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WTO 2002: imaginary crisis, real problems

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Abstract: This article contests the view advanced by Daniel Esty in *World Trade Review*, that the WTO is now facing 'a crisis of legitimacy', for which the remedy is to create for it 'links with popular sovereignty', to broaden its objectives and concerns, and to establish it as part of a stronger system of 'global governance'. I argue that the legitimacy of an international agency derives first and foremost from its member governments; that democratic legitimacy and 'popular sovereignty' do not necessarily go together; that non-governmental organizations have no valid claim *in their own right* to participate in the activities of international agencies; that bringing these organizations into the WTO would weaken and divide it; that governments, in handling and deciding trade matters, already take account of wider issues and goals and are not uncritically committed to freer trade; that it is still appropriate to limit the concerns of the WTO to questions relating to trade and trade liberalization; that globalization has neither undermined the power and competence of national states nor given rise to a need for new forms of global governance; and that the WTO, despite its now more secure status and enlarged scope as compared with the GATT, is for good reasons neither a powerful instrument of global governance nor in course of becoming so. While the Organization has no 'legitimacy crisis', it faces substantial problems both old and new. Its potential for useful activity largely depends, as in the past, on the readiness of its member governments to defend and pursue the goal of freer trade.

1. Introduction

In his challenging article in the inaugural issue of *World Trade Review*, Daniel Esty takes the position that the international trading system, and with it the World Trade Organization, face 'a serious legitimacy crisis'. He argues that the world has changed profoundly, in ways that put in question the present status, objectives, and procedures of the WTO: hence the Organization now 'stands at a watershed'. He puts forward some radical proposals for reforming it.

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While I agree with Esty that the trading system and the WTO currently face serious problems, I see the nature and origins of these problems in different terms from his. I believe that both his diagnosis and his prescription are wide of the mark.

Esty's thesis has three main interrelated elements.

The first of these concerns the issue of *legitimacy* which features in his title. The argument here runs as follows. The WTO's justification and effectiveness depend on its recovering, through far-reaching measures of reform, a legitimacy which it no longer possesses. The twin foundations of legitimacy for international agencies are 'popular sovereignty' and 'efficacy', and it is in relation to the former in particular that the present crisis has arisen. The WTO, like the GATT before it, is run by officials who are not elected, and whose allegiance is to member governments. Such official ties to governments provide only an indirect link with popular sovereignty; and given the now extended responsibilities of the Organization, and the increase in public concern about what it does, the time has come to establish a formal and direct connection. Efficacy alone is no longer enough to furnish legitimacy; and in any case, the efficacy of the Organization has now itself been put in question by its critics in 'civil society'. Hence the WTO should now make 'a commitment to transparency and to greater involvement of civil society groups' (p. 17), so as to establish the foundation of popular sovereignty which it can no longer do without and regain the legitimacy that it has lost.

A second element concerns the *objectives* of the Organization. Here Esty argues (p. 7) that 'the trade regime needs to pursue its economic goals in a fashion that shows sensitivity to other goals and values, such as poverty alleviation, environmental protection, and the promotion of public health'. This is a strange form of words, since poverty alleviation is unmistakably an economic goal, and the same is true of both environmental protection and public health in so far as, under both headings, monetary values can be attributed to alternative states of affairs and outcomes. But the underlying idea can be expressed in a different way. Essentially, what Esty proposes is that in relation to trade rules and trade policies the WTO should explicitly weigh and take into account what could be their full effects, both economic and non-economic, and in particular their possible impact on the state of the environment and the distribution of income within and between countries. It should not treat trade liberalization as its sole purpose and concern.

A third element relates to *global governance*. Like many other observers, Esty takes the view that globalization has brought with it a need for new forms and mechanisms of international collective action: 'Effective global institutions … are essential in a world of complex interdependence' (p. 19), and (p. 12) 'the trade regime stands at the center of the emerging structure of global governance'. In this new structure, 'more representative international decision-making bodies, including a revitalized World Trade Organization', would play a larger role. In the case of the WTO, it is the two proposed changes in its functioning – the greater involvement of 'civil society', and the conscious adoption of broader objectives – that would provide the necessary 'revitalization'. By embracing wider aims and

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ensuring closer ties with popular sovereignty, the Organization would gain acceptance and support, improve its efficacy, and enlarge its capacity to contribute to the stronger global governance that the world now stands in need of. The different elements of radical reform are thus presented as mutually reinforcing.

