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**Interview of Julio Lacarte Muró
conducted by A. Jane Bradley
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1 **A. Jane Bradley:** This is an interview of the Honorable Julio Lacarte Muró for an Oral History
2 of the World Trading System being compiled by the Institute of International Economic Law of
3 Georgetown University Law Center. The date is Wednesday, October 8, 2003, and the
4 interviewer is Jane Bradley. We are conducting this interview at the Georgetown Law School in
5 Washington, DC. Ambassador Lacarte, thank you so much for participating in this oral history
6 project. We very much appreciate your giving us your valuable time. To begin the interview I am
7 going to ask you to provide some information about your personal background and career
8 history, and then we'll move on to your recollections and perceptions of the multilateral trading
9 system. And I also should add that, given time limitations today, we would like to regard this
10 session as the first in a series of interviews with you. So, if we can begin, maybe you should tell
11 us where and when you were born and take it from there.

12 **Julio Lacarte Muró:** All right, I will be very brief about that. I am Uruguayan and I was born a
13 long while back. I was born in 1918. I am a career diplomat and have one way or the other
14 delved into diplomacy and international negotiations throughout my career. I have been
15 ambassador in many places. I have been ambassador in Washington, at the Organization of
16 American States, in Argentina, Bolivia, Ecuador, Germany, Japan, and been concurrent
17 ambassador in India and Thailand. I have been Permanent Representative to the Latin American
18 Free Trade Association, to the United Nations organizations in Geneva and, naturally, to the
19 GATT [General Agreement on Tariffs and Trade]. Twice, I have been Chairman of the GATT
20 Council. I have been, let's see what else, I have been a member of the Economic and Social
21 Planning Committee at the United Nations [UN] and of its equivalent in Latin America. I have
22 been Minister of Industry and Trade in Uruguay. At one time I dabbled in politics, as you can
23 see, since I was Minister—but I also ran for the vice presidency of the country and I have also
24 been in the United Nations Secretariat twice. Once in 1977 to 1980, and that was the second
25 time, when I had the wish to get away from the country for a time because of internal political
26 issues, I was at UNCTAD [United Nations Trade and Development] in Geneva and I was
27 Director of Economic Cooperation among developing countries. Previous to that I had joined the
28 United Nations in 1946 and that's where I became first connected with the GATT, or rather with
29 the incipient GATT. And I might say that my diplomatic career began in London where I was
30 Secretary of the Embassy and Secretary of its Commercial and Financial Department when the
31 United Nations Preparatory Commission was set up. It met in London. I was a member of the
32 Uruguayan delegation. I was a young member of course, but I was fairly active. I was also a
33 member of the delegation to the first half of the first Assembly of the United Nations and one
34 thing or the other led me in the end to joining the UN Secretariat where I stayed for two and a

35 half years. And that is where my connection with GATT begins. If you wish, we can go on from
36 there.

37 **Bradley:** All right. Well, Ambassador Lacarte, you are in the unique position—among all of
38 those whom we might be able to interview—of having been involved in the GATT, and now the
39 WTO [World Trade Organization], system since its inception and continuing up until today. So
40 as you’ve been involved in the trading system in such a wide variety of roles, both as a diplomat
41 and an official in the GATT and in the Secretariat, I think it might be useful if we approached
42 this morning’s session chronologically. Tell us a bit about what I would call institutional
43 issues—the original negotiations for a proposed international trade organization that were not
44 successful in the late 1940s—then the evolution of the GATT as an institution. And perhaps, if
45 we have time, we can conclude with some of the—describing the negotiations that led to the
46 creation of the WTO, that was the negotiating group in the Uruguay Round of which you were
47 the chairman. So, perhaps you should start by telling us what role you played in the Havana
48 Conference.

49 **Lacarte Muró:** I think I should start before Havana.

50 **Bradley:** Okay.

51 **Lacarte Muró:** With a small anecdote, if I may. When I joined the UN Secretariat, I went into
52 the Economic Department, and initially this was a time when the Secretariat was being set up,
53 and I was doing three jobs. I was Acting Director of the Division on International Trade and
54 Balance of Payments. I was administering the Economic Department and I was Special Advisor
55 to the Assistant Secretary General for Economic Affairs, who was Sir Arthur David Owen, a
56 very pleasant English chap. And we were at that time in Hunter College, so you can see what an

57 early stage it was, even before the United Nations installed itself at Lake Success before finally
58 going to its final headquarters where it is now. And my office was a classroom, which had been
59 cleared of chairs and I had a desk and a chair and this large expanse of room. And David Owen,
60 who had his room next door, walked in on me one day and I noticed he had a piece of paper in
61 his hand. And I had the immediate feeling that that paper was for me. But David didn't say
62 anything about that. He mentioned different things and casually walked here and there around
63 the room. And then he said, "Julio, I'll be going off now," but then he went by the corner of my
64 desk and he dropped this piece of paper on the corner and said, "Julio I wonder if you would take
65 care of this." So I said, "fine," and I picked it up, and what was it? It was the printed version of
66 the first American proposal for an International Trade Organization [ITO]. And it's a copy which
67 I still have in my possession. So that was my initiation into this new project. And so inevitably I
68 took charge of it within the UN sphere. The issue was taken to the Economic and Social Council,
69 a Preparatory Committee was set up, and in that Preparatory Committee the USSR [Union of
70 Soviet Socialist Republics] declined to take part. The only Eastern European country that
71 participated in that committee was Czechoslovakia. And of course some very prominent players
72 of today's trading world were absent because of the consequences of war; that means Japan,
73 Germany, Italy of course were not on that Preparatory Committee. The Preparatory Committee
74 first met in London. Subsequently, we had a meeting at Lake Success, a more technical meeting.
75 And finally in 1947 in Geneva, the Preparatory Committee countries—which were just, I think,
76 eighteen—met to do two jobs. One was to finalize a draft charter for an international trade
77 organization and the other was to simultaneously engage in tariff negotiations that would give a
78 lead on trade liberalization as it was intended at that time. That conference took six months in
79 Geneva. It went through spring, summer and early autumn. And on that occasion the countries

involved put down their schedules of tariff concessions. The only thing that was being negotiated was tariffs—much less sophisticated than what we have today in the WTO. And they finalized the draft charter for the International Trade Organization.

Bradley: Who were the key players?

Lacarte Muró: Well, inevitably the United States was the most important player by far. At the end of the war the United States was crushingly the most important trading country in the world by a very, very substantial margin. We must remember the destruction, material destruction, in Europe, material destruction in other parts of the world, disruptions of world trading flows, and the United States was easily the most powerful force. I think the next most influential force was Britain. Britain, of course, was a very close political and strategic ally of the United States. Britain had overcome a very terrible five years during the war, but they were very active, they had very good negotiators, and I would say the British were probably the next most important. And then you had the French, inevitably, and after that it was more or less a mixed bag. But there was a dominance of North Atlantic relationships. I might say also that Canada and Australia and New Zealand were, as always, very active in trading issues. So those were the main players, I would say, in the Preparatory Committee. Then, it had been settled that Havana would be the site of the world conference and we gathered there in late 1947 and into early 1948. Decolonization had not yet taken place to any substantial degree, so the total number of countries participating was just somewhat over fifty—a far cry from the 148 who are today members of the WTO and the even bigger number who are members of the United Nations. At Havana one group that was very active was the Latin American group. Latin America in the Preparatory Committee was represented by Brazil, Cuba and Chile. But some new players came into play during Havana and they were very influential. Argentina was one, Mexico was another, and my own country as well.

103 We had a very, very active and competent Minister of Finance at the time, and he was one of the
104 leading figures at the conference as well. And we must remember that because there were present
105 only fifty-odd countries, Latin America—which was fully represented—was nearly one-third of
106 the conference. So there was a big participation by Latin America.

