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A tribute to Robert E. Hudec

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Bob Hudec had the great good fortune to witness – and make important contributions to – the full evolution of the focus of his life's work, namely the GATT/WTO legal system. When he began, the GATT had what he called a 'diplomat's jurisprudence', a state of affairs perhaps best exemplified by the fact that the member countries did not allow the Secretariat to have a formal Legal Division (or even a formal legal advisor) until 1983, 35 years after the GATT was established (the IMF had a General Counsel and a Legal Division the day it opened for business). By the 1980s the authority of legal obligations was playing a much more important role. Then, with the successful conclusion of the Uruguay Round, came the bold changes we are living with today: the automatic right to bring legal complaints before a dispute settlement tribunal, automatically binding legal rulings, appellate review, and an automatic right to impose retaliatory trade sanctions when the defendant government fails to comply with a legal ruling.

In his contribution to this volume T. N. Srinivasan captures the academic life of Bob Hudec like no one else before: an excellent economist among lawyers, and an outstanding lawyer among economists. Hudec was driven by an ever-growing interest to add to his analytical skills by drawing on 'neighbouring' fields. The product of his cooperation with economists and political scientists has found its way into numerous well-known publications.

His strong belief in the importance of drawing on contributions from different disciplines when dealing with trade issues made him an early friend and supporter of this journal, with its multidisciplinary orientation. He contributed an important review article to the second issue and was always a willing and insightful referee. His legacy is also evident in our regular feature, the 'Dispute settlement corner', which reprints in each issue an article from an American Law Institute project in which case law from adjudicating bodies of the WTO is *jointly* evaluated by a lawyer and an economist.

Non-discrimination is one of the many areas that attracted his interest. This principle is usually taken for granted by most lawyers, but viewed with scepticism by many economists. Hudec's thinking on the issue was very much influenced by economic analysis. His starting point, however, was the merits of the existing regulatory response to the question: 'How to liberalize trade on a contractual

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basis?' For Hudec was a great technician, as well as a thinker. His ability to discuss at both the positive and the normative level was unsurpassed among lawyers, and it is this ability that brought him into circles unfamiliar to lawyerly lawyers.

In this volume we invited contributions on the principle of non-discrimination from five leading scholars – two lawyers and three economists – who had worked with Hudec over the years: Steve Charnovitz, Michael Finger, T. N. Srinivasan, and Gene Grossman and Alan Sykes. Their contributions discuss the making of trade agreements, the role of reciprocity in these agreements, as well as the quintessential element of integration in the GATT, the principle of non-discrimination. We conclude the WTR's tribute to Hudec by reprinting a particularly insightful tribute by Ichiro Araki first published in March 2003, the month Hudec passed away at the age of 68.

Economic theory offers various explanations as to why a trade agreement is necessary to liberalize trade. It also offers persuasive theorizations of the role the MFN (most favoured nation) clause plays in such a setting. The second leg of non-discrimination, national treatment, has not been scrutinized by economists with the same degree of attention. Lawyers, on the other hand, have paid more attention to discussions on national treatment, rather than MFN, and, with very few exceptions, no attention at all to the rationale behind a trade agreement.

At the same time, we have been experiencing over the years a steady erosion of the MFN principle, due partly to the increasing number of preferential trading agreements, and partly to the special and differential treatment afforded to developing countries. MFN arguably is now the exception rather than the rule, becoming, in the inimitable expression of Jagdish Bhagwati, the LFN, the least favourable treatment that WTO Members will accord to each other.

Hudec's many contributions on all these issues have largely shaped the ongoing discussion and research agenda. His 1987 book on developing countries and the GATT was the first piece of legal scholarship that sensitized its intended audience to the negative aspects of special and differential treatment. His papers on regionalism alerted lawyers to the fact that beyond strict compliance with Art. XXIV of the GATT lies the systemic concern of the erosion of non-discrimination. His numerous contributions on non-discrimination with respect to domestic policy instruments reveal the problems associated with formalistic reading of the treaty language, and further unveil the inventory of issues that trade practitioners and theorists alike should keep in mind when dealing with this thorny subject.

But most importantly, his work points to the network externalities that can be built across disciplines. Through his many associations with social scientists, he shaped a language that rests on ever-more sound arguments and becomes more powerful. He reaches audiences beyond his original lawyers' audience. For Hudec, existing legal texts – while certainly not to be overlooked – are but one regulatory response to pressing issues. One can discuss forever as to what is the appropriate method to tackle a particular issue: should we start from an abstract discussion as

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to what should be contracted and then see how to do it? Or should we start from the observable response (the legal rule) and travel backwards?

His work on non-discrimination, like all his work, is useful no matter what the perspective. In the present volume, our goal is to call attention, directly and indirectly, to the current literature on non-discrimination. If Hudec were around, he would have responded to all papers. Beyond revealing his agreement or disagreement with each one of them, he would point as to what needs to be done next, the direction that the research agenda should follow.

In a way, he is very much around us, through his work which has not lost any of its freshness. The contributions in this volume are part of an ongoing discussion between him and us. As we delve further into his work, we discover new angles all the time. Even more surprisingly, the more we advance in our own work, the more we see how we can better use his contributions. Let us hope that this volume will receive a nod of approval from him wherever he is right now.

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