20 particularly anti-aircraft guns. Anyhow, my educational background is that after my
21 matriculation examination, I studied law at what was then the University College of Stockholm,
22 which is now the University of Stockholm, and then I took my law degree in 1950, and then I
23 went on studying economics, at the Stockholm School of Economics, when I got a master of
24 business administration degree in 1952. I'm sorry, the master of laws was in 1949 and the master
25 of business administration was in 1951.

26 Then I started working for the Swedish Foreign Ministry and essentially I worked on trade policy
27 matters in the relevant part in the ministry of Stockholm, partly in the Swedish Embassies in Rio
28 de Janeiro in Brazil, and in Bonn in Germany. And then I started working on GATT matters in
29 the beginning of 1959, and after about two years I was asked by the Swedish Foreign Ministry
30 people whether I would like to be seconded for a two-year period to the GATT, because they
31 needed strengthening of the staff in GATT for the Dillon Round negotiations, and they never had
32 any Swede working in the GATT and thought it would be nice to have a Swede working there.

33 **Plank-Brumback:** This was already for the Dillon Round.

34 **Lindén:** Yes. So I came in 1961 in March to the GATT for a two-year period.

35 **Plank-Brumback:** For how many years did you come initially?

36 **Lindén:** Originally it was for two years.

37 **Plank-Brumback:** And you ended up staying much longer.

38 **Lindén:** And then it was extended to four years. After four years I had the chance of either going
39 back to the Swedish Foreign Ministry or stay on in GATT, so I decided to stay in GATT. Instead
40 of two years it became ultimately thirty-four years, so I retired the thirty-first of December 1994;
41 it was the day before WTO entered into force. So I have never been working for the World Trade
42 Organization as a staff member. I had a number of consultant jobs for the WTO, particularly in
43 the first years after taking my retirement in 1994, but during the first ten years between 1994 and
44 2004, I worked quite a long time every year on different consultant jobs. But basically really, for
45 the first years more or less a full-time job as a consultant, but later on partly I didn't want to
46 spend all my time on consultant work so I cut down somewhat my activities and WTO was also
47 deciding in the meantime not to use outside consultants, unless it was absolutely necessary, so
48 my jobs for WTO were cut down quite a bit. But I still have a couple of consultant jobs, both for
49 the USAID [United States Agency for International Development] projects: one in Ukraine and
50 one in Central Asia (Kazakhstan, Kyrgys Republic, and Tajikistan). They are not very extensive
51 jobs from the time point of view. Last year I spent I think about two months or a bit more on
52 consultant work, mainly here in Geneva, going through laws to check whether they are in
53 conformity with the WTO requirements. And that's of course the type of job I can do here as
54 well as in the capitals, but the only outside job I had last year was about ten days in Dushanbe in
55 Tajikistan. And then I spent a week in New York, on a kind of roundtable discussion on a book
56 that has been published on the origins of GATT. And this was a meeting at Columbia University

57 to discuss the book and express opinions about whether you liked the book or you didn't like the
58 book, and I must say I liked the book. It was three professors who had written the book. One of
59 them was a Greek professor, Petros Mavroides, who worked for some years in the GATT; he
60 rather worked in WTO but I know him very well. So it was a very interesting discussion.

61 **Plank-Brumback:** Did you finish on that? I thought we would go back to the early years.

62 **Lindén:** As far as my work in GATT?

63 **Plank-Brumback:** You arrived for the Dillon Round, or you were working for the Swedish
64 Ministry?

65 **Lindén:** I worked for the Swedish Ministry until the 15th of March 1961, and the last two years
66 from '59 to '61, I worked with GATT matters in Stockholm.

67 **Plank-Brumback:** What were—let's look at the chronology—the years of the Dillon Round? So
68 how different was it working in the national government on GATT matters and then arriving to
69 the GATT itself?

70 **Lindén:** You know my work in the GATT was from the very beginning work in connection with
71 tariff negotiations in the Dillon Round.

72 **Plank-Brumback:** You fell into that and just loved it, and worked for several decades on it.

73 **Lindén:** Yes, I must say, already in Stockholm, when I worked on GATT matters, I was very
74 much involved in tariff negotiations, tariff matters. Not so much for new tariff negotiations but
75 re-negotiation of tariff concessions. The government wanted to increase the tariffs for some
76 purpose and had to pay compensation.

77 **Plank-Brumback:** That was sort of a blend of your interest in law and economics?

78 **Lindén:** I looked upon myself rather as an economist than a lawyer and my work in GATT, both
79 in Dillon Round and later, was a mixture of law and economy.

80 **Plank-Brumback:** And a lot of politics.

81 **Lindén:** Yes, certainly. There was another odd development, because when I came to GATT
82 there was no legal part of the Secretariat.

83 **Plank-Brumback:** How was the Secretariat organized when you first arrived?

84 **Lindén:** When I first arrived there, it was very small. There was altogether, everybody included,
85 eighty-two people when I arrived.

86 **Plank-Brumback:** Eighty-two people including administrative staff?

87 **Lindén:** Anybody from the doorman to the Executive Secretary.

88 **Plank-Brumback:** That was Sir Eric Wyndham-White?

89 **Lindén:** Exactly. And the Secretariat was actually split up, really in three divisions. One was the
90 administrative division and the others were the trade policy division and the trade research
91 division and just to give you an idea of the size there were altogether around twenty professional
92 officers.

93 **Plank-Brumback:** You were in the trade policy division.

94 **Lindén:** I was in the trade policy division, and we were I think roughly something like eight or
95 ten professional officers plus staff, administrative staff (the secretaries and typists).

96 **Plank-Brumback:** What was the geographic mix of the professionals?

97 **Lindén:** The Secretariat was very much dominated by Anglo-Saxons. There were some
98 Americans, there were British and there were people from the British Commonwealth. I think
99 GATT did not have—WTO too does not have—any national quotas, so it employed people from
100 whatever part of the world and of course at that time the majority of the staff were of Anglo-
101 Saxon origin. There were very few people from developing countries, and there were very few
102 developing countries that were members of GATT at that time. Membership when I joined was
103 thirty-five; now in WTO it is 151, plus about thirty countries negotiating for accession so there
104 has been a sizeable development. And the Secretariat was, as I just mentioned eighty-two when I
105 joined, and now in WTO I think it's over 700, so there has been a certain development over these
106 years.

107 **Plank-Brumback:** So what was it like in the Dillon Round with thirty-some countries
108 negotiating, and what was the role of the Secretariat, of the eight or nine professionals that were
109 there?

110 **Lindén:** The Dillon Round was partly connected with the negotiation of new concessions, but I
111 was particularly involved in negotiations for the establishment of the commitments of the
112 European Economic Community. That was a kind of first part of the negotiations before the real
113 Dillon Round for new concessions started.

114 **Plank-Brumback:** These were the Article XXIV negotiations?

115 **Lindén:** Article XXIV:6, XXIV:5 negotiations, right. And the background documentation was
116 very, very extensive that people had prepared in Brussels at the Commission. I remember when

117 the documentation arrived in Geneva in GATT, there was a big truck full of documents which
118 had been prepared for the negotiations, so there were I think at least four or five tons of paper
119 which had to be distributed.

120 **Plank-Brumback:** And how did the examination of all of that paper follow?

121 **Lindén:** There was a working party, but there was to a very large extent bilateral negotiations,
122 because the working party examined the general incidence of the proposed common market
123 tariff—the European Economic Community tariff—and the previous tariffs in the six member
124 governments. But there were also the negotiations about the individual bindings, how they have
125 been transferred from national bindings to European Community bindings, and the negotiations
126 on individual bindings—it was the largest part of the negotiations. It was very, very extensive.
127 That was a first part of the negotiations before the real Dillon Round for the new negotiations
128 started. One must clear up what the situation was about the existing bindings and how they were
129 being transferred from national bindings to European Economic Community, EEC, bindings.

130 **Plank-Brumback:** How did the contracting parties at the time—the working party—approach
131 the operative term of “general incidence” of tariffs?

132 **Lindén:** The general incidence was—the basic rule in Article XXIV of GATT is—that the
133 incidence of the tariff, common tariff of a customs union, may not be higher than the incidence
134 of the previous national tariffs. Now this turned out to be a complicated matter, because the
135 expression used in Article XXIV is the average level of the *applicable* tariffs and the question
136 was if that meant the applied rates or the higher rates that could legally be applied.

137 **Plank-Brumback:** Article XXIV. My GATT 1947 is falling apart, especially at Article XXIV.
138 This is what we were establishing: a customs union.

139 **Lindén:** Yes, exactly, the establishment of a customs union. “The duties and other regulations of
140 commerce imposed at the institution of any such union ... shall not on the whole be higher or
141 more restrictive than the *general incidence* of the duties and regulations of commerce *applicable*
142 in the constituent territories prior to the formation of such union.”¹ Now that particular
143 expression caused a considerable lot of discussion, because “applicable” is not very clear. In
144 many cases governments had lower tariffs than what they had actually bound in the GATT and
145 then the point was, did “applicable” mean therefore what the countries actually did apply or did
146 it mean what the countries *could* apply under the GATT rules? So “applicable” was a somewhat
147 controversial expression. And the other thing was there was still a number of tariffs which had
148 not yet been finally fixed in the customs union common external tariff, in the agricultural area
149 for example, and it was difficult to form a final opinion before one knew exactly what the new
150 tariff rates would be in all the areas.

151 **Plank-Brumback:** There was also the term “on the whole.”

152 **Lindén:** “On the whole,” yes, exactly. Article XXIV is not 100 percent clear.

153 **Plank-Brumback:** Was this one of the first or earliest times when the contracting parties had to
154 interpret or apply Article XXIV?

¹ GATT Article XXIV:5(a).

155 **Lindén:** It may have come up earlier, I'm frankly not certain about that, but I think it was the
156 first time when discussion—serious discussion—was started on that particular question.

157 **Plank-Brumback:** Was there a consensus reached?