107 **Bradley:** Can I ask you, because I think we will want to come back to this when we talk about
108 the more recent negotiations, about this idea of countries expressing their positions as a group?
109 Was it—is that how it happened, was there a spokesperson for the group of Latin American
110 countries?

111 **Lacarte Muró:** No, if I remember right, not too much. Obviously there were common interests
112 involved and you naturally coincided very much with the next fellow. May I say, between
113 brackets here, that my role there was Deputy Executive Secretary of the Conference. I had
114 become, I have forgotten to mention, I had become Deputy Secretary of this incipient secretariat
115 for the GATT and—

116 **Bradley:** And you later became deputy?

117 **Lacarte Muró:** Yes, and in due course I returned to my government, but which I will tell you
118 that later. So while you couldn't say that there was an active Latin American group that met
119 every morning and prepared strategy and so on, there was obviously a whole area of common
120 interest where people coincided. And some of the delegates were very competent people indeed.
121 And some very, very strong debate took place at Havana, very strong indeed. However, the
122 conference developed well. There was a great deal of well-done technical work on areas like
123 balance-of-payments issues, articles that concerned the Monetary Fund, the job was very well
124 done. And in the end the conference approved a text: the Charter for an International Trade

125 Organization. Now, if I may just interject here, I had been thinking all the time of reverting to
126 my own government service and I stayed after Havana until the end of the year. In December
127 1948 I returned to my government, but until then I was involved with the GATT Secretariat.
128 Well, as you know, the Havana Charter was not ratified by the US Congress—and that was
129 definitive. I think the only Parliament that ratified the Havana Charter was Australia's. And
130 Australia, if I remember rightly, conditioned its approval on American ratification. So the US
131 Congress denied its approval to the Charter. It denied it again some time later, so in the end the
132 Havana Charter never came into being.

133 There are a lot of questions asked sometimes as to why the US Congress did not approve the
134 Havana Charter. I guess there are many possible reasons. One is that the Havana Charter
135 included certain chapters which may or may not have been welcome in the US Congress—
136 chapters on economic development, restrictive business practices, employment. Those were
137 sensitive areas at that time, as they still are. And I think there was possibly, I don't know, really
138 I'm just speculating here, the feeling that the predominance of the United States in world trade
139 was such that the United States could very well proceed without any international trade
140 organization, but this is all, I repeat, speculation on my part.

141 However, the meeting in Geneva where the Preparatory Committee members had negotiated
142 tariff concession schedules had given rise to a provisional arrangement to apply those tariff
143 concessions ahead of the Havana Conference. And this had been done by selecting certain
144 provisions of the draft ITO charter and applying them provisionally as cover for the tariff
145 schedules. And, as we all know, what occurred was that since the WTO did not come into being,
146 then this provisional mechanism, this protocol of provisional application of the GATT, lasted for
147 nearly half a century. And so what would have been a third part of the stool—Monetary Fund,

148 World Bank, ITO—did not materialize. GATT became a somewhat poor cousin living in
149 relatively straitened circumstances in Geneva, but under a very, very efficient regime. The
150 GATT, I think, showed enormous resiliency. Resiliency, I think, which responded a great deal to
151 the fact that world trade needed some organization in any case, whatever had happened to the
152 ITO.

153 **Bradley:** How large was this small secretariat?

154 **Lacarte Muró:** Oh, it was very small. I would say at one time there were no more than a dozen
155 people and I think that included administrative staff as well, not clerical but administrative.
156 There were only seven or eight professionals and it was very well run by Eric Wyndham-White
157 who had become Executive Secretary just before the Havana Conference. Wyndham-White was
158 British, a very good administrator indeed. He used to describe himself as an administrator and a
159 diplomat. And he was very good at both. A very competent man with a lot of personality, a great
160 deal of personality, who ran the Secretariat very efficiently and who provided a great deal of
161 leadership to the organization as it existed—this provisional mechanism that we called the
162 GATT.

163 The GATT then proceeded to enlarge its membership through new negotiating rounds. In 1949
164 GATT organized the Annecy conference, where I participated. Already, I was back in
165 government service and I turned up at Annecy, and we stayed six or seven months in Annecy and
166 negotiated new concessions and that's when Uruguay negotiated to accede to GATT. And then
167 in 1950–51 there was the Torquay conference where again new countries began to negotiate and
168 to join. So, starting from what I might say were humble beginnings, the GATT showed a great

169 deal of resiliency and dynamism. And it began to acquire new members and to enlarge its
170 scheme of tariff concessions.

171 **Bradley:** Your own government acceded to the GATT in what year?

172 **Lacarte Muró:** That's a good question. We negotiated in Annecy and we readjusted certain
173 concessions in '50-'51, because in Annecy we had consolidated specific duties which were set
174 out in an *ad valorem* basis in our tariff but which were applied in the end as frozen *ad valorems*
175 in terms of their specific equivalent, if I explain myself properly. And I felt this was a bad thing
176 because it meant that as time went by, and the inevitable devaluation of the currency took place,
177 our tariff protection would just melt away. So at Torquay, I had a chance to revert to this and I
178 did. So we readjusted our schedule and then after that we entered as a contracting party.

179 I might perhaps say a word about the way the Secretariat functioned from the beginning. As I
180 said, Wyndham-White was a very efficient fellow. He was determined to run a low-budget outfit,
181 and he did. And he did. And we would often have a friendly but major argument over whether
182 we should fire somebody or not. Because Wyndham-White would come in one day and say, "I
183 think we should fire so-and-so," and I would say, "Why should you fire so-and-so, he's a very
184 competent man" or "She's a very competent official." "I know, but I don't think he's good
185 enough and furthermore why should we waste all that money?" And we might have a two- or
186 three-day argument about this and generally I was able to protect people, but I mention this only
187 to indicate how close to the line things were done. In other words, there was not a cent wasted in
188 the GATT Secretariat ever. It was one of the great things about Wyndham-White. He had many
189 other virtues, of course.

190 And when I came back later—I became Permanent Representative twice to GATT, Chairman of
191 the Council, and Chairman of the Contracting Parties—I had to involve myself with the
192 budgetary issues and so on, it was always the same. It was always a tight budget with not a
193 person shown to be superfluous.

194 So that was one of the characteristics of Wyndham-White, and it was a good one. And secondly,
195 as I say, he was a very competent man, full of drive, full of force, full of personality, who left his
196 mark in GATT. At a certain moment he decided he would abandon GATT and go into the
197 business world. I think it was a pity he did that. His entry into private enterprise was not as
198 successful as it should have been or as he deserved, and the international world in that sense lost
199 what I felt was a quite extraordinary civil servant. So anyway that was the GATT Secretariat for
200 a long time.

201 **Bradley:** How has the role of the-then Executive Secretary—later called Director-General—
202 how has that changed over the years, from your perspective?

203 **Lacarte Muró:** Of course GATT had been accused at that time of having been a cozy club—
204 cozy members' club where everybody knew everybody else. People would come for years to
205 attend GATT meetings, and it was really very clubby, not in a bad sense, these were very
206 competent people. But it was business that sort of grew into itself. And the contact of course was
207 much more frequent and immediate. If you had thirty or thirty-five or forty countries, members
208 of which not everyone was very active, in the end you had a nucleus of twenty or twenty-five
209 individuals who were really running the show. And if you have that limited number of people
210 and then an Executive Secretary in constant touch with them having lunch or dinner or
211 conversations or consultations all the time, everybody becomes clubby. So things were very

212 close under those conditions and, really, at that time the initiatives tended to arise—well, they do
213 in a way today as well—but they tended to arise even more clearly than now from one or two
214 focal points. An initiative—and I could see this very clearly because I knew everybody—an
215 initiative of any kind might come into the mind of Wyndham-White, and he would probably talk
216 to the American representative and chat about it. They might discuss it, not a bad idea, maybe the
217 British chap would get it and they would adjust it a bit more and maybe the French and after a
218 while maybe the Australians or Canadians. And little by little, in a gradual and balanced process
219 in which everybody's views were taken in reasonably, before you knew it you had a dozen
220 influential countries pushing for some new initiative, and of course by then it had already begun
221 to take a lot of impetus. Of course that happens today as well, but with 100-something countries
222 it's a little more difficult to get these things going. That is how it happened very often at that
223 time.