In what follows I focus mainly on Esty's thesis, but refer also to some related lines of thought. I begin by examining the issue of legitimacy in relation to international agencies in general and the WTO in particular.

2. International agencies, governments and 'popular sovereignty'

Since Esty is so much concerned with the legitimacy of organizations, it is worth asking how this term is to be interpreted. His treatment of the issue has a missing dimension. Although he rightly notes (p. 9) that legitimacy 'is a complex concept in the context of governance', he considers only one aspect of it. Both in his text and in an article that he draws on by Keohane and Nye (2001), the legitimacy of an institution is implicitly defined in terms of its acceptability to public opinion in a democratic society and the attributes that make for acceptability. But this is not the only possible interpretation: one can also think of the concept in more straightforward formal terms. The Oxford English Dictionary provides a form of words that gives expression to this alternative – or additional – interpretation. It offers, as one meaning of legitimacy, 'the condition of being in accord with law or principle' (1989, Vol. VIII, p. 811).[1] Admittedly, it can be argued that, at any rate in relation to political institutions, such an interpretation captures only a part of what is involved. But formal legitimacy, even if no more than a starting point, is neither irrelevant nor unimportant for international agencies as for other institutions of governance. In this restricted but pertinent sense of the term, the legitimacy of an organization such as the WTO does not derive from, nor depend on, public acceptability or support. It comes from governments alone.

This direct link with governments rather than peoples is inherent in the nature of institutions such as the WTO. It was the governments of national states that created the Organization, as they had created the GATT before it. In the same way, it is governments that have established an array of international organizations including the International Monetary Fund (IMF), the World Bank (IBRD), the regional development banks, the International Labour Organisation (ILO), the Organisation for Economic Cooperation and Development (OECD), and the various agencies that directly make up the United Nations (UN) system. All such organizations are, and can only be, the creatures of sovereign nation-states. It is their member governments that bring them into existence, lay down their initial roles and terms of reference, decide their future membership, finance their current activities

1 Oxford's main American rival, Webster's Dictionary, offers a similar though more explicit wording: 'possession of title or status as a result of acquisition by means that are held to be in accordance with law or custom' (1961, p. 1291).

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(whether directly or indirectly), and exercise continuing control over what they do and how they do it. Admittedly there is no set pattern of relationships and procedures, and different agencies may acquire, or be granted, different degrees of initiative and autonomy. But whatever pattern may evolve, and whatever the differences between the agencies which are indeed substantial, it is the member governments that determine these matters and have the sole right to change them. Except by winding up an agency, a course of action which only they can decide on, its governments cannot escape these responsibilities. So long as an international agency continues to be maintained and financed by member governments, its right to exist, and to carry out the functions which those members have collectively assigned to it, is clear. To this extent, and in this sense, its legitimacy derives from governments alone. Questions of public acceptability and 'direct links with popular sovereignty' do not enter in.

What is more, the formal legitimacy of an agency does not necessarily depend on its having the 'indirect links with popular sovereignty' which are made possible by democratic processes within member states. Most existing international agencies include among their members governments which are far from democratic, and this is neither an oversight nor an anomaly. Now as in the past, it is unusual for the observance of democratic forms to be made a condition of eligibility: generally speaking, the right of a member state to join an agency, and to participate in its affairs, does not depend on whether or how far the government of that state is democratically elected, accountable to its citizens, and concerned to safeguard civil and political rights.[2] This is most obviously the case with the United Nations, where Article 3 of the Charter specifies that membership is open 'to all peace-loving states which accept the obligations contained in the present Charter and, in the judgement of the Organization, are able and willing to carry out these obligations'. The reason for this is clear: insistence on the observance of democratic forms as a condition of membership would not only have created from the start huge and divisive problems of interpretation, but also put in question the principle of universality which is widely viewed as essential to the legitimacy of the UN system.