158 **Lindén:** I think the outcome was that “applicable” should mean what they applied, not what they
159 in theory could apply. But then, of course, I mean, that was a question of a general nature,
160 particularly when there was a question of transferring tariff bindings, bound rates, from national
161 tariffs to the European Union tariff. The problem there was that as far as the “general incidence”
162 was concerned—over the whole of the tariff—it was quite not simple, but it was relatively
163 simple, to conclude what was the average level in the individual countries together and the
164 common external tariff. But when it came to bindings, there were very difficult negotiations
165 because if you had a particular tariff binding, that might be of interest to some or perhaps even
166 one member country of GATT, and then you had to—for each particular item—to negotiate with
167 countries where the binding would be higher in the common tariff, it would be higher than the
168 national bindings, to compensate them for that. Now then the idea was that a country would be
169 partly compensated, at least partly compensated, by tariff reductions for other bound items where
170 the common tariff would be lower than the previous bound tariff for a particular member
171 country. But the difficulties—the main history behind it and five tons of documentation—was
172 that you had to take into account the individual bindings for every country of the six. Now it was
173 somewhat less complicated than six, because the Benelux countries (Netherlands, Belgium and
174 Luxembourg) had the same tariffs, so that simplified matters.

175 **Plank-Brumback:** To a certain extent.

176 **Lindén:** But for each individual item, for each individual bound item, you had to look at what
177 bindings there were in the participating six countries and what any particular other member
178 country had interest in, which products they were particularly interested in, what duties had gone
179 up and what duties had gone down, and to what extent the decreases balanced the increases.

180 **Plank-Brumback:** Do you think there was an inherent dilemma in applying Article XXIV:5 in
181 that it is hard to arrive at a common evaluation of “general incidence” when each individual
182 exporting country participating in the exercise will certainly look at the general incidence on its
183 own trade?

184 **Lindén:** Yes, I think the main problem there was rather in XXIV:6 with the question of the
185 bound duties because as far as the general average was concerned, it was less controversial.

186 **Plank-Brumback:** Did all the members collectively agree by consensus that the principles had
187 been pretty much applied in XXIV:5?

188 **Lindén:** Yes. My recollection is that XXIV:5 was certainly less complicated than the XXIV:6
189 negotiations when you had to deal with the bindings. There were difficulties of course with
190 XXIV:5 too but, as I mentioned before, the one problem was that a number of customs duties
191 where the final level in the common external tariff had not yet been decided upon at the time, so
192 that caused problems and I think particularly in the agricultural area.

193 **Plank-Brumback:** Agriculture.

194 **Lindén:** Yeah, agriculture, which has always been a problem, different kinds of aspects of it in
195 the GATT and WTO and still is. Just now in the Doha Round, agriculture is not the only but one
196 of the main difficult areas.

197 **Plank-Brumback:** Was one issue the establishment in the European Economic Community of
198 the variable levy system on agriculture?

199 **Lindén:** Yes, the variable levy was a very large issue in the agriculture area. It wasn't settled at
200 all at the negotiations that preceded the Dillon Round.

201 **Plank-Brumback:** So that would make it a bit difficult for countries trying to determine how
202 they would fare, after the establishment of the customs union.

203 **Lindén:** You are right. My recollection is that the variable levies wasn't at that time as much of
204 a problem as it became later. I don't remember frankly when the European Economic
205 Community really started relying to a very large extent on variable levies. They came much,
206 much later.

207 **Plank-Brumback:** Then it later became the cornerstone of their common agricultural protection.

208 **Lindén:** I don't think at that time in 1961, '60-'61, that variable levies was a main stumbling
209 block—but it became certainly later.

210 **Plank-Brumback:** So did countries reserve their rights then in the Article XXIV:6 given the
211 uncertainty about the development and evolution of the market access system in the European
212 Economic Community? Did they reserve their rights?

213 **Lindén:** One problem with the common tariff was that some actual duty rates had not been
214 finally settled in the Community.

215 **Plank-Brumback:** So how did they resolve that?

216 **Lindén:** I think they resolved it on the basis of what was the preliminary rates that the
217 Commission in Brussels had in mind then with of course with the understanding that one would
218 later on re-negotiate matters when the Community had ultimately agreed on, at that time,
219 outstanding duties. But my recollection is that that question was at that time more a question of
220 technicalities than really a large political problem. Of course, later on the variable levies became
221 a very technically and politically important area where all agricultural exporting countries had
222 very strong feelings about the legality of the variable levies under the GATT. As a matter of
223 curiosity, the original idea of variable levies had actually come up and they were introduced in
224 Sweden, but of course Sweden was not a very large agricultural importer, so the agricultural
225 exporting countries didn't worry too much about the variable levy system when it was applied by
226 Sweden. But later when the European Communities took up the idea, then of course it became a
227 matter of very high importance.

228 **Plank-Brumback:** And a much greater trade impact.

229 **Lindén:** Of course.

230 **Plank-Brumback:** What was your role, what was the role of the Secretariat, during these Article
231 XXIV negotiations?

232 **Lindén:** The role of the Secretariat was, one side of it, was the technical side. You had to keep a
233 record of what people agreed upon, both in XXIV:5 and XXIV:6 negotiations, when they
234 reported results of their bilateral negotiations.

235 **Plank-Brumback:** Did you actually participate in the XXIV:6 negotiations, or you were just the
236 recorder once the participating countries reported back to you?

237 **Lindén:** Actually the Secretariat was rather more involved in recording the results than taking
238 any kind of active part in the actual negotiations. There might have been occasionally some
239 technical questions that came up where the Secretariat was asked for its opinion. I remember one
240 thing was when a country—one of the member countries of the union—had had specific duties
241 and then the final community tariff had *ad valorem* duties, the comparison between the specific
242 duties and the *ad valorem* duties was something that was sometimes quite controversial and
243 where the Secretariat was asked to express an opinion.

244 **Plank-Brumback:** And how did you arrive at a technical opinion on the matter? Were various
245 members of the Secretariat involved? Was the ultimate decision that of the Executive Secretary
246 as to what to advise?

247 **Lindén:** Well yes, I would say the Secretariat—I was then a junior officer, a very junior officer
248 in the Secretariat so I was not involved at the high level discussions. But as far as technical
249 discussions were concerned, I was involved. It wasn't really the Secretariat taking any decision,
250 it was the Secretariat giving advice and its opinion to countries that were negotiating. To the
251 extent that there were matters of general principle where one had to take a decision, that certainly
252 went up to the top, to the director of what was then called the General Division which meant the
253 division that was dealing with all kinds of trade policy questions.

254 **Plank-Brumback:** Who was the director at the time?

255 **Lindén:** When I came, the man who was in charge was the Deputy Executive Secretary, a Dane
256 called Finn Gundelach, who later became the Danish ambassador to the European Union and a
257 Deputy Chairman of the Commission. And, if I'm not mistaken, the Director of the General
258 Division at that time was a Belgian called Etienne, but the trade policy questions were essentially

259 dealt with, of course, by the Executive Secretary, Eric Wyndham-White, but also to a very large
260 extent by Finn Gundelach. Eric Wyndham-White, by the way, had a rather unique experience,
261 because he had been a British delegate when the GATT and the International Trade
262 Organization, which never entered into force, were drafted in 1946–47 so he knew GATT before
263 GATT entered into force. He had a rather unique background in the sense that he had been
264 involved in GATT from the very beginning at a time when the British and the Americans were
265 discussing GATT before the actual negotiations started on ITO/GATT. He had been involved in
266 matters on the British side.

267 **Plank-Brumback:** So you have served under several executive secretaries and directors-general.
268 Could you perhaps say a little about each and maybe compare them to one another in terms of
269 style and substance and their strengths?

270 **Lindén:** The first one was Eric Wyndham-White. As I just mentioned, he had been involved in
271 what became the GATT from before the beginning, and GATT at that time was a relatively
272 simple organization from the point of view of what it covered, because the main part of GATT
273 activities were tariff negotiations and tariff re-negotiations when countries wanted to increase a
274 bound tariff and pay compensation in the form of reducing other tariffs. And such re-negotiations
275 went on all the time, both under general negotiating rounds like the Dillon Round or the
276 Kennedy Round, Uruguay Round, but also in between there were always re-negotiations going
277 on.

278 **Plank-Brumback:** It was the raison d'être of the organization, in other words?

279 **Lindén:** It was, because GATT was essentially an agreement for the reduction of custom duties,
280 and then there were a number of articles to ensure that one wouldn't take other measures that

281 would affect the value of customs reductions, like anti-dumping measures, countervailing
282 measures, subsidies, and quite a number of other technical articles. Eric Wyndham-White left the
283 GATT, I think, in 1967 and he had very much dominated the work in the GATT both of course
284 because of his position as Executive Secretary, and also not the least because of his experience of
285 GATT and the drafting of GATT, but he had a rather unique insight and experience. He was
286 replaced by a Swiss, Olivier Long, and Olivier Long was a person of a rather different type than
287 Eric Wyndham-White who was rather an extrovert, and it was easy for him to establish relations
288 with national delegates to GATT, and he was very much outgoing. Olivier Long was Swiss, was
289 a different type, he was much more an introvert and more reserved in his contacts with people
290 than Eric Wyndham-White had been. Now Olivier Long started his work in the GATT in a rather
291 unfortunate way, because there had been a general agreement amongst the members of GATT, or
292 at least the most important members of GATT, that one would like to have as a successor for
293 Eric Wyndham-White a Swiss trade diplomat—his name escapes me just now but it will come
294 back. In any case, when the GATT member countries—principal ones—got in touch with the
295 Swiss to ask for the Swiss (no, I can't remember his name), the Swiss said no, unfortunately,
296 they couldn't make him available but they had another name to suggest and it was Olivier Long,
297 who had partly a trade background but not as much as the first candidate that countries were
298 looking for. Now the problem was, however, that Olivier Long had been appointed ambassador
299 to the United Kingdom and he had been only a few months in London and he was not at all
300 interested in giving up the London Embassy to be the Executive Secretary of GATT. So I mean
301 he couldn't refuse, because his government had proposed him; they committed themselves, so he
302 had to.

303 **Plank-Brumback:** Why did they decide on having a Swiss to succeed?