224 The Secretariat for a while had no legal advisor. Up to the Havana Conference we had a legal
225 advisor who was Alan Renouf, very pleasant and competent young Australian, and when Alan
226 went back to his government, if I remember rightly, he wasn't replaced. For quite some while
227 then, the GATT, believe it or not, had no legal advisor at all. Yet it survived very successfully.
228 So those were the pioneering days of GATT, and I must say I remember them as very, very
229 pleasant days in which everybody worked very hard and the atmosphere was generally very
230 good. So that is the early stages of the GATT.

231 Subsequently, the GATT began to develop more and more, and then it came into the big rounds.
232 The Dillon Round in the 60s wasn't a very big round. Then we had the Kennedy Round and I
233 think it is worth mentioning. It was still a time when the developing countries were very much on
234 the periphery of GATT. Now, I was the representative in the Kennedy Round for my own

235 country and I think I can safely say that we made—at least my country made—a very, very
236 significant effort to participate fully in the negotiations by lodging what we felt were good offers
237 of tariff concessions which, we presumed, would elicit an adequate response. The response was
238 nil. It was nil. I didn't entrust somebody else to do it, I did it; I went through every schedule of
239 tariff concessions proposed by every other participating country in the Kennedy Round and I put
240 down items that could be of interest to my own country. And if my memory does not fail me, I
241 think I got a list of about a page and a half and there wasn't really one worthwhile concession
242 there. They were all very minor concessions. So, in common with every other developing
243 country, I withdrew my list of concessions. Uruguay did not lodge any concessions during the
244 Kennedy Round nor did any other developing country.

245 And at the end of the Kennedy Round the developing countries issued a statement to the effect
246 that they had participated in the Round but had drawn no benefit from it. And it had really been a
247 round among developed countries, and a round regarding industrialized trade and industrialized
248 goods. No agricultural goods had been involved. So that was of course a significant
249 disappointment and it meant that developing countries still remained outside the scope of real
250 tariff negotiations and real market access. Subsequently, we had the Tokyo Round. And there we
251 had the famous Tokyo Round Agreements. I did not feel they were a good thing because they
252 were fracturing the system. Membership was limited very often to just developed countries and
253 some developing countries. I was all against them, but you couldn't go against the tide.

254 **Bradley:** Were you a representative of Uruguay during the Tokyo Round?

255 **Lacarte Muró:** I was—at the beginning of the round I was a representative, although I didn't
256 participate in the subsequent stages at that time because I was doing other things. But I followed

257 the events at home throughout. So the Tokyo Round, however, did not really improve things
258 from the point of view of developing countries.

259 And then we get on to the next stage, the next big stage, the Uruguay Round. So that's a whole
260 new chapter. You might ask me, "Why is it called the Uruguay Round, how did you get it that
261 way?" Well, then again, I have to tell you another anecdote. One night I was having dinner at the
262 Chilean mission in Geneva and at that moment Brussels wanted to be the site of this launching,
263 and so did Montreal. So they had this transatlantic competition between these two. And a friend
264 of mine said to me, "Julio, why don't you propose Uruguay for the conference?," and I said,
265 "Well, we've got these other two, yes, but you know I have a feeling it might, you never can tell,
266 it might turn out." So, I thought it over, and the next morning I called up my Foreign Minister
267 and I said, "Well, look, this has come up, my informant is a reliable fellow, and in the prospect
268 we might, you know, I've been thinking it over, we might do this, what do you say?" He said,
269 "I'll speak to the President." And he called me back and he said, "The President says okay. Go
270 ahead." So I replied, "OK, I'll see what I can do." And I said, "I need two votes. I need the
271 Argentine vote, I need the Brazilian vote. You get me those votes and I'll deal with the others."
272 So I launched Uruguay into this competition and at the beginning everybody thought, well, these
273 fellows won't get anywhere. But of course we were calculating that there would be a standoff
274 between Montreal and Brussels. And when a standoff takes place then the third one comes in. So
275 little by little, we began to accumulate votes. Little by little. And first we had five and then we
276 had nine and then we had ten and we had fifteen. And the Secretariat was asked to report on the
277 facilities in these three places. The Secretariat report said, after an on-site visit, that all three
278 were adequate, each one in its own way. So in the end what really tilted the balance were the
279 Scandinavian countries. The Scandinavians—the Ambassador of Sweden spoke for the

280 Scandinavian countries at a meeting and he made a very balanced statement. He pointed out all
281 the advantages of Brussels, he pointed out all the advantages of Montreal. He pointed out the
282 advantages of Punta del Este which we had proposed, and then he said, “But all three, all very
283 good, all fine, and since we’ve never had a meeting in a developing country, maybe, maybe just
284 maybe we might do it this time.” That was a very clear indication we were getting the
285 Scandinavian vote. And in my recollection, that is the moment when our candidacy really picked
286 up speed. After that it was very difficult to stop it. So in the end we got to Punta del Este.

287 **Bradley:** Excuse me, was that Ambassador Anell—Lars Anell—or his predecessor?

288 **Lacarte Muró:** A very tall man, what’s his name, a very competent Swedish ambassador. Very
289 tall chap, about six foot three, six foot four. He used to love to come to dinner at my house
290 because we had a very good cook.

291 **Bradley:** We’ll look it up and insert it in the record.¹

292 **Lacarte Muró:** He was a very competent guy, I’m sorry his name has slipped my mind. Good.
293 So we got to Punta del Este and—or rather, we settled on Punta del Este and then what became
294 the Uruguay Round of course had been building up in GATT. We’d had a number of economic
295 ups and downs worldwide. The danger of protectionism had, as usual, presented itself all over
296 again in very, in very pronounced form and I think there was a general feeling that something
297 had to be done to stop this, this wave of protectionism that was coming in very strongly. And one
298 way to do it was with a round. So after two or three years of comings and goings in the GATT,
299 finally this had been decided.

¹ Lars Anell was Sweden’s Ambassador to the GATT from 1986 to 1992. His predecessor was Hans V. Ewerlöf.

300 And on the run-up to Punta del Este there had been some very tough pre-negotiations, as usual.
301 In the end, a group of countries had gone outside the GATT building. We were meeting at the
302 International Center, Avenue Vermont in Geneva, as guests of the Swiss delegation. And we had
303 joint chairmen, a Colombian colleague and a Swiss colleague, joint chairmen of this more or less
304 informal but really very formal negotiating exercise in which, what I think was a pretty
305 representative group of developing countries had sat down with developed countries to work out
306 a common Ministerial declaration for Punta del Este. Some developing countries which had
307 taken rather an extreme position did not participate in that work. And I think if they did not it's
308 because they had in fact taken such extreme positions that it was difficult to engage in any
309 dialogue—not just for developed countries but for other developing countries—with them. So in
310 the end we hammered out, that's the only way to put it, we hammered out a draft Ministerial
311 declaration on trade in goods.

312 On services, some of those developing countries which were not participating in this exercise
313 were determined that they should not be included in the negotiations. For other developing
314 countries there was no great objection. And we felt that in any case, services were going to be
315 included one way or the other. So we as developing countries left the service area open. We
316 concentrated on goods which was our immediate trading concern, our biggest trading concern.
317 And when we got to Punta del Este, we wanted to make sure that the deal we had struck in
318 Geneva would be upheld by the developed countries. So if I may, I'll confess that I got hold of
319 the Canadian trade minister and I said to him that our group of countries, our developing group
320 of countries that had participated in these negotiations in Geneva, felt that we were able to
321 maintain our part of the deal, but that developed countries would have to do the same. And that
322 whatever other pressures were brought to bear upon them that they should not have an effect on

323 the chapter on the trade in goods, which of course—as you’ll remember—is the biggest part of
324 the Punta del Este Declaration. And he told me he would convey that, and obviously he did,
325 because there was practically no change of any significance proposed in that part of the deal.
326 And most of the argument was about whether to put in services or not. And in the end services
327 came in as we suspected they were going to come in anyway, and they were agreed to by the
328 same people who had said they wouldn’t accept them. So we were more or less vindicated in our
329 negotiating technique, in our negotiating tactics.

330 We came out of Punta del Este with a Ministerial Declaration, and I think I might comment here
331 that Punta del Este is a good model of how you prepare a ministerial conference. I maintain that
332 in a five-day ministerial conference you can only agree on three or four things which have not
333 been settled up till then. You can’t agree more than that. Ministerial meetings are inevitably
334 unwieldy, and not all ministers, if I may say this, are equally competent on the matters they are
335 dealing with, and are not equally conversant with the details. And it’s very hard to get such a
336 large meeting—and Punta del Este was already a large meeting—to go into too many details.
337 You have to bring in a practically approved text in which three or four crucial issues have to be
338 determined at high political level, and then you can manage it. That’s what we did in Punta del
339 Este. And I think that is what did not happen in subsequent Uruguay Round meetings, or even
340 more recently, as we know. In Montreal, and subsequently in Brussels, the meetings had not
341 been fully prepared. People felt they could paper over a few cracks, and you can paper over some
342 cracks but not too many. And if those cracks are important cracks and they hurt other people,
343 then the answer is going to be no.

344 In any case, after a lot of hard work Punta del Este produced the Punta del Este Declaration
345 which was the basis on which the whole Uruguay Round was conducted. We had the Montreal

346 Mid-Term Review after a time. And at Montreal it was very clear there had been no advance on
347 agriculture and passivity on textiles. And naturally everybody has his own negotiating technique.
348 Developed countries wanted to push forward the issues of concern to them. Developing countries
349 wanted to do exactly the same. It so happens that they are not always the same issues. And it was
350 clear to me at Montreal that while there was a lot of push for a number of other areas, on
351 agriculture and textiles which were crucial for us, for us and many other countries, there had
352 been complete lack of movement. So at a certain moment a group of countries came together,
353 Latin American countries, and we did an evaluation. And we said, "Well, there's progress here,
354 there's progress there, there's progress here, but where it hurts us there is no progress at all. This
355 won't do."

356 So five countries—Argentina, Brazil, Uruguay, Colombia and Chile—decided we would make a
357 statement. So we chose the Argentine representative who was Bernardo Grinspun, an old friend
358 of mine. And Bernardo was physically a very forceful looking fellow, very squat, very strong
359 with a deep growling voice that was just right for the occasion. So we said, "You are going to be
360 the spokesman, Bernardo," and he said fine. So in the middle of a Heads of Delegations meeting
361 he put up his hand, took the floor, and in his own inimitable way he let loose an absolute
362 broadside that had people sitting back in their chairs because what he said was, that for our five
363 countries this was no good at all, we could not go on as we were. There was no movement in the
364 areas of interest to us and therefore, thank you very much, but we are not ready to go forward.
365 And this provoked an enormous disarray, enormous disarray all across the building. And
366 naturally it provoked the textile countries to imitate us. So a number of textile-exporting
367 countries came along as soon as they could, pulled their own act together and said, "This is no
368 good for us either." And that led us to a major crisis coming out of Montreal. And as usually is

369 done, the representatives in Geneva were entrusted by ministers to put everything back on
370 course, which is the usual procedure; and the Director-General, Arthur Dunkel, naturally was
371 also asked to contribute to this task. So there, we had a conference where preparation was
372 uneven. Some things had gone ahead very well, others not, but there was an imbalance, an
373 imbalance of likely benefits and obligations. You could see where the other fellow was going to
374 benefit, but you couldn't see where you were going to benefit, and when that happens then you
375 stop. You stop the whole thing. And that is what happened in Montreal. We had advanced on
376 some things like dispute settlement, and in other areas, but really in some cases these were
377 simply cosmetic changes. The real substance was put on hold. And I wouldn't say that Montreal
378 was either worse or less bad than the recent conference in Cancun. It was the usual thing: if you
379 don't prepare the conference right, inevitably somebody is going to object.

380 **Bradley:** Okay, I regret that we are out of time for today's session. I again want to thank you for
381 sharing your recollections and your firsthand knowledge and experience. I hope that when we
382 pick up again to resume this interview, we can talk a bit more about the leadership the chairmen
383 have assumed over the years in these negotiating groups. You were one of the more significant
384 chairmen and chaired one of the most significant negotiating groups that led to the creation of the
385 WTO. And I hope we can address that along with the dispute settlement procedures and resulting
386 institutional provisions that created the Appellate Body. So we look forward to a second time and
387 appreciate very much your time today.

388 **Lacarte Muró:** Thank you very much. I now look forward to our second session too. Thank
389 you.

390 [END OF INTERVIEW, PART ONE]

391

PART TWO

392 **Bradley:** This is the resumption of an interview of the honorable Julio Lacarte-Muró for an Oral
393 History of the World Trading System being compiled by the Institute of International Economic
394 Law. We began this interview on October 8, 2003. And today (which is March 31, 2004) we
395 would like to pick up where we left off last fall. Ambassador Lacarte, at that time you had talked
396 about the various rounds of negotiations prior to the Uruguay Round, and about the launch of the
397 Uruguay Round in Punta del Este in 1986. So what I thought we could do today would be for
398 you to talk about your role as chairman of two of the major negotiating groups in the Uruguay
399 Round, beginning with the group that negotiated the Dispute Settlement Understanding [DSU]
400 and then, as well, the additional group that focused specifically on the Marrakesh Agreement—
401 the agreement that created the WTO.

402 And then, if time permits, it would be very helpful—since you were the first chairman of the
403 newly created WTO Appellate Body in 1995—if you could talk about how that institution was
404 built from the ground up, and its early days when you were serving on the Appellate Body. So
405 perhaps we can start with 1986, and the early days of the Uruguay Round when you were
406 appointed chairman of the negotiating group.

407 **Lacarte Muró:** I am happy to begin. Now let's start a little questioning. What would you like
408 me to begin with?

409 **Bradley:** Perhaps you can talk a bit about how all of the chairpersons of the negotiating groups
410 were selected, and particularly the Institutions Group— which included “functioning of the
411 GATT system” [FOGS]—particularly how that group began to focus on a new dispute settlement
412 mechanism and your role in putting that together.

413 **Lacarte Muró:** Well, really the appointment of the different chairmen followed the traditional
414 GATT road, which was that of lengthy consultations and exchanges of views and opinions. And,
415 in that process, inevitably, some names come up a little more than others. Once there is a general
416 consensus and no great resistance has appeared to the different names, then they are formally
417 approved and that's how it went. Basically, the consultations are carried out by the Director-
418 General and the Chairman of the GATT Council, plus conversations in the celebrated, well-
419 known Green Room. So, that's how the other colleagues and I were appointed. And I was
420 appointed, initially, Chairman of the Dispute Settlement Group. And, that was—like everything
421 else in the Uruguay Round—a pretty long and difficult process.