304 **Lindén:** I think in this particular case there were two reasons. One is this Swiss man, whom they
305 first had in mind, was an excellent candidate. The other was that Switzerland was a kind of
306 neutral country and a Swiss citizen would be a reasonable appointment because one would avoid
307 —Eric Wyndham-White was a bit special because he was very much involved in all the
308 preparatory work—but otherwise the idea was that one should avoid having someone from one
309 of the large trading nations, but to have somebody from a smaller trading nation. At that stage
310 developing countries played a very small part in GATT so it was rather a question of a
311 representative of a small developed country and then with Switzerland of course, political
312 neutrality was a good background. In any case, Olivier Long came to GATT rather reluctantly
313 because he couldn't refuse to take it up as he had been formally proposed by the Swiss
314 government. And I think to complicate matters, he had not originally been asked if he would be
315 willing to take it up, at least not in very concrete terms so it came as a bit of a surprise to him that
316 he learned that he had to suddenly leave London and go to Geneva as executive director of
317 GATT. I don't know exactly how that worked out. Now he was a very good Director-General.
318 He was very, very bright and though trade policy was not his special background, he
319 nevertheless in the Swiss service had learned quite a lot about trade matters. His negative side
320 was that he was very reserved and he had limited contact with his staff in GATT. Obviously he
321 would have closer contact with people next to him in the Secretariat, but otherwise he was
322 virtually unknown to most of the GATT staff. But his competence was certainly very good.

323 I must say, as a parenthesis, that after he had retired, he started inviting me to lunches at the golf
324 club here where he was a member, and we discussed GATT matters and I found him to be very
325 charming on a private basis. There he was very open and quite happy to discuss all kinds of
326 matters, contrary to the impression I had of him when he was my top boss in the GATT.

327 Then when Olivier Long retired, the question came up of a successor, of course, and then the
328 choice became another Swiss, Arthur Dunkel, who was a Swiss trade policy expert and he, from
329 the point of view of personality, was quite different from Olivier Long who had been very
330 reserved and introverted. Arthur Dunkel was rather the opposite, he was quite open and quite
331 extroverted. An example was that he invited sometimes, particularly on Friday afternoons,
332 members of staff to come into his office and have a glass of whiskey with him, or whatever drink
333 they wanted, and to talk about their work and what problems they might have and so on. And
334 that was something Olivier Long certainly never would have done. Arthur Dunkel was, I think, a
335 very good Director-General, as was Eric Wyndham-White and Olivier Long. Arthur Dunkel's
336 shortcoming was that in the Uruguay Round negotiations, the political aspect became more
337 important than it had been in the earlier tariff negotiation rounds, because the main problems
338 earlier had been rather technical problems. But in the Kennedy Round, and later in the Uruguay
339 Round, the political aspect became more and more important. Arthur Dunkel was a high-ranking
340 ambassadorial level civil servant, but he had no political background, and in the Uruguay Round
341 negotiations it became clear that you needed as the head of the Secretariat—who was also the
342 chairman of the Trade Negotiations Committee—somebody with political contacts at high level,
343 which Arthur Dunkel did not have. So when Arthur Dunkel left, when he came to the age limit
344 on the first of July 1993, many countries wished that he would stay on until the end of the
345 negotiations, which one would foresee would come fairly soon after 1993. But the main
346 countries, and I think not least the United States, felt that one should not keep him after he had
347 reached retirement age but should get in somebody who had more political clout than he had.

348 Then the decision fell on Peter Sutherland, who was Irish. And he had been earlier Attorney
349 General of Ireland and then Vice Chairman of the European Commission in Brussels, and he had

350 contacts at a very high political level as an Irish government member and as a former top official
351 of the European Commission. And I think also another factor was that some of the mainly
352 industrialized countries felt that Arthur Dunkel had a tendency of being too much pro developing
353 countries in the GATT, and so the whole thing amounted to Arthur Dunkel's leaving the GATT
354 on the 1st of July 1993 and being replaced by Peter Sutherland. Peter Sutherland had not been
355 directly involved very much in GATT matters earlier in his career, although he was generally a
356 trade man. He had been Attorney General in Ireland, but I think he was the chairman or president
357 of the Allied Irish Banks at the time he was appointed Director-General. In the meantime the title
358 had changed from Executive Secretary to Director-General but that was back in the late 1960s.
359 Anyhow, Peter Sutherland was a very dynamic person and my title then was Assistant Director-
360 General and Special Advisor to the Director-General and I was specially advising Peter
361 Sutherland about a week and then he thought—he didn't think, he knew—that he knew
362 everything he wanted to know about GATT [laughter], so my special advisory work was very,
363 very limited. No, but he was very good and he had a status internationally at a higher level than
364 the previous directors-general had had, because they were all technicians, very senior technicians
365 but had no real political background.

366 There is a little story, that is a true one, that at one critical stage of the negotiations in the autumn
367 of 1993, when the agriculture matters were as usual one of the main stumbling blocks,
368 particularly where the French were difficult, Peter Sutherland was annoyed with the American
369 position. So the concern was there was something that he thought in the American position was
370 unreasonable and the American ambassador said no, he had strict instructions from the President
371 not to make any concessions on that particular matter. So Peter Sutherland said, then I'll talk to
372 the President, and he called in his secretary and said, would you get a call through to President

373 Clinton in the White House, and she said, yes sir, of course. And the ambassador said, you won't
374 get contact with Clinton because he's far too busy, and then after about a couple of minutes the
375 secretary came back and said that Mr. Clinton is now in a helicopter on the way back to the
376 White House from wherever he had been, and he said that as soon as he has landed in
377 Washington [at the] White House, he will call you and it will be presumably in about fifteen
378 minutes. So the ambassador looked somewhat surprised and after about fifteen minutes the
379 telephone call came from the White House and Clinton, and Peter Sutherland explained what the
380 problem was and why he thought the American position was too rigid. And Clinton agreed and
381 said that he would amend his instructions to the mission in Geneva. That is just an example of
382 something which Peter Sutherland could do which Dunkel never could have done.

383 I think for the success of the Uruguay Round it was very lucky that Dunkel was the Director-
384 General during most of the time of the negotiations, because he was very well-informed about all
385 the technical issues that were discussed in the negotiations, and he had an excellent background
386 there. And he prepared in 1990 what was called the Dunkel Draft for the final outcome, which
387 was a bit premature, but it certainly had a very good influence on the development of the
388 negotiations. At the very end, when the matters came up at the high political level, I think that
389 Peter Sutherland was certainly a more efficient Director-General than Dunkel could have been,
390 but I don't think Peter Sutherland would have been a good Director-General in the earlier stages
391 of the negotiations because he wasn't interested in technical aspects, and he looked upon it from
392 a political perspective. So I think the idea that Dunkel was the Director-General during the first
393 and longest part of the negotiations, to be replaced by a political man, Sutherland, at the very end
394 was a very good solution.

395 I think that meant that Dunkel lost a bit of—felt a bit put aside—because he thought that he had
396 done very much of the groundwork and then suddenly he was put aside and Sutherland took over
397 and got the praise for the success of the negotiations, when I think Dunkel had played a very
398 important role in the earlier part of the negotiations. Anyhow, that was how it was. Now Peter
399 Sutherland had made it clear from the very beginning that he was not going to stay on as a
400 director-general; he wanted to conclude the negotiations. And so he took over on the 1st July of
401 1993 and he left on the 31st of December 1994 so he was Director-General—now wait a
402 moment, no, he must have stayed on a bit longer because the WTO entered into force on the 1st
403 of January 1995 and he was the Director-General of WTO for a short period. In any case, he
404 must have left sometime in early 1995 after about two years.

405 **Plank-Brumback:** We can check the dates for the record and insert them.²

406 **Lindén:** Then he was replaced by an Italian, Renato Ruggiero. It's difficult for me to express
407 any opinion about him or his successors, because then I had left the Secretariat on 31 December
408 1994 so I saw it just from outside. Eric Wyndham-White, Olivier Long, and Arthur Dunkel, the
409 three of them, were heads of the Secretariat from January 1948, when GATT entered in force,
410 until Arthur Dunkel left on 1st July 1993. In other words, they had been there over forty-five
411 years, about fifteen years for each of them. I think Wyndham-White was a bit longer and the
412 others somewhat shorter, but each director-general had a very long experience and worked, as I
413 say, for about fifteen years. After Arthur Dunkel left and Peter Sutherland took over, there had
414 been at least four directors-general under this remaining period. So they have had much shorter
415 periods as heads of the Secretariat than the first three directors-general had. And, furthermore,

² Peter Sutherland was Director-General from 1993 to 1995. His successor, Renato Ruggiero, took up his functions as WTO Director-General on 1 May 1995. See http://www.wto.org/english/thewto_e/dg_e/exdgs_e.htm.

416 there was no rule about the length of term or appointment as a director-general earlier. But then it
417 was decided that a director-general was elected for a four-year period and he could be re-elected
418 for another four years, but periods like fifteen years were excluded.

419 **Plank-Brumback:** Perhaps we can now go back to the preparations for the Kennedy Round and
420 what problems arose preparing for that round and during the round, and what issues had to be
421 decided. What was your role during that period? The Kennedy Round took place 1962–1967.
422 Part IV was added to the GATT.

423 **Lindén:** Part IV was added in the 1960s, yes. I was not at all involved in that matter at that time.
424 The background, by the way, for the addition of Part IV of GATT was that inside the United
425 Nations the UNCTAD [United Nations Trade and Development] was created and the GATT,
426 member countries of GATT, industrialized countries, of course, were afraid that UNCTAD
427 might be a serious competitor to GATT and could take over a large part of GATT's
428 responsibilities. So GATT had to demonstrate that GATT was also interested in particular
429 problems of developing countries. And that was why Part IV was drafted. Now it turned out that
430 the UNCTAD never became a very serious competitor to GATT, because it became very quickly
431 clear that UNCTAD was more a discussion forum than an organization that could take any
432 decisions. I think the introduction of Part IV was a good thing, but the background to it was
433 rather the fear of what might come out of the UNCTAD. In the beginning, by the way, the
434 relations between GATT and UNCTAD were not very good. But gradually, particularly after the
435 Kennedy Round, they improved very much because UNCTAD had given up all aspirations of
436 trying to replace GATT. So from that point of view, UNCTAD concentrated entirely on the
437 problems of developing countries and I think it was useful from the point of view that they
438 could—developing countries could—use UNCTAD as a kind of putting some pressure on the

439 GATT to move towards showing more interest in the problems of developing countries. So that
440 was Part IV and UNCTAD.

441 **Plank-Brumback:** And the Kennedy Round?

442 **Lindén:** I was interviewed in 1961 by the undersecretary in the Stockholm foreign ministry
443 about if I was interested in going to the GATT Secretariat because the foreign ministry had got a
444 request from Finn Gundelach, who was then the Deputy Executive Secretary, whether Sweden
445 could make someone available for short-term work.