422 What happened, in my view (anyway, I may be wrong, of course) for a long time in the Uruguay
423 Round is that nobody—no country—really wanted to commit itself on anything. Everybody was
424 very desirous of setting out their demands. But, they were very, very reluctant indeed to take any
425 commitment of any sort. Since you personally were there, you would probably bear me out on
426 that. And this was no different in dispute settlement.

427 Now, in the course of these negotiations—which, as you know, went over a long period—I
428 engaged in what I think became known as “the confessionals.” I find that this system is
429 extremely useful, but, of course, you have to invest a great deal of effort and time. Sometimes
430 people aren't ready to do that. But, in this particular occasion I did it. It meant calling in
431 individually and privately, one person from each active delegation, sitting down with that person
432 with no time limit, and asking that person what his or her country really wanted out of the
433 dispute settlement negotiation, and what they were ready to give up in exchange. Some people
434 were naturally more forthcoming than others. But this is a process which I used more than once.
435 It was an ongoing means of keeping a very careful pulse of what was the feeling within

436 delegations. A moment ago, I referred to “active” delegations, because in any international
437 organization where you have a negotiation where over one hundred countries are engaged, not all
438 those hundred or so countries are equally active. So, really in dispute settlement I would say that
439 there were about fifty.

440 **Bradley:** And, even among that fifty there were probably fewer who were the key players.

441 **Lacarte Muró:** Inevitably, the key players are nowhere near fifty. But there were within those
442 fifty a number who were one way or the other influential. And, in my view, every country that
443 was candidly participating in that negotiation deserved to be considered and to have its views
444 taken care of as far as possible. I felt that was a duty as chairman. So, I would engage in this
445 process, and as I said a moment ago, with differing results, different reactions, but I would say
446 on balance it was a very positive exercise. It certainly was very instructive for me, and I think it
447 was instructive for delegations, because they learned things that were hopefully useful for them,
448 as well. I must also confess that I would sometimes squeeze certain actors who deserved to be
449 squeezed. The procedure—there was only one person there—meant that it was a one-on-one
450 exercise. I did not allow people to come in as a group. Say, country X to come in with four or
451 five people. “No, no,” I said. “I want the one who is responsible. I don’t want anyone else. The
452 one who is responsible.” So, that one would come. So, as I say, that went over pretty well. Time
453 went on. We had ups and downs, which I don’t think I should go into now because that would
454 make this interview much too lengthy, so I will jump forward to near the end at the moment
455 when we came to an agreement. Now, I don’t think we spoke about that last time.

456 **Bradley:** No.

457 **Lacarte Muró:** There came a point when my own analysis made me feel that on dispute
458 settlement, and on the institutional issue as well—because I had by then become chairman as
459 well of the institutional negotiating group due to the withdrawal of the chairman of that group—
460 there were four issues left. Those four issues could be narrowed down to a very few words in
461 each case to a small text for a drafting proposal that, if approved, would break the logjam, and
462 allow us to go forward very freely after that. So, I wrote those down without consulting anyone.
463 Then, I had a problem—who to talk to? There were many people who deserved to be consulted,
464 because of their very positive contribution to the work. But I realized that I couldn't speak to
465 them all.

466 So one day, after we had a morning meeting (and by that time we were all completely
467 deadlocked), I invited four delegations to have lunch. But lunch was pizzas, in an office room (I
468 think up on the third floor) of the GATT building. So they brought in these pizzas. Four of them,
469 and me (four or five), sat around the table. I told them that I had this idea and that I had a piece
470 of paper for them. It all boiled down to one sheet of paper. I told them of course this was a take-
471 it-or-leave-it proposal. If there was any objection by anybody to any part of my proposal, it
472 would be withdrawn.

473 I circulated this piece of paper to these four people, while we munched away at our pizzas. They
474 looked it over, and I will go so far as to say that I had two developed countries and two
475 developing countries in the room. And with a normal show of reluctance, in the end everybody
476 said that they would agree—these four.

477 At the afternoon meeting, at some suitable stage, I said that I had a proposal, and I emphasized
478 this was a take-it-or-leave-it proposal. And I endeavored to sound slightly threatening by saying,

479 “Of course, if you don’t take it, you’re on your own. Don’t count on me to come up with any
480 other further compromise proposal. This is the only proposal that you’ll get from me, ever.” So
481 there was a certain hush around the room after that. And, while I was speaking, since people
482 seemed to agree that they would look at this, I had the paper circulated. And, I had good luck in a
483 way, because there was one delegate, who was a very positive contributor, but with a rather
484 mercurial character. When the paper was put in front of him, while I was speaking, he called out
485 spontaneously. He said, “Oh, I can’t accept this.”

486 **Bradley:** He was not one of the four with whom you had had lunch?

487 **Lacarte Muró:** No, he was not one of the four. So, I took advantage of that and I chastised him
488 rather severely. I said, “Are you interrupting me?” And he said, “Well, no.”

489 “But, no, you are interrupting me. And, why are you objecting? You haven’t seen this paper,
490 yet.” “Well, yes—no.” So, I confused him a good bit. And, I created, I think, a situation in which
491 people felt reluctant to open their mouth after that, because he was very embarrassed. He
492 excused himself and I barely accepted his excuse. I made him feel bad, not because I wanted to,
493 but it was in the interests of our common purpose.

494 I then finished my presentation, which was quite brief. “Take it or leave it because this is the
495 only chance that you’ll get.” Then the hushed silence became even more deep; there was just no
496 noise whatsoever in the room. You could have heard a fly in that room. I let that mature a bit.

497 There was silence, complete silence. And then, after a while, someone put up their hand very
498 discreetly, one whom you know, and that person in a very low tone, very discreet tone, said,

499 “Well, I think my government can accept this.” There was another silence, and then another
500 person—whom I also had not consulted but who deserved it because of their positive approach
501 throughout—put up his hand, and he said, “I think my government can accept this.” And then,
502 that opened the floodgates, and everybody began to come on board. So, in the end, we had
503 unanimous agreement. And the moment we had that, covering dispute settlement and
504 institutional issues, really, the doors were open.

505 Now, I have my own interpretation of events in the Uruguay Round. It may be simply a
506 coincidence. But immediately after this agreement was made on institutional and dispute
507 settlement matters, the rest of the conference began to move. I have always felt that governments
508 became more ready to accept substantive commitments in many areas when they knew that there
509 was going to be a strong dispute settlement system that they could have recourse to. It wasn’t
510 said by anybody, but I have a feeling that it was something that permeated the whole working of
511 the conference. And it’s really after that, as I say, things finally began to move. That was not the
512 absolute final end of the dispute or institutional negotiation. There were loose ends to tie up, but
513 the main agreement had been reached.

514 **Bradley:** Ambassador Lacarte, I do recall that one of the issues (and perhaps it was earlier than
515 this stage where you had the institutional group together with the dispute settlement group), but
516 in the dispute settlement negotiations, one of the critical stages was where the idea surfaced to
517 provide for what people have come to term “reverse consensus,” which was the idea of building
518 in automatic decisions by the dispute settlement body without eliminating the consensus process.
519 But in order to reach that automaticity, there was a decision that a consensus would be required
520 to not do something, to not adopt a report or establish a panel. Can you recall where that idea
521 came from? Or, how it evolved? How it was introduced into the group?

522 **Lacarte Muró:** Yes, that was an earlier stage. I think we were meeting in what is now the
523 meeting room of the Appellate Body—around the round table that is now used by the Appellate
524 Body members when they deliberate. And I had chosen that room intentionally, because while it
525 is a large room, it certainly doesn't take a hundred people, or anything like it. It may take forty,
526 forty-five people, at best. I only wanted people who were interested, who wanted really to be at
527 those meetings. So a seat was hard to come by, and it was a big thing to get a chair. People
528 would often have to come in and stand for two, three, or four hours if they wanted to participate
529 in what was going on. It was part of my technique to get people to concentrate on the business. I
530 seem to remember that Warren Lavorel was very active in that particular issue. And I think the
531 reverse consensus is a great change for the better.