446 **Plank-Brumback:** A secondment? Or would you be paid by Sweden?

447 **Lindén:** No, I would have a leave of absence—a secondment—but would be paid by GATT.
448 The Secretary said to me that, you know, GATT's future might be somewhat uncertain in view
449 of the negotiations going on about creating UNCTAD. But he said that if that happens and if it
450 turns out that UNCTAD is really becoming a serious threat to GATT, the industrialized countries
451 would most likely switch over and concentrate on OECD in Paris, so you might end up in the
452 OECD, and I said I wouldn't mind going to Paris, but that was a sideline.

453 **Plank-Brumback:** The Kennedy Round. The negotiations for the formula.

454 **Lindén:** There were several new things coming up in the Kennedy Round. One was the general
455 scope of the negotiations, because GATT had essentially dealt with trade in goods and the tariff
456 aspects. But it had become clear that trade in services had become a very important field, for
457 many countries more important than trade in goods. So many countries, many developed
458 countries, were very much interested in including services in the field of activities of GATT.

459 **Plank-Brumback:** Are you talking about the Kennedy Round? Already in the Kennedy Round
460 there were issues on services? I thought that came later with preparation for the Uruguay Round.

461 **Lindén:** No, I think it came up already in the—no, I’m sorry, forget about that. No, the big new
462 element in the Kennedy Round was, as you mentioned, the formula negotiations because, it
463 turned out that tariff negotiations became more and more difficult because the tariffs were
464 already negotiated down to a low level and in most countries there were sectors of the
465 enterprises, industry and also agriculture, had very strong positions about that in their particular
466 area; it wasn’t possible to go any further down. So the idea of having some kind of general
467 formula for tariff reductions had come up earlier, it had been discussed in the context of the
468 Dillon Round—but it didn’t lead to any concrete decisions.

469 **Plank-Brumback:** Why wasn’t it established in the Dillon Round? It became just too politically
470 controversial at that time? It wasn’t right for people, for countries, to—

471 **Lindén:** I think psychologically the time wasn’t right at that time. But apparently when work for
472 the Kennedy Round started, I think the main industrialized countries in general were quite
473 prepared to take up discussions on some kind of formula for tariff negotiations.

474 **Plank-Brumback:** Who was the main proponent of that? Who were the lead players?

475 **Lindén:** I can’t remember who was the country that actually was the first one to support that
476 idea, but the United States was certainly one country and I think the main—practically all the
477 rule would no longer be sufficient.

478 **Plank-Brumback:** Had run its course—

479 **Lindén:** —would not be very efficient any longer and needed some kind of formula. Now it was
480 clear that governments didn't—even governments that were very much in favor of a formula—
481 were not very prepared to accept a formula without far-reaching decisions. Sorry, there were two
482 things: one was the formula would be applied for the industrial area, not for the agriculture
483 negotiations. And it was not to be applied by developing countries. For developing countries and
484 the agriculture area, one would continue with the old item-by-item negotiations. For industrial
485 products, one would adopt a program for a standard formula for which I think the idea was that
486 one should have a 50 percent—in principle a 50 percent—reduction but governments could make
487 exceptions for particularly sensitive areas.

488 **Plank-Brumback:** Was that limited at all?

489 **Lindén:** No, there was no rule for it, it was all a negotiating matter, how much people could
490 expect from the cuts. But the outcome was an average tariff reduction of, I think, about 35
491 percent so it was a bit lower than the 50 percent aim, but was still a very considerable result. It
492 had also been agreed that one could take up certain non-tariff barriers for negotiation in the
493 Kennedy Round, but the only real result of it was the first anti-dumping agreement.

494 **Plank-Brumback:** And you were involved in that?

495 **Lindén:** I was a bit involved in that, yes. The chairman of the negotiating group for anti-
496 dumping measures was then Deputy Director-General, an American law professor, Gardner
497 Patterson, who did a very efficient job as chairman of the anti-dumping negotiating group. But
498 there were some other non-tariff measures that came up, but the negotiations there didn't lead to
499 anything. The first anti-dumping agreement was the first result.

500 **Plank-Brumback:** And what was the object and purpose, what did that accomplish, that first
501 anti-dumping agreement?

502 **Lindén:** The reason for it was that with the general reduction of customs duties and the binding
503 of practically all customs duties in the industrialized countries, many governments were starting
504 using anti-dumping much more actively than they had done before. And Article VI of GATT that
505 dealt with anti-dumping and countervailing duties was in some respects not very detailed and not
506 very strict. So the feeling was that one had to—as anti-dumping duties became a very much more
507 important policy instrument than they had been earlier, as a result of the general reduction of
508 customs duties—it was necessary to draw up more precise rules for anti-dumping, introduction
509 of anti-dumping measures, than one had had before. And I think the first anti-dumping
510 agreement was a success. Now, the problem there was—which became obvious later in the
511 Tokyo Round where there were quite a few different agreements on non-tariff measures—that
512 these agreements were not generally applicable; they applied only to countries that accepted
513 them. So that meant that you got two levels of GATT. You got the GATT as such, and then you
514 got what was called GATT Plus, which was GATT and some agreements on non-tariff measures,
515 which were generally signed by industrialized countries and some developing countries, but not
516 all.

517 **Plank-Brumback:** Why was the code approach used in the Tokyo Round?

518 **Lindén:** The code approach was simply that it was very difficult to change the text of the GATT.
519 You needed, for some articles, unanimity and some articles you needed two-thirds majority, and
520 it turned out that it was very difficult to achieve that. So one agreed that despite the fact that it
521 was, generally speaking, not very desirable, but that the only way of getting these measures, non-

522 tariff measure agreements into force between the countries that were seriously interested in them
523 was to have a kind of annexes to GATT—codes—because to introduce these measures in the
524 Agreement itself would have been very difficult or at least taken a very, very long time.

525 **Plank-Brumback:** Of course, that opened the door, though, for the dilemma that you had a
526 multilateral instrument applicable to all, and then you had plurilateral agreements attached,
527 which contradicted the very ethos, if you will, of the multilateral instrument.

528 **Lindén:** Yes, I think that was certainly generally agreed, that this was an unfortunate situation,
529 and the result of that later was that in the Uruguay Round all the different agreements were
530 incorporated in what was called the single package so a country would have to accept everything
531 or nothing.

532 **Plank-Brumback:** And you think that was the correct approach, a single undertaking?

533 **Lindén:** Yes, countries would have to accept not only the new agreement—the WTO
534 Agreement—but including all these different, separate codes.

535 **Plank-Brumback:** What was your involvement specifically in the Tokyo Round, which
536 negotiations?

537 **Lindén:** In the Tokyo Round I was involved as chairman of a subgroup to negotiate the
538 countervailing duties agreement. But I was also involved in the tariff negotiations, the formula
539 negotiations.

540 **Plank-Brumback:** Which do you want to speak about first?

541 **Lindén:** That was when one would continue the formula negotiations on tariffs, which was
542 called the Swiss formula which meant that higher duties would be reduced more than lower ones.

543 **Plank-Brumback:** Did the Swiss invent it?

544 **Lindén:** A Swiss-invented formula. The main point in it was that, contrary to the Kennedy
545 Round negotiations where there was talk about a formula of 50 percent with exceptions, the
546 Swiss formula meant that high duties would be reduced more than low duties, and there was a
547 rather complicated formula to assure that. But the end result of the whole thing was that the tariff
548 reductions resulting from the Tokyo Round were about the same level as the tariff negotiations
549 that resulted from the Kennedy Round. I think it was something like 33–34 percent.

550 **Plank-Brumback:** Notwithstanding the attempt to be more ambitious.

551 **Lindén:** Yeah, I don't think that anybody had really expected that the tariff reductions in the
552 Tokyo Round would be more comprehensive than they were in the Kennedy Round, so I think
553 that the outcome—which was essentially the same—was certainly more or less in line with what
554 most people had expected before the negotiations started. Now for the next round, the Uruguay
555 Round, there was no fixed rule about the tariff negotiations, so one went back more or less to the
556 old item-by-item negotiations.

557 **Plank-Brumback:** And we also had, again, EC enlargement Article XXIV negotiations going
558 on, in parallel to the Tokyo Round.

559 **Lindén:** Yes, both Tokyo Round and Article XXIV.

560 **Plank-Brumback:** Were you involved in that?

561 **Lindén:** The accession negotiations?

562 **Plank-Brumback:** From six to nine members.

563 **Lindén:** Oh, you mean—no, I was not very much involved in that. I was involved, as I said, in
564 the original pre-Dillon Round negotiations and also to some extent in the Kennedy Round.

565 **Plank-Brumback:** Maybe we can talk about the negotiations on countervailing duties and what
566 was the object and purpose of those negotiations, what issues arose and had to be decided, and
567 whether you think the outcome was successful.

568 **Lindén:** I think the outcome was successful. Now the problem with the countervailing duties
569 was not so much a problem of countervailing duties as such, but rather a problem of subsidies.
570 The original idea in the drafting of GATT that created the idea of the countervailing duties was
571 that—at an earlier stage before the GATT was established, the countries used anti-dumping
572 duties to cover both dumping in the proper sense and subsidization. But then the idea was that
573 the existence of subsidies and the amount of subsidies would be easier to check than the price
574 comparisons that were a part of the anti-dumping system. So one should create a special type of
575 duties to counteract subsidies. As a matter of fact, many countries never used countervailing
576 duties; they used anti-dumping duties also for countervailing cases with the comparison of the
577 price levels.

578 **Plank-Brumback:** Maybe for the record we should clarify that we are talking about the
579 Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the GATT,
580 which resulted from the Tokyo Round.

581 **Lindén:** Yes. Now Article VI covers both anti-dumping duties and countervailing duties. This
582 agreement, XVI and XXIII, was reference to subsidies.

583 **Plank-Brumback:** And dispute settlement.

584 **Lindén:** Now it turned out that the negotiations on the actual countervailing duties and on
585 subsidies was very much interlinked. Now from the technical point of view, the countervailing
586 duty agreement and the anti-dumping agreement are not very different in investigation
587 procedures and so on, are basically very similar. But the problem with this area was more linked
588 to the subsidies than to the technical questions of countervailing duties. Now there was already in
589 Article XVI of GATT a basic prohibition on export subsidies for industrial products.

590 **Plank-Brumback:** Non-primary.

591 **Lindén:** But the subsidies played a very considerable role, and they still do, in the agricultural
592 area.

593 **Plank-Brumback:** Where it said that you should “seek to avoid” export subsidies.

594 **Lindén:** Yes. It was not very clear.

595 **Plank-Brumback:** And then the “more than an equitable share of world trade” discipline.

596 **Lindén:** Precisely.

597 **Plank-Brumback:** Such as it was a discipline.

598 **Lindén:** Of course, you could argue what this equitable share was about. But the countervailing
599 duties were, I think, roughly what you could have expected at that time. The question of

600 subsidies, I mean the basic GATT/WTO philosophy is that export subsidies distort trade and
601 should be prohibited, while production subsidies—domestic subsidies—are less harmful. And I
602 think now, as a result of the Uruguay Round negotiations, the export subsidies both in the
603 industrial area—but that was already before the Uruguay Round and before the Tokyo Round—
604 but that the agricultural exports subsidies have been reduced. They should have been completely
605 abolished but I think that is still not quite achieved. The other thing is that the big problem in the
606 agricultural area is production subsidies, production support where this has been a great
607 stumbling block in all the tariff negotiations, in all the trade negotiations. It was in the Kennedy
608 Round when it came up, and the Tokyo Round and in the Uruguay Round, and now very
609 particularly in the Doha Round, that agricultural domestic subsidies certainly have a great
610 distorting effect on world trade. And the European Union, or certainly their Common
611 Agricultural Policy, is to a large extent based on production subsidies and also the United States
612 has quite a scope for agricultural production subsidies; particularly one area that's been very
613 sensitive has been the American cotton subsidies, where the cotton producing countries in West
614 Africa and Central Asia are very much concerned by the very large amount that the United States
615 spent on domestic subsidies to cotton growers. And this has been one of the main problems now
616 in the Doha Round. When I learned a bit about GATT—not very much, but a bit—when I
617 studied at the Stockholm School of Economics, I was told that subsidies was, as a matter of fact,
618 not a bad form of trade measures because they were in a way self-regulating because ministers of
619 finance would put a stop to the excessive use of them.

620 **Plank-Brumback:** [Laughter] That was the theory. Sweden also applied variable levies.

621 **Lindén:** True. Even if ministers of finance presumably are skeptical to subsidies, it seems that
622 ministers of agriculture have even more skepticism in not maintaining them.

623 **Plank-Brumback:** So we have the conclusion of the Tokyo Round and what you said was a
624 successful code on countervailing duties.

625 **Lindén:** Yes, I thought the countervailing duty part was a—technically a good code. The
626 problem was how to limit the subsidies and in the agricultural area, it has not been that
627 successful. I think the agricultural export subsidies have virtually disappeared, but the domestic
628 subsidies are flourishing.

629 **Plank-Brumback:** Let's take a five-minute break and then pick up on, after the Tokyo Round,
630 the Tariff Division being established and what your functions were as the Director; here it says
631 1980 to 1982.

632 **Lindén:** Yes. That was after the Tokyo Round.

633 **Plank-Brumback:** Do you want to take a short break five-minute or can we continue?

634 **Lindén:** I'll think about this particular thing and then we can relax for a few minutes.

635 **Plank-Brumback:** And then we can go into your experience on dispute settlement in the Office
636 of Legal Affairs. Just to finish that two-year period in the Tariff Division, what your functions
637 were as director. This was after the Tokyo Round, immediately after. So you're busy recording
638 things, I imagine.

639 **Lindén:** Yes.

640 **Plank-Brumback:** If there is one thing that you could explain—at least for me if not for the
641 researchers who will be reading this—is the issue of “initial negotiating rights” on tariff re-
642 negotiations and how that evolved.

643 **Lindén:** The “initial negotiation right” means that if you want to re-negotiate a customs duty, if
644 you want to increase a bound customs duty on some kind of product, you would have to
645 compensate the exporters. And the exporters are—of course, the principal supplier is—the most
646 important party, the most important country to compensate.

647 **Plank-Brumback:** And how is that determined?

648 **Lindén:** The initial negotiating right means that if a country—now it doesn’t work really any
649 longer, but earlier when the negotiations were item-by-item negotiations, it meant that a certain
650 particular tariff cut was negotiated with another country. Say that Sweden negotiated with the
651 United States, and Sweden had obtained from the United States a tariff concession on, say,
652 spring clothespins, which happened to be a fairly important export product once upon a time; it
653 was at that time when I joined.

654 **Plank-Brumback:** It was state of the art at the time. [laughter]

655 **Lindén:** Then the importing country—the United States—would have to negotiate with Sweden
656 because Sweden was the initial negotiator of the United States for spring clothespins, and is
657 likely also to be the main supplier.

658 **Plank-Brumback:** At the time the binding was negotiated?

659 **Lindén:** No, at the time when re-negotiations would take place.

660 **Plank-Brumback:** Okay, so it’s a different reference point.

661 **Lindén:** This may have been an unfortunate example. But if another country, say Finland, had
662 been the initial negotiator with the United States, so the American tariff concession on spring

663 clothespins had been given to Finland, the initial negotiator had always a right to take part in re-
664 negotiations even if they had no trade at all. I mean because the situation rarely changed that
665 rapidly, that the initial negotiator suddenly dropped down and had no export interest to the
666 United States.

667 **Plank-Brumback:** And all of these are recorded as to who has the initial rights?

668 **Lindén:** They all are recorded. So the initial negotiator had a right to take part in the re-
669 negotiations for products where it was the initial negotiator. If they had no trade and the trade
670 had completely reduced and disappeared, they couldn't claim much compensation but they could
671 at least take part—they had one means of putting pressure on the re-negotiating country because
672 they could refuse to agree with the importing country, which wouldn't pay any compensation to
673 them, and it would always look bad if a country would have a report on the outcome of Article
674 XXVIII negotiations that they said no agreement could be reached with, say, Finland—

675 **Plank-Brumback:** The holder of the initial negotiating right.

676 **Lindén:** The holder of the initial negotiating right. So I think in most cases, governments were
677 willing to give some token concession to the initial negotiator even if the initial negotiator had
678 actually ceased to be a supplier of any importance. But of course this whole thing has become
679 meaningless when you have formula negotiations, because then there is no initial negotiator
680 because the tariff concessions are given on a global basis

681 **Plank-Brumback:** So over time, this whole system of initial negotiating rights has become
682 moot.

683 **Lindén:** Yeah, there was in the beginning, when you had formula negotiations in the Kennedy
684 Round and also in the Tokyo Round, governments were granting, separately from the concession
685 as such, initial negotiating rights to countries who claimed it and the importing country was
686 willing to give concessions. So you had initial negotiating rights despite the fact that the
687 concessions had been given on a formula basis. But you had a separate agreement on initial
688 negotiating rights. And I don't know to what extent—I can't remember, in the Uruguay Round I
689 think there were still some negotiations there on initial negotiating rights if the concessions had
690 been granted on a global basis because the Uruguay Round was complicated because there was
691 no agreement on what kind of basis one should have for tariff negotiations, if it should be on
692 item-by-item or on some kind of limited formula basis.

693 **Plank-Brumback:** So you kept records of all of this.

694 **Lindén:** There are, in the archives, big bookshelves full of bound results of the negotiations,
695 both negotiations in the rounds for new concessions and re-negotiations.

696 **Plank-Brumback:** Are there still secret documents of the market access negotiations of previous
697 rounds?

698 **Lindén:** GATT documents and WTO documents are normally derestricted, made public, fairly
699 shortly after they have been issued, but for negotiating documents there is no rule about
700 derestriction, so now the result is that most negotiating documents are still restricted.

701 **Plank-Brumback:** Are we talking negotiating of text, or negotiating of market access
702 commitments?

703 **Lindén:** Both. This has been something which has been, in a sense, a great pity. In the earlier
704 negotiating rounds, until the Kennedy Round started the practice and it developed in the Tokyo
705 Round and the Uruguay Round, and that was that most negotiations, real negotiations were in
706 informal groups, and there were no records kept in these informal groups

707 **Plank-Brumback:** No summary records or anything.

708 **Lindén:** They reported to the official bodies, but they reported only results, they didn't report the
709 negotiating process.

710 **Plank-Brumback:** The bang up fight that got to the result.

711 **Lindén:** Exactly. And I had a rather funny experience. There was a rather short time before I
712 left, I think it was one time in 1990—I got a request from one of the American professors who
713 had found references to—in the Tokyo Round—to some documents that had been submitted by
714 the United Kingdom and France to one of these informal negotiating groups. Then he asked me
715 if he could have access to those documents, and I said, in principle no, because these were
716 negotiating documents and had not been derestricted. But as this was about fifteen years after the
717 negotiations had taken place, I said to him that what I could do was to ask the French and British
718 if they had objections to these documents being given to this researcher. The French said they
719 had no objection, we could give it to the researcher, and the British said no, they did not agree to
720 giving it to the researcher, and I said, “But this is fifteen years ago; is this document really so
721 sensitive?,” and they said no, the matter was that this represented the British view at that moment
722 when they submitted the document. Later in the negotiations they had changed their view, rather
723 considerably, and they said the first document had been from the point of view of the counterpart
724 in the negotiations, a better position than what ultimately was the position of the British. And

725 they said, now if we agree to have this document made available, and there is reference to it in
726 what this researcher would be ultimately producing, we would be accused of having sold the
727 British industry down the river because the ultimate British request had been less positive than
728 what was in this document.

729 **Plank-Brumback:** This was in market access?

730 **Lindén:** Yeah. It was in the market access area.

731 **Plank-Brumback:** So it may still be secret to this day.

732 **Lindén:** I think they were tariff negotiations, but I was not so much interested in the contents of
733 the documents as in their legal status.

734 **Plank-Brumback:** The issue of its restriction.

735 **Lindén:** Negotiating documents can be controversial, even twenty years after they have been
736 prepared.

737 **Plank-Brumback:** Still controversial.

738 **Lindén:** Controversial, so the governments might be careful.

739 **Plank-Brumback:** It's interesting because I thought all of the GATT documents had been
740 derestricted, but I guess there are different categories.