532 It's a wonderful thing, and it is what has allowed the Dispute Settlement Understanding to be so
533 successful. It certainly is one of the most important features of the DSU. In the past—as I'm sure
534 you well remember—in GATT practice, any country could block a panel decision that was not
535 agreeable to it. Now you cannot do that. You need a consensus to reject a panel report or an
536 Appellate Body report. As we know, that is a very difficult thing to do. That great reversal of
537 traditional GATT procedures, in my view, was extremely important, and has shown itself to be
538 extremely positive. If you go back through the many cases that have now been dealt with in the
539 WTO, nobody seems to object to this rule of automatic consensus. On the contrary, it's now
540 taken for granted, as it were. It's part of the procedure and I don't think we had any problem
541 from the very beginning. Everybody took it as a good thing that should be utilized as it has been,
542 and the automaticity that it has provided has eliminated delays. It has eliminated all kinds of
543 objections and obstacles that could have been, and were, raised in the past. I can only say that I
544 wholeheartedly agree with this, it was a very positive thing.

545 **Bradley:** Some of the other issues that were critical in moving those dispute settlement
546 negotiations forward included, of course, the creation of an appeals process and the creation of
547 the Appellate Body, and some of the other provisions like Article 23 on multilateralism. Do you
548 want to talk a bit about what you think were some of the key issues that provided hurdles that
549 had to be jumped?

550 **Lacarte Muró:** I can certainly talk about those two issues which you've just raised. I think the
551 Appellate Body also was a very positive step forward. To begin with, it has given much stronger
552 judicial impact to the whole DSU. I think if we remember how GATT functioned on dispute
553 settlement, how GATT functioned for a long time, you go back to the record and what you see is
554 that disputes were dealt with by panels, really.

555 And, I have a feeling if my memory does not fail me, that often negotiating and even political
556 considerations found their way into the reasoning of these working groups that were dealing in
557 particular disputes. The Appellate Body, on the contrary, is only concerned with the legal aspect.
558 And from the very beginning, the Appellate Body has fulfilled that role and no other role. Of
559 course, it had grown much faster than anyone ever suspected. I have a feeling that a number of
560 people thought that the Appellate Body might have occasional use, that when there came up a
561 particularly awkward legal issue that a panel might pass it on to the Appellate Body, but that
562 countries would continue accepting the panel rulings as definitive. But, as we all know, that has
563 not been the case at all from the very beginning. All countries involved in disputes have
564 appealed. So the Appellate Body, instead of being a quiet organ occasionally meeting in these
565 austere headquarters, has turned out to be an extremely active organ of the WTO. I can't
566 remember the exact percentage, but I would say 80–90 percent of cases are appealed. It was only
567 in those that were absolutely cut and dry, that you don't have an appeal. Even then, sometimes

568 you have an appeal, if only to gain more time. So the Appellate Body has been, I think, a very
569 great achievement. It has also done something that is very important. While the Appellate Body's
570 rulings and the panel rulings only apply to the particular case in the particular dispute, in the end
571 of course the case law piles up.

572 The existence of the Appellate Body has seen to it automatically that there is a coherence in the
573 case law. If you look at internal alcohol taxes, for example, we can foresee now, what the
574 Appellate Body and probably any panel is going to rule on cases that are in any way similar to
575 the *Japan – Alcohol* case, the *Korean – Alcohol* case, and the *Chilean – Alcohol* case. And so the
576 case law had been building up very strongly, and governments themselves are constantly
577 referring to it, because in any submission to a panel or the Appellate Body nowadays, you find
578 literally dozens of quotes of previous pronouncements by the Appellate Body on the particular
579 issue.

580 And you also raise the question of Article 23. You could really eliminate Article 23 and nothing
581 would change in the Dispute Settlement Understanding. But many countries were very fearful of
582 Section 301 of US legislation, and the unilateralism that was involved. And they did not want to
583 see any of that in dispute settlement within the WTO. There was a very strong resistance, very
584 strong. Just about every participant in the negotiations, except the United States of course, was in
585 favor of drafting something like Article 23, which condemns unilateralism in any way. It
586 condemns unilateralism in no uncertain terms; but as I said, you can do without it because the
587 rest of the DSU is already pushing you in a multilateral direction that you cannot avoid. So,
588 really, Article 23 is really a source of reassurance for a number of countries. As we know, the
589 United States, which has been involved in very many disputes in the last eight years or so, has

590 never behaved in any way that would constitute a violation, or even implied or threatened to do
591 so. It has been a good thing for the system, a very good thing for the system.

592 **Bradley:** One of the other difficult issues, which may have been resolved outside of the
593 negotiating group, was the issue of what I will call “cross-retaliation,” which enabled a party
594 bringing a dispute under one agreement, say a Goods agreement (Agriculture for example)—if it
595 went through all of the procedures, and there was noncompliance in the end—could suspend
596 concessions or obligations under another agreement, for example, Services. And I wonder if you
597 could talk a bit about the difficulty of that issue and other issues which were of major concern for
598 developing countries participating in the negotiation.

599 **Lacarte Muró:** Yes, the question of retaliation across agreements was a very hotly debated
600 issue, very hotly debated. And I think the end result was a reasonable and logical way out. Every
601 country has a different economic structure from every other country. And you cannot compare
602 the United States economy with the economy of a Latin American raw materials producer, for
603 example. So while some countries have the capacity to retaliate within the framework of the
604 same agreement which has given rise to the dispute, other countries don’t. And so I think the
605 solution that was found is a wise one. It has given more flexibility to a great number of countries.
606 So, from that point of view, I think, we have done well. At one stage when Clayton Yeutter was
607 the American negotiator, there were heated exchanges on that issue. But, as I say, as we went
608 forward and as the discussion matured, and the reasonings matured, in the end we came to that
609 conclusion.

610 **Bradley:** For developing countries, I do recall that there were some efforts to try to build into the
611 dispute settlement procedures themselves, different or special and differential procedures for

612 disputes involving developing countries. But, in the end, many of those proposals were not
613 adopted.

614 **Lacarte Muró:** Yes, if you go through the DSU, there were some provisions intended to cater to
615 developing countries, but I would not call any of them substantive. From that point of view I
616 think developing countries did not get really what they wished to get during the negotiations.
617 There were a number of proposals made, but to speak frankly, I think that what developing
618 countries obtained, in terms of special or differential treatment, is rather marginal, in terms of a
619 little more time for this, or a special treatment for that, but essentially the DSU applies equally to
620 all. And from that point of view, developing countries did not find, in those special provisions, a
621 very great deal to their advantage. And actual practice has shown that my view is the right one
622 because we see it in what has been happening.

623 **Bradley:** Many developing countries are using the system actively.

624 **Lacarte Muró:** Yes, they're using it but not necessarily because of the special provisions. They
625 are using it because they can use it. And, because if they are able to follow the right procedures
626 and so on, they can defend themselves perfectly well. In the end, you may find that you don't
627 need those special provisions. The main thing is that you should be right.

628 **Bradley:** Ambassador Lacarte, let's move now to when the DSU was finally agreed and adopted,
629 and the WTO itself was established. The Appellate Body was a new institution. It had to be
630 created from the ground up, as it were. And you—as its chairman as soon as the first seven
631 members were appointed—I imagine you had to spend a great deal of time working out
632 institutional issues: developing working procedures, and creating an institution, the details of
633 which were not found in the DSU and were not negotiated. Can you talk a bit about that process?