741 **Lindén:** There are different categories. One thing is that in particular now when we had all these
742 informal groups negotiating back and forth, documents submitted to these groups were normally
743 non-papers so there were no official numbers; they were just working papers. But particularly in

744 the earlier negotiating rounds, and up to the Kennedy Round, most texts—not the bilateral tariff
745 negotiations because it was only the results that were recorded—but for negotiations on legal
746 texts and on general principles for the tariff negotiations, the documents were negotiated in the
747 official negotiating groups and they kept, of course, records of how the discussions went there,
748 how the final text had developed. But unfortunately from the point of view of research, in both
749 the Tokyo Round and the Uruguay Round—particularly the Uruguay Round and I suppose also
750 now in the Doha Round—a very great part of the negotiations are taking place in informal
751 groups outside. And for a long period now in the Doha Round, the negotiations were more or
752 less suspended until it was taken up in 2007, but in the meantime, although officially the
753 negotiations had been suspended, there had been quite a few informal meetings where I don't
754 think the results were very impressive. But the main point is simply that, from the point of future
755 research, the big negotiations round, the negotiating rounds, a very large amount of the total
756 discussions, negotiations, took place in informal groups where there is no written record. Of
757 course the Secretariat was—I don't know how it is in the Doha Round—but in the earlier rounds
758 the Secretariat was certainly present at some of these informal meetings—not all perhaps, but
759 some of these informal meetings—and took records which would be necessary for final
760 submission by the informal groups to the official groups on what they had achieved. I personally
761 kept fairly detailed records of how the discussion went in these groups where I was involved.

762 **Plank-Brumback:** Where are those notes now?

763 **Lindén:** They are kept in files that I left with the Secretariat when I retired, and they are now
764 kept in the Legal Affairs Division and I was a bit involved in a project a couple of years ago.
765 There was a Bulgarian ambassador in Geneva who had the idea of collecting contributions to a
766 book on the Dispute Settlement Understanding from the Uruguay Round and I was very much

767 involved in those discussions, so I was asked if I would contribute to this book. And I think he
768 had approached something like fifteen to twenty national delegates who had been involved in the
769 Uruguay Round discussions on dispute settlement. I thought it was an interesting project, but I
770 started drafting—everybody should write something like ten to fifteen pages on their personal
771 recollections of the negotiations—and I found, when I started looking at my records that were
772 kept there in the Legal Affairs Division, that my recollection was sometimes very different from
773 what had happened when I saw my own notes from the meetings. So I realized that—in any case,
774 that book was never published.

775 **Plank-Brumback:** And of course there are some discussions which are held outside of the
776 Secretariat, outside of the GATT, outside of the WTO which is the case in the '80s in the text
777 prepared by Ambassadors Jaramillo and Girard leading up to the Uruguay Round. Let's take a
778 five-minute break.

779 **Lindén:** I was very surprised when I saw my notes from these informal meetings of dispute
780 settlement from what I thought I remembered from it. [Interview interrupted for brief break.]

781 **Plank-Brumback:** [Interview resumed.] All right, now I'm recording. I just asked Mr. Lindén
782 how he came to be appointed in 1983 as the Legal Advisor to the Director-General but also head
783 of the Office of Legal Affairs, which was the first time that there appeared to be an office so
784 designated, and how was his team organized.

785 **Lindén:** Originally when I came to GATT in 1961, there was not and had never been any kind of
786 legal section, legal expertise in the Secretariat. The idea was that the operational part of the
787 Secretariat—there were lawyers and they were sufficient, one didn't have to have a special legal
788 section. And over the years this became a controversial issue particularly between the Americans

789 and the European Communities, because the Americans wanted to have a legal section because
790 they said that GATT is, after all, a treaty and you need to have some section of the Secretariat
791 that is responsible for interpreting—proposing interpretations of the legal text. The Europeans
792 considered, on the contrary, that GATT was primarily a body for negotiations and that the legal
793 aspect should not be overstressed.

794 **Plank-Brumback:** But it really wasn't a treaty.

795 **Lindén:** It wasn't a treaty no; there was a protocol of provisional application of the agreement.

796 **Plank-Brumback:** An international agreement, of whatever nature, in writing.

797 **Lindén:** I think about a year after I had joined, Eric Wyndham-White decided to employ a man
798 who would be dealing with a kind of legal advice and there was an American lawyer, Noel
799 Torres. He was, I think, a good lawyer, but he got in trouble in the Secretariat because he
800 criticized texts that had been prepared in different parts of the Secretariat.

801 **Plank-Brumback:** He was not very popular.

802 **Lindén:** So he stayed about a year in the Secretariat and then he left.

803 **Plank-Brumback:** That was the first legal—

804 **Lindén:** That was the first embryo of a legal unit.

805 **Plank-Brumback:** Sir Eric Wyndham-White was not a lawyer by background, then?

806 **Lindén:** I don't know, he was from the London School of Economics.

807 **Plank-Brumback:** I see, but he wasn't shy to—as I have heard, he was not shy to—make
808 pronouncements of somewhat of a legal interpretive nature, given his experience in the
809 negotiation of the instruments, especially in settling disputes.

810 **Lindén:** No, he handled dispute cases and legal opinions on the whole. Of course he relied to
811 quite some extent on the staff in the Secretariat dealing with these particular matters. We had to
812 write memoranda to him on how we looked on matters that came up for discussion. But after this
813 experience with Mr. Torres, it took a long time for this question to come up again because, as I
814 say, it was the opinion of the Americans who said that there should be some legal specialists who
815 would look at the texts and would advise in disputes. And the European Union position was that
816 the GATT is essentially a negotiating forum and there is no need to have a legal section. There
817 are legal officers, officers with legal backgrounds in the operational divisions, so they can deal
818 with the legal matters that come up.

819 **Plank-Brumback:** That included you. Were you hired more as an economist or as lawyer at the
820 time?

821 **Lindén:** I was myself more as an economist than as a lawyer, but I had a law degree. But
822 anyhow—it turned out that—I can't remember at all what the item was—but there were
823 originally two divisions in the Secretariat because as I told you from the beginning when I came
824 there were only two—no, there were three Divisions in the Secretariat: the Administrative
825 Division, it was the Research called the Intelligence Division, and the General Division that dealt
826 with trade matters in general. Now the General Division ultimately split up so it became about
827 five or six different trade policy divisions instead of one, gradually over the years.

828 **Plank-Brumback:** That was particularly after the Tokyo Round.

829 **Lindén:** Yes, it was already after the Kennedy Round. The first thing was that a separate
830 Agriculture Division was set up and that must have been about the time of the Dillon Round.
831 And then there was set up a Development Division. Agriculture I think was first and then
832 Development Division. And then a special Tariff Division was set up and the Non-tariff
833 Measures Division—there was a great split up. But it so happened that, on one occasion in
834 particular, that two similar matters had come up in two different divisions. It had come up in the
835 Agriculture Division and then in the Non-tariff Measures Division—it was virtually the same
836 question that had come up—but the Agriculture Division because it was an agricultural problem
837 and in the Non-tariff Measures Division because it was a question of a non-tariff matter. The
838 basic question was the same but the outcome had been quite different in the dispute settlement
839 when it was handled by the agricultural division than by the other division.

840 **Plank-Brumback:** Were they interpreting or applying the same rule?

841 **Lindén:** They were the same rules they were applying but I wouldn't say it was 100 percent the
842 same matter.

843 **Plank-Brumback:** Do you recall what year this was or what the issue was?

844 **Lindén:** No. I think it was about a year and a half before I was appointed Director of the Legal
845 Affairs, 1983–84, and then legal advisor, yeah. Must have been about 1982, I imagine. Anyhow
846 it was of course unfortunate that the same issue had been dealt with in two different ways.

847 **Plank-Brumback:** This was a matter that had gone to a panel?

848 **Lindén:** I think the matters had gone to panels but the advice the panels had got was different in
849 the case of the two divisions. Anyhow, it was a rather unfortunate situation, so that strengthened

850 the American request that there should be a central legal function in the Secretariat. And then the
851 European Union said no, the European Community said no, they didn't think it was necessary.
852 And then what happened was that then the Chief of the Administration in GATT, who was
853 Dutch—Hielke van Tuinen—retired, and he had earlier been an operational officer in the
854 Agricultural Division and he might have been Director of the Agriculture Division. In any case,
855 the Director-General took the responsibility to keep Mr. van Tuinen, after his retirement, as a
856 legal consultant in the Secretariat. His background was legal.

857 **Plank-Brumback:** This was Director-General Olivier Long?

858 **Lindén:** That must have been '82, that would have been—

859 **Plank-Brumback:** No, that would have been Arthur Dunkel.

860 **Lindén:** Dunkel, it was Dunkel, decided to employ Hielke van Tuinen as a temporary legal
861 consultant of the Secretariat, and the European Union—European Economic Community—
862 grumbled a bit but they accepted it, I suppose in view of the fact that there had been this
863 unfortunate divided opinions on a similar legal matter. But after about a year, Hielke van Tuinen
864 wanted to retire finally, and then the question came up of establishing a legal office and that was
865 accepted by everybody, including the European Economic Community, but the next question
866 was, who should be responsible for this legal office? The Americans wanted to have one of the
867 law professors that were dealing with GATT matters, for example John Jackson or Bob Hudec,
868 or they could also accept a French lawyer, Thiébaud Flory, that the Americans had suggested as a
869 possible name. But the European Union said, no, we accept the establishment of the legal office,
870 but the head of the legal office must not be a theoretical GATT legal specialist, he must be a

871 practical pragmatic law man. So after some discussion back and forth they agreed that I could be
872 a candidate, because I had a law degree.

873 **Plank-Brumback:** Was this a surprise to you?

874 **Lindén:** Yes, it was a surprise, because I had never thought of having an entirely legal job—of
875 course there were legal aspects involved in my work, particularly in tariffs, market access. But
876 the European Union suggested me because I was pragmatic enough to be acceptable to the
877 Community, rather than any professor or what the Community called a theoretical GATT lawyer.
878 So I accepted the job with some hesitation. I used to say I was appointed because I was a bad
879 lawyer—I was more a pragmatist and a realist than a lawyer. Anyhow I must say I found the job
880 interesting, so I didn't regret afterwards that I had taken it up.

881 **Plank-Brumback:** And what disputes were you directly involved in and what was your role?

882 **Lindén:** I can't remember exactly. I remember one particular—there was a question of, it had to
883 do with vitamins.

884 **Plank-Brumback:** B-12 wasn't it, vitamins for feed?

885 **Lindén:** Vitamins. Yes, the problem was this vitamin had different uses, and I can't remember
886 exactly what happened, but the point was that the tariff concession on this type of vitamin was
887 applicable to both these different uses, so anyhow I remember this particular case—I was then
888 secretary to the dispute settlement panel. And I had produced a report of about thirty to forty
889 pages and that was considered to be a very lengthy, too long panel report. And I was involved in
890 two panels here, now, in the WTO, the panel on asbestos products, and that report was more like
891 four hundred pages, but that was just one example. Another panel I remember was about electric

892 transformers.³ The importing country was New Zealand and it was a question of anti-dumping
893 measures. It was a large electric transformer that was not a standard product, so dumping was
894 difficult to establish—there were two producers that were competing, one in Finland and one
895 was in New Zealand. And the Finland one was the one that was ultimately bought by the
896 government. In any case the arguments were of course highly technical because there wasn't any
897 product that you could compare it with, because this was a specific type of transformer that was
898 constructed just for the buyer. And the producer in the importing country, New Zealand, thought
899 that the price of this transformer had been put at too low a level and it should be an anti-dumping
900 duty on the product. Anyhow I can't even remember what the outcome was, I think that the panel
901 found that it could not be demonstrated that this had been a sale at a normal price and that it
902 really was a case of dumping. So the New Zealand calculation of prices was justified. Then it so
903 happened that just a couple of months after this case came up, the Finnish company bought the
904 New Zealand company.

905 **Plank-Brumback:** So the issue was resolved, in a certain way.

906 **Lindén:** Then the most difficult cases were cases concerning subsidies because I remember two
907 or three panels, and they were remarkable panels, in the sense that the reports were never
908 adopted by GATT.

909 **Plank-Brumback:** There was the wheat flour and sugar.

³ See Report of the Panel, *New Zealand—Imports of Electrical Transformers from Finland*, L/5814, 19 June, 1985, available at <http://sul-derivatives.stanford.edu/derivative?CSNID=91140151&mediaType=application/pdf>.

910 **Lindén:** Most of the panel reports were ultimately adopted despite the fact that the losing
911 country had objections, but they ultimately agreed to adopt the report.

912 **Plank-Brumback:** And the first exception was, I believe, the Spanish soy oil case with the
913 United States, an Article III.

914 **Lindén:** Yes.

915 **Plank-Brumback:** That was the first time that the losing party, in this case the United States,
916 blocked adoption of the report, which it did not do lightly. You could argue that the panel was
917 really wrong in its interpretation of Article III and certainly in the light of new jurisprudence.
918 And then there was a whole series of agriculture reports.

919 **Lindén:** Yes. In any case there were about, I think, three or four panel reports that were never
920 adopted.

921 **Plank-Brumback:** Citrus preferences and—

922 **Lindén:** I think there was one rather odd case. It concerned agricultural subsidies. Normally one
923 tried to get three neutral panelists, the standard composition, but somebody got the rather curious
924 idea in this case to have one panelist that more or less represented the complaining party's view
925 and another panelist representing the country complained against, and then one could have an
926 impartial chairman, and that turned out to be a very special experience because the chairman,
927 who was Japanese, couldn't make up his mind.

928 **Plank-Brumback:** And this was the wheat flour case?⁴

929 **Lindén:** I think it was.

930 **Plank-Brumback:** With a Canadian and a Swiss member.⁵

931 **Lindén:** Anyhow, this panel report was never adopted. But otherwise the panel reports—the
932 very large majority of the panel reports—were adopted, despite the fact that the losing country
933 had complaints against it but they didn't oppose the adoption. We were talking about how I
934 happened to take up the legal job. It was essentially the idea that I was pragmatic enough to
935 satisfy the European Community.

936 **Plank-Brumback:** Do you have any recollections of the negotiations leading to the launch of the
937 Uruguay Round at Punta del Este in 1986? In particular, there was an issue that arose—I don't
938 know whether you were involved—whether in the lead-up to Punta del Este whether the Chair
939 could summon a special session of the contracting parties or whether this would require a vote,
940 and this was an important issue because certain countries were trying to block consensus on the
941 launch of the new round. Do you remember that event?

942 **Lindén:** Yes.

943 **Plank-Brumback:** And what the advice was?

944 **Lindén:** I remember there were very different ideas.

⁴ See Report of the Panel, European Economic Community – Subsidies on Export of Wheat Flour, SCM/42, 21 March 1983, available at <http://sul-derivatives.stanford.edu/derivative?CSNID=91140151&mediaType=application/pdf>.

⁵ The panelists were H.E. Ambassador Fumihiko Suzuki (Japan) as Chairman, with Mr. D. E. Hobson (Canada) and Mr. R. Lempen (Switzerland).

945 **Plank-Brumback:** Whether the contracting parties voted on convening a meeting?

946 **Lindén:** When was that?

947 **Plank-Brumback:** This would have been in the lead-up to 1986 that arose in my interview with
948 David Hartridge. It was 1985, whether the chair could summon a special session—the chair on
949 his own responsibility. There were rules on the contracting parties, right?

950 **Lindén:** I'm afraid I can't frankly remember how the matter was settled.

951 **Plank-Brumback:** Do you remember what the issue or advice was then about voting?

952 **Lindén:** I could try to clarify.

953 **Plank-Brumback:** What was your involvement in the negotiation of the Dispute Settlement
954 Understanding? We were talking about this history of the series of unadopted reports and also in
955 the Montreal meeting?

956 **Lindén:** In the Uruguay Round.

957 **Plank-Brumback:** There had been some rules more or less decided upon at Montreal, you had
958 the 1979 code, if you will, the understanding on how the legal system had evolved up to then—
959 and then that was supplemented a little bit later and the decision was taken, I believe, in
960 Montreal to follow certain better practices and then later, of course, the Dispute Settlement
961 Understanding as a result of the Uruguay Round.

962 **Lindén:** Yes, the Uruguay Round, because of the problem of getting the panel reports adopted,
963 there were different ideas how to deal with it.

964 **Plank-Brumback:** Development of the negative consensus.

965 **Lindén:** Negative consensus.

966 **Plank-Brumback:** How did that arise? Do you remember how the proposal came?

967 **Lindén:** There were different ideas of how one should settle the problem of non-adoption. One
968 idea that came up was that the parties to a dispute should not take part in the decision on the
969 adoption or non-adoption of a report, but the general opinion was that that would not work
970 because the country that was opposed to the adoption of a report could always get somebody else
971 to object on their behalf. So then this problem was discussed at length before this so-called
972 midterm meeting—it was supposed to be halfway in the Uruguay Round.

973 **Plank-Brumback:** December 1988, the midterm review in Montreal.

974 **Lindén:** Then at the discussion in Montreal there came up different ways of settling this
975 problem.

976 **Plank-Brumback:** You were in Montreal?

977 **Lindén:** Yes. I can't remember who came up with the idea, but the suggestion was that one
978 should have an automatic adoption of reports. Another related problem was how to decide on the
979 setting up of a panel because there had been objections to the setting up of panels, that the party
980 complained against argued that there was no need to set up a panel.

981 **Plank-Brumback:** Could block the establishment of a panel in the Council.

982 **Lindén:** Yeah, so the negative consensus idea came up both as far as setting up of a panel, the
983 establishment of a panel, the adoption of the report, and the reference to the Appellate Body, that

984 would be a kind of higher instance. And a party to a panel who was not satisfied with the
985 outcome could bring an appeal to the Appellate Body. Some countries were in favor of a pure
986 automaticity, that a request for a panel should always be agreed to and that a panel report should
987 always be adopted. Now the other countries did not agree to the automaticity in these cases.

988 **Plank-Brumback:** Who was pushing for automaticity?

989 **Lindén:** I frankly can't remember. I think it was the Commission in Brussels, the Communities,
990 but I'm not certain on that point. Then the idea came up of what was later called the negative
991 consensus, that panels should be set up and their reports should be adopted unless there was
992 consensus not to set up the panel or adopt the report, which meant in practical terms
993 automaticity, because it was utterly unlikely that the party who had asked for a panel should
994 change their mind and agree to the non-setting up of a panel and also the same thing with the
995 adoption of a report, that the party who had won a dispute would not take a position against the
996 adoption of the report.

997 **Plank-Brumback:** Be in favor of adoption is how it would work out in practice.

998 **Lindén:** Yeah, so even if it was not called an automatic procedure it meant in practical terms that
999 it was automatic, because you would never get a consensus against the setting up of a panel or
1000 the adoption of a report.

1001 **Plank-Brumback:** Unless the winning party decided that yes, the panel was wrong and the
1002 winning party should have lost, which in practical terms would seldom, if ever, arise.

1003 **Lindén:** This was combined with the fact that there would be set up an Appellate Body so a
1004 country that had lost a case—

1005 **Plank-Brumback:** Had redress.

1006 **Lindén:** Had always the possibility to appeal to the Appellate Body. So that was the ultimate
1007 solution. That was one of the things I had mentioned earlier, that when I looked at the papers
1008 from the meetings of the dispute settlement group that my recollections were not quite
1009 corresponding to my notes from the meetings. The chairman of the negotiating group on dispute
1010 settlement—

1011 **Plank-Brumback:** I was going to say, that was chaired by Julio Lacarte, Ambassador Lacarte.
1012 Was he a very important personage in forging alliances and getting consensus on the
1013 Understanding?

1014 **Lindén:** Yes, I think Julio Lacarte did an excellent job as chairman. One thing was that he had a
1015 very long experience of GATT, he has been involved in GATT matters before the actual entry
1016 into force of GATT. He was seconded by the United Nations—he worked in the United Nations
1017 Secretariat and he was attached to the drafting group in the preparatory group for GATT, and
1018 then he had been, all his career, more or less involved in GATT matters. He had been Chairman
1019 of the Council and Chairman of the Contracting Parties a couple of times, and Uruguayan
1020 representative to GATT.

1021 **Plank-Brumback:** So a good choice on dispute settlement, a very critical part of the new
1022 architecture of the WTO—what would eventually become the WTO.