634 How, internally, you developed it; the new WTO members who were involved in that process;
635 and how that worked. It was an important time in the history of the WTO.

636 **Lacarte Muró:** Yes, it was a very challenging moment. The other members of the Appellate
637 Body decided that I should be their chairman the first year, and then they re-elected me
638 exceptionally for the second year. So, I really was involved in all the period in which the
639 Appellate Body was set up.

640 One thing I might mention is that the members of the Appellate Body barely knew each other
641 personally; we had hardly met ever. We came from different parts of the world. So the first
642 question was, how were we going to get along? We were very fortunate. I think I can safely
643 assert that the personal relationship among all seven members developed in a very warm manner,
644 and we created friendships which have survived our period of duty in the Appellate Body, and
645 that allows us today to feel exactly the same way to a former colleague as we did at the time we
646 were sitting around the same table. It could have been otherwise. Fortunately, if I may put it
647 graphically, there were no bad apples in the barrel.

648 Another thing that I remember well is that I felt that the Appellate Body had to exert authority
649 from the beginning. It was something that the GATT had never had. It was the new boy on the
650 block. And probably some people who had accepted it weren't necessarily confident as to what it
651 would be like and how it would function. So I felt that we should make sure that no one could
652 ever fault the Appellate Body. One thing we did, of course, was to draft our working procedures.
653 Now, those working procedures were our own because the DSU states that the Appellate Body
654 establishes its own procedures and then communicates them to the membership. The
655 membership cannot change them, just the Appellate Body. And that was a very carefully carried

656 out process where we weighed every word, to make sure that we had the right balance between
657 the contents of the DSU and the authority we had to exert, without in any way infringing on the
658 prerogatives of the governments. And that is not an easy job because the WTO, like the GATT,
659 is a government-driven organization. It is the ambassadors who run it.

660 This was the first time, and remains the only example in the trade system of an organ that is
661 independent from everybody, independent of governments, and independent certainly of the
662 Director-General. So, how to fit that in so that you did not create frictions was not an easy thing.
663 But I think we did it. And, if I remember rightly, when we put out the working procedures, there
664 was no fuss, no complaint; nobody reacted negatively about them. Those working procedures,
665 among other things, ensure the confidentiality of all activities of the Appellate Body.

666 The Appellate Body, from the very beginning, devised its own internal ways to see to it that the
667 integrity of its members, and their objectivity and impartiality, would be ensured. It's a privilege
668 to say, I'm proud to say, that in all the years I was there, I never had a hint of a lack of
669 impartiality or objectiveness. Everybody was impartial, objective, and fair. I think that was a
670 great thing for the Appellate Body, because these things one way or another transcend outside
671 the body.

672 Another aspect where I was concerned is that we should avoid minority opinions. Inevitably
673 many of the members of the Appellate Body were used to organs where minority opinions were
674 common. I felt from the very beginning that this was not a good thing for the Appellate Body.
675 Because if from the start, in our findings, governments were to find dissenting opinions, they
676 would inevitably come to the conclusion that there was dissension within the Appellate Body.
677 And if that happened time after time, that indicated that there was more dissension.

678 So I made it a very special point to try to avoid that, and I think we were very successful that it
679 didn't happen, so that governments felt that the Appellate Body's views were monolithic. There
680 was one body of seven people who thought the same. Now, how do you reach this point? That is
681 not easy. What we found was that we had to exert a great deal of tolerance and patience and
682 goodwill, and invest a great deal of time in our discussions. It was not a matter of saying to
683 somebody, look so and so, you're one out of seven—why don't you just go away and let us
684 approve this. We never approved anything that was not approved by everybody.

685 Now if I may say one more thing. You may be asking me, "Ah, but doesn't that lead to
686 weakened, watered-down texts that were compromises?" Oddly enough, no. We found that as we
687 continued our analysis of a subject, and we went deeper and deeper and deeper into the
688 discussion of the subject, little by little disagreements fell away. It was a matter of intelligent
689 perseverance. We might have lengthy discussions that might take two or three days over one
690 particular small subject. We would come back to it, and come back to it. But, one way or the
691 other the formula would be found, and it would not be a watered-down formula. It would not be
692 a compromise formula; it would be a substantively valid formula. You can see this is true by
693 simply going through Appellate Body findings.

694 **Bradley:** What I was going to ask you is about—in what you've just described—is a process that
695 involves input from all seven of the members when in fact, procedurally, each case is heard by a
696 Division of only three. And this concept of collegial discussion, when did that arise? When was
697 that established? How did that evolve?

698 **Lacarte Muró:** The collegial side of the Appellate Body was raised by me, no, I'm sorry, was
699 raised with me by a delegate of one of the big countries when I was, I think, in New York. The

700 phone rang, and this chap was calling me. He said, “Look, do you think within the concept of the
701 DSU that this exists? I don’t see any objection to it.” And I think that was the first that I heard
702 about it. And then, subsequently, it began to be discussed. And there again we had a long process
703 of thinking through the consequences, and we all seven members of the Appellate Body came to
704 the conclusion that this was a good thing. Now, as you know, the three members who are
705 selected for a Division are the ones who are formally responsible for a ruling, and they are the
706 ones who sign it. But they will, at some stage in any dispute, sit down with the other four
707 members, discuss the case, and listen to their views. This means that the other four—the outside
708 four, let us say—have to have read everything just as well as the three members of the Division
709 because if you don’t do that, you are not able to keep up in the discussion. So that is one thing
710 we soon learned, that you have to read everything just as well as a member of a Division to
711 participate properly in a discussion, because the standard, the intellectual level reached at the
712 Appellate Body, is really high. One thing you cannot do is reveal yourself ignorant or unaware of
713 some significant fact, because you are shown up immediately.

714 So everybody, as I say, soon found out immediately that you really had to know exactly what
715 you were talking about when you spoke out. And this collegial element sometimes is lengthy and
716 sometimes is short. It may only last a day, because the members of the Division may first listen
717 to the other four, and then they’ll maybe give some of their initial views, and then a debate
718 follows, and if everybody is more or less agreed with what the Division is already thinking, then
719 there isn’t a great deal to discuss because it is just a matter of drafting the ruling. Other times, the
720 discussion can be extremely vigorous.

721 I remember one particular case when the three members of the Division had position A, and the
722 other four had position B. We came together for over a week. It was a very well known case. At

723 the end of that week, we had all agreed. But at the beginning it was extraordinary. The three in
724 the Division had one position firmly held and the other four—each one independently arriving at
725 Geneva—had a completely different position. We had to convince each other; and we did. So
726 when the case is a complicated and difficult, this collegiate stage is extremely important. It
727 allows the three members of the Division to enrich their knowledge through the contribution of
728 the other four. The other four are really helping the three. In the end, we all know it is the three
729 who decide. We also know that in the end, in actual practice, the Appellate Body has always
730 come out unanimously. Although you only have three signatures, you know that behind that the
731 other four members also agreed.

732 **Bradley:** Now it's probably one of the best guarded secrets, how the members of each Division
733 are selected at random. Is that something that anyone is ever going to know?

734 **Lacarte Muró:** No. No. I don't think so. We have a wonderful system. We don't even know
735 ourselves exactly where we stand. The system was devised by one of our original colleagues, our
736 Egyptian colleague who had a very good mind for numbers. While we were discussing that, he
737 said to us, "Let me work out something and let me give it to you." So two or three days later he
738 came up with this procedure; it's very well devised. Nobody knows anything, if I may say it this
739 way. The Secretariat knows nothing. Everything is put away in a safe. Even if we had access to
740 the safe, you still wouldn't know. It's a most wonderful system, and it's so well devised that I
741 doubt that it will be changed ever. We did it because we felt that there was possibly a danger that
742 if the system were transparent enough, governments would eventually devise a way to penetrate
743 it. And, a government might say to itself, "In this particular complaint that I'm about to raise, I
744 suspect that so-and-so on the Appellate Body is going to be on the Division but I don't want him on
745 the Division, so therefore I will delay my complaint until some other complaint is presented first.