1023 **Lindén:** It was agreed from the beginning that dispute settlement would be one of the main
1024 points in the negotiations, and I think the selection of Julio Lacarte as chairman was certainly a
1025 very, very good one, because he had a very great amount of poignance and his experience was

1026 better than probably anybody else for this particular job. The Secretary was a Chilean staff
1027 member, Hector Millan, and my job was as advisor to the chairman, and that was a very odd job,
1028 because the chairman certainly didn't need any advice, because he knew more about GATT than
1029 I did. [laughter] But in any case, we worked together very well. Julio Lacarte certainly did an
1030 excellent job. I think it was agreed that the dispute settlement—no, the negotiations after the
1031 halfway meeting in Montreal continued, of course, until the very end of the negotiations, and
1032 there were some additions to what was agreed in Montreal, and particularly the setting up of the
1033 Appellate Body was really controversial because particularly the European Union was very keen
1034 on stressing that the Appellate Body should not be a regular part of the Secretariat but it should
1035 be an independent body. And the Community suggested that it should not be located in Geneva,
1036 it should be located somewhere else. They suggested, for example, Strasbourg,

1037 **Plank-Brumback:** [laughter] Which happens to be in the Community, next to the parliament.

1038 **Lindén:** Some less ambitious idea was that the Appellate Body should be located in Nyon. That
1039 would be a demonstration that it was not a part of the regular Secretariat.

1040 **Plank-Brumback:** Somehow separate.

1041 **Lindén:** Separate. And ultimately then this idea was given up and it was accepted that it would
1042 be in the Secretariat, but it should be considered as something separate. The size and
1043 composition of the Appellate Body—one particular matter that came up that I thought was
1044 unfortunate was that the members of—the composition of—the Appellate Body should be
1045 generally corresponding to the membership of the WTO.

1046 **Plank-Brumback:** You said you found that unfortunate.

1047 **Lindén:** The idea was that one should have representatives of the different parts of the world. So
1048 there should be one European, one American, one African, and one Asian including Australia—
1049 no, I think it was one North American and one South American and one African, one European,
1050 and one Asian. Anyhow, no, I think what was unfortunate was this means that you may well
1051 have two excellent representatives from one of these areas, but you can't take more than one
1052 otherwise it would not be representative of the composition of the membership of the WTO.
1053 Sometimes you have problems finding somebody who is considered to be competent enough and
1054 is willing to take up the job.

1055 **Plank-Brumback:** And is unaffiliated with any government.

1056 **Lindén:** Yes, and may not be affiliated with any government, right.

1057 **Plank-Brumback:** It says "broadly representative of the membership of the WTO."

1058 **Lindén:** Yep. And another point was how an 'affiliate of a government' would be interpreted.
1059 One case that came up was about universities because in Europe, most universities are
1060 government universities; in the United States, for the most part, they are private universities.

1061 **Plank-Brumback:** Some of them are state universities.

1062 **Lindén:** Yes, but private universities are rather rare in Europe so if a university professor for a
1063 state university should be considered as being affiliated with the government—I think it was
1064 agreed that he would not be.

1065 **Plank-Brumback:** These are all things that had to be worked out in the negotiations later on,
1066 settling on the composition.

1067 **Lindén:** Quite a number of them were taken up in what was called the Legal Drafting Group
1068 after the final meeting of the Trade Negotiations Committee.

1069 **Plank-Brumback:** I was going to ask you what your involvement was in the legal scrub.

1070 **Lindén:** This Legal Drafting Group dealt with all kinds of issues. I mean the name was rather
1071 misleading, because it was much more than a legal drafting group because the legal drafting was
1072 expected to be just a refinement of the texts.

1073 **Plank-Brumback:** And the intent of the negotiators put in a more artful form.

1074 **Lindén:** But it turned out that the work was really negotiating work in this Legal Drafting
1075 Group, and I was involved in that aspect, in the refinement of the Dispute Settlement
1076 Understanding and the setting up of the Appellate Body.

1077 **Plank-Brumback:** So all of these issues arose.

1078 **Lindén:** There were lots of questions that came up there. One of the things that came up there
1079 was the equality of sexes, and one shouldn't use "he" when one talked about jobs or
1080 appointments of chairmen—not chairmen but chairpersons, and this turned out—it sounds a bit
1081 ridiculous, but it was sometimes rather difficult to say he/she—that was also considered odd so I
1082 tried to avoid such gender references.

1083 **Plank-Brumback:** And just use nouns like a member or an official.

1084 **Lindén:** Now this was a drafting point, of course, and not a point of substance, but there were
1085 quite a few points of substance that came up in this group. One was to change the GATT text
1086 from GATT 1947 to GATT 1994, and that one should then try to change the text, for example,

1087 replace “Contracting Parties” with “Members,” and there wasn’t really any substantive changes.
1088 There were some, but anyhow, one should at least try to align the 1994 GATT text to the WTO
1089 text, say, for example, one shouldn’t talk about contracting parties, one should talk about
1090 members, and one shouldn’t talk about CONTRACTING PARTIES in capitals, one should talk
1091 about Ministerial Meetings or whatever phrase one would use. In any case, unfortunately the
1092 Legal Affairs Division considered it would take too long a time to amend GATT on every point
1093 to correspond to WTO language, and the idea was given up. I was originally appointed Legal
1094 Advisor to the Director-General.

1095 **Plank-Brumback:** 1985 to 1988 and then you were special advisor.

1096 **Lindén:** I think one should start a c/v with the first appointment and then move down to the last,
1097 but of course the Americans wanted always the latest appointment on top, I don’t know why. But
1098 Director, Office of Legal Affairs, 1983 to 1984, and then in 1985 I became Legal Advisor, and
1099 then it was changed in 1989 to Special Advisor. The reason for that was that in the meantime
1100 they had set up a Legal Affairs Division.

1101 **Plank-Brumback:** The successor to the Office of Legal Affairs.

1102 **Lindén:** Yes, the Office of Legal Affairs was originally called so because it was a rather
1103 temporary solution and one didn’t want to call it a Division, but then after the Legal Division had
1104 been established—the Legal Affairs Division—the Director-General obviously thought that it
1105 would be better to call me Special Advisor, because otherwise it would, in a sense, infringe on
1106 the importance of the Legal Affairs Division.

1107 **Plank-Brumback:** We were talking about the legal scrub and were there any other issues that
1108 arose, of whatever kind, leading up to the actual signing of the WTO in Marrakesh?

1109 **Lindén:** One important thing that came up was originally in the first stage of the negotiations.
1110 When one had agreed to incorporate the TRIPS [Agreement on Trade-Related Aspects of
1111 Intellectual Property Rights] and TRIMs [Agreement on Trade-Related Investment Measures]
1112 and services, the idea was one could keep the name GATT, even after the enlargement of the
1113 scope of the activities, but then I think it was Canada who suggested that one should change the
1114 name—one should call the organization something else to make it clear that this was something
1115 different from the old GATT. And then the suggestion came up of what it should be called. Some
1116 people thought it should be called the International Trade Organization but that was not very
1117 popular because this went back to the failure to establish the ITO.

1118 **Plank-Brumback:** 1940s.

1119 **Lindén:** Yes, in 1948 the ITO was never adopted by the Americans, so the Americans made it
1120 clear they wouldn't accept the name ITO. So somebody suggested the World Trade Organization
1121 but there was already a United Nations organ, World Tourism Organization, in Madrid and you
1122 couldn't very well have two "WTOs." So then one agreed on the rather unfortunate name
1123 Multilateral Trade Organization. Then just before the very final meeting, after the Legal Drafting
1124 Group had finished its work actually, just before the Marrakesh meeting, the American
1125 representative said that he had got instructions from the President that the organization must be
1126 called "World Trade Organization" and the Americans obviously had talked to some people
1127 about it, so there was a general acceptance.

1128 **Plank-Brumback:** Was this part of the conversation when President Clinton got off the
1129 helicopter and called back Peter Sutherland?

1130 **Lindén:** No, that was earlier. So the Americans put it in very strong terms that they insisted the
1131 organization be called the World Trade Organization and of course most countries thought that
1132 World Trade Organization was a better name than Multilateral Trade Organization, and I was
1133 sitting just behind the Director-General, Peter Sutherland, when this matter came up. The
1134 Americans insisted on WTO and got support from some other important members of the
1135 committee. The American proposal was adopted, so that one agreed it should be World Trade
1136 Organization and then I wrote a little note to the DG [Director-General], that this means
1137 problems with the World Tourism Organization, and he scribbled down, “I know, but you settle
1138 it!” [laughter]. The Deputy Director-General of WTO came up to Geneva, and obviously this
1139 matter had come up in the WTO in Madrid.

1140 **Plank-Brumback:** In the World Tourism Organization.

1141 **Lindén:** World Tourism Organization, and the Madrid Secretariat had found that in the World
1142 Tourism Organization, it was even amongst their own members, quite a strong sympathy for the
1143 new GATT association being called the World Trade Organization. So the WTO in Madrid—in
1144 French and Spanish there was no problem (it was the Organisation Mondial de Commerce
1145 (OMC) in French and the Organisation Mondial de Tourisme (OMT), so it was only in English
1146 that if there was any doubt which organization was meant, the WTO should call itself WTO-
1147 OMC and the organization in Madrid would call them WTO-OMT to make it clear which
1148 organization was meant. Now there could be some problems there, because in the service area,
1149 tourist matters could come up, in both WTOs.

1150 **Plank-Brumback:** There might be some confusion as to which organization.

1151 **Lindén:** Anyhow, the thing went through, and that was that.

1152 **Plank-Brumback:** And they signed at Marrakesh, and they established the WTO.

1153 **Lindén:** And it was called the WTO and everybody was, I hope, happy. The Americans told me
1154 that the one who insisted on the WTO was not so much the President, but it was Hillary Clinton
1155 who had told her husband that Multilateral Trade Organization is a hopeless name, because 99
1156 percent of the world population wouldn't know what the Multilateral Trade Organization does,
1157 so she said it must be the WTO. And I think she was right, but it was unfortunate that it came up
1158 as a kind of ultimatum just before the Marrakesh meeting.

1159 **Plank-Brumback:** I hadn't realized that she had taken such an interest in trade matters other
1160 than what a bad idea NAFTA was, that is what she is maintaining in the Ohio primaries today;
1161 very interesting. First let me thank you very much for—

1162 **Lindén:** During the rest of your stay here, if there is something you want to take up with me,
1163 please do. You can always call me at home at Nyon.

1164 **Plank-Brumback:** Wonderful, wonderful. I thank you so much, Mr. Lindén, for your invaluable
1165 insights and taking time for this project, which I'm sure will be of great interest to researchers
1166 and future trade diplomats. Thank you.

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1168 [END OF INTERVIEW]