746 And then when I put mine in, he won't be on the Division." But they can't do that. Nobody
747 knows who is going to turn up in the Division. And, as we say, even we ourselves don't know. It
748 couldn't be better.

749 **Bradley:** I do want to ask you What you just described, given the principle of collegiality, is
750 the very heavy workload for the members of the Appellate Body. What you've said is that as an
751 appellate member you have to read everything related to every case, regardless of whether you're
752 serving on the Division. There evolved a practice on top of that, by which members of the
753 Appellate Body began to be chosen to serve as arbitrators. There are, peppered throughout the
754 DSU, provisions where certain decisions can be decided through binding arbitration. For
755 example, determining the "reasonable period of time" by which a party must comply with rulings
756 of the Appellate Body and Panel. Do you recall how Appellate Body members first began to be
757 involved in such arbitrations? What's your view? Was it a good idea? Has it overburdened the
758 Appellate Body?

759 **Lacarte Muró:** It is a burden. Because you are quite right, you have to read everything. And
760 very often, you have to read something two, three, or four times. It is not enough to read it once.
761 Some things you simply read to know that they are not as pertinent. And other things you have to
762 read more carefully because they are pertinent and when things are very pertinent you have to
763 practically have to know them by heart. There is a lot of reading involved. Governments send
764 you a lot of documentation. You have to know it all. If you don't know it all, you can't
765 participate in the debates. It's as simple as that. So, there is a lot of work. Obviously, being an
766 arbitrator adds to that. Generally, however, the arbitrator has already dealt with the case so he
767 knows it and the amount of new reading is quite relative. Say for example, 'reasonable period of
768 time,' well you've already—subconsciously you have an idea of what you think is about right.

769 So, acting as an arbitrator does not involve a great deal of additional documentation, and
770 normally it is a case that you've dealt with. So, while it adds to the burden, it is not
771 overwhelming. Now is it a good thing or a bad thing? I think it's a good thing because I don't
772 believe that anybody has ever objected to the impartiality of the Appellate Body members. And,
773 since that member already knows the case, you are simplifying life all around because, if you
774 bring an arbitrator from outside, to understand the request, say for 'a reasonable period of time,'
775 he's going to have to go back through the whole case to understand what it's all about. So I think
776 in terms of practical, operative aspects, it's a good thing.

777 **Bradley:** We are coming close to the end of the time that you've had to share with us today, but
778 there are many, many more issues and many more questions that I could ask you, and issues to
779 have you address. I think one issue that was difficult for the Appellate Body falls into a category
780 of issues relating to transparency. One is the question of *amicus* briefs, and how that was
781 handled. Perhaps it would be helpful here if you could tell us a bit about that issue as it arose in
782 the Appellate Body. And perhaps you can conclude by giving us your personal view—not only
783 on that issue but also on an issue that has been much discussed but is presently precluded by the
784 DSU, which is opening up Appellate Body hearings to public observance. I think the
785 transparency issues are important, and I would like to know your personal views on those issues.

786 **Lacarte Muró:** They are important issues, and I have to confess my own thinking has evolved. I
787 am a former Permanent Representative to GATT. I negotiated during the Uruguay Round. I
788 know how the mentality of ambassadors functions because I know how mine functions, and we
789 are all about the same. Diplomacy is a secret operation, diplomats thrive on confidentiality. That
790 is what they are supposed to do; you don't go out to the street corner and proclaim what you are
791 doing. Your government wants you to be very discreet, and that's the formation of every

792 diplomat. You only speak out publicly when there is a particular reason for it, so trade diplomats
793 are the same because normally they are members of their country's diplomatic body. In the same
794 way they are ambassadors to Geneva and to the GATT, or to the WTO, they could be
795 ambassadors to anywhere else, to the United States or China or France or whatever. So I knew
796 that there would be no joyous acceptance among the membership of *amicus curiae* briefs. I knew
797 and so therefore I thought it would not be wise to accept them because I was endeavoring to set
798 up a highly respected and unassailable Appellate Body and bringing in the *amicus curiae* briefs
799 was going to raise a problem. So my initial feeling was negative. This was a matter we discussed
800 many times, and, as you know, one way or the other *amicus curiae* briefs have sort of crept in a
801 bit. Some of the objections remain. You cannot have a massive amount of paper. There are, I
802 don't know how many, hundreds of active NGOs [non-governmental organizations] in the world,
803 hundreds, thousands. And you mentioned a while ago and I was concurring, that Appellate Body
804 members read a lot of stuff, and so do panel members. And to receive a 150-page brief from one
805 NGO and fifty pages from another and 100 from another and six or seven others and you put
806 them all on your desk—there are 500 pages that you have to read and the whole thing adds to
807 what you have already got to be doing. And if you receive them you have to read them and you
808 have to analyze them and you have to form an opinion on them. So there is a great material
809 objection, there must be some control and like there is now—a certain number of pages and so
810 on and so forth. And again you also have to determine some kind of system to weed out the good
811 things and the bad things because if you open the doors wide you may be gaining all kinds of
812 briefs from all kinds of organizations, or individuals for that matter, who may for one reason or
813 the other want to submit something to the WTO on a particular subject, maybe for internal
814 political reasons or for personal advancement reasons, whatever it could be. So you have to

815 visualize this great mass of material that might be descending on Appellate Body members and
816 on panel members, and you realize that there has to be some control. So while I say my mentality
817 has evolved and I am much more open to *amicus* briefs than I was before, mainly because in a
818 way the membership has more or less reluctantly accepted them.

819 Now on the other question of opening the hearings to the public, I confess I am in favor now and
820 I wasn't in favor before. Because again I would not do this in a wide open way. There is a limit
821 to how many people you can cram into a room at WTO, even the assembly room, and so there
822 would have to be some kind of control. But I do not see any real reason to prevent open hearings,
823 provided you allow the parties to call for a closed hearing whenever they consider it necessary,
824 because sometimes a participant in a hearing may wish to make a statement on some issue that
825 has political repercussions at home and he would be setting up his government for a headache for
826 no good reason. So you could have, I think, open hearings provided that at a certain stage at any
827 moment in the proceedings a participant may ask for that particular part of the hearing to be
828 closed and I think this is fair and you have to grant it, because as I said earlier, negotiations and
829 diplomacy are essentially confidential matters. And you cannot negotiate in the middle of a
830 public square as we all know. We also know that the WTO is a particularly secretive
831 organization and many things are settled in the back room. And while that is not what is
832 happening on dispute settlement, yet in a hearing a number of things come up which touch
833 national interests so you have to respect that. So while I have evolved because I also think that
834 the membership is much more amenable to the idea than it was before, and that doesn't mean it's
835 going to accept it now, but there is a better atmosphere to it. So I see it as a more feasible thing
836 than it was in the past. At the beginning it would have been quite unacceptable as you well

837 know; the reactions were very strong indeed. And they probably still are. But some kind of
838 modulated compromise formula is conceivably possible today—couldn't have been in the past.

839 **Bradley:** I think that's good to hear. I regret that we have no more time today. But I hope that we
840 might have another opportunity in the future, at some point, to hear your views about things that
841 you might change or improve in the process—and other issues that are related to your service on
842 the Appellate Body—as well as related to the negotiations (including the current negotiations
843 and consideration of improvements to the Dispute Settlement Understanding). So I thank you
844 again for spending the time with us and we're very grateful to you for participating in the Oral
845 History Project.

846 **Lacarte Muró:** It was a great pleasure to be here. Thank you.

847

848 [END OF INTERVIEW]