Forms of government were likewise not taken into account in defining eligibility for membership of the GATT, and this continues to be the case in the WTO. Thus – to take a recent leading instance – China was not barred from consideration for membership of the Organization on the grounds that its political system does not provide for free elections or protect basic liberties. As in other applications for membership, and in accordance with the WTO Articles of Agreement, the preconditions were more technical and specific to the Organization. Most people,

2 There are of course exceptions. Thus in the case of the OECD today, it is clear that new candidates for accession would have to establish democratic credentials as well as meeting other tests. (The fact that the criteria for OECD membership are notably more restrictive than for UN agencies is sometimes viewed, mistakenly, as weakening the Organisation's claims to legitimacy.) In the case of the European Union, achieving membership is formally dependent on demonstrating 'stability of institutions guaranteeing democracy'; but the EU is not an international agency, though the European Commission is.

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including some though not all of today's critics of the WTO in 'civil society', would take the view that the legitimacy of the WTO was not undermined by the accession of China. As to the future, extending the criteria for accession, so as to include within them the observance of democratic forms, would strengthen the Organization's claim to formal legitimacy only if it were agreed by the existing member governments. It is for them to determine the basis of eligibility.

Esty notes (p. 15) that 'some of the regimes of WTO members are not fully democratic'. Although he views this as one of the reasons why the Organization now lacks legitimacy in his sense of the term, he does not argue for a tightening of the conditions for WTO membership. He simply by-passes the aspect of formal legitimacy, to argue that those of the Organization's member governments that are democratic should now take effective steps to strengthen its claims to public acceptability, through new or stronger links to 'popular sovereignty'.

Whether such direct links would in fact make the WTO more legitimate is open to question. The notion that they make the democratic process within nations more legitimate has been questioned by Robert Hudec in the context of the history of trade policy in the United States. Hudec makes the point that the notorious Smoot-Hawley tariff of 1930 was a product of 'direct democracy': 'Seldom has so much of the US electorate had so much direct impact on so many details of a major US statute' (Hudec, 1999, p. 217). He argues (p. 220) that such episodes, as also the handling of present-day issues of sanitary and phyto-sanitary standards, cast doubt on what he terms 'the simplistic notion that democratic participation is a one-dimensional phenomenon measured by the distance between the voter and the decision-maker'.

In Esty's treatment of the issues, this 'simplistic notion' goes unquestioned: legitimacy and 'popular sovereignty' march together. Moreover, it is not sufficient for democratic participation to be achieved by actions taken, and procedures followed, within the boundaries of member states: the 'diverse global public' has to be effectively brought into the processes of the WTO. Hence (he argues) the official machinery of trade policy must give more scope, in the WTO as well as at national level, to non-governmental organizations which directly represent the people of a country, and in some cases, arguably, the people of the world.

3. The status and claims of non-governmental organizations

Esty's proposals for the WTO can be set against a wider background of institutions and events. In sketching out this background, I use the lower-case term 'non-governmental organizations' in a broad sense, so that it covers unofficial associations of all kinds, national and international. Among non-governmental organizations thus broadly defined, two groups are especially relevant in relation to the constitution and working of international agencies. One comprises representatives of the 'social partners' – that is, the organizations that represent businesses and trade unions. The second is the 'public interest' groups which have grown in

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number and influence in recent years. Following general current practice, I refer to these latter as the (upper-case) NGOs. They stand for particular causes, rather than sectional or professional interests. They include consumer associations, conservation and environmental groups, societies concerned with economic development in poor countries, human rights groups, movements for social justice, humanitarian societies, organizations representing indigenous peoples, and church groups from all denominations. They are often classed together under the label of 'civil society'; but this is a misuse of language, since the term should be, and historically has been, given a much broader meaning. It would appear that, in referring to 'civil society', it is the NGOs that Esty has in mind.

The principle of non-official involvement in the proceedings of international agencies is neither new nor controversial. Right from the start, the UN system assigned a role to non-governmental organizations. Article 71 of the Charter authorized the Economic and Social Council 'to make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence', and a recent text notes that there are now over 1,500 such organizations that are recognized as having 'consultative status within ECOSOC' (Archer 2001, pp. 26–27). Well before the UN Charter was drafted, a much closer involvement of particular non-governmental organizations, going beyond consultation, had already been established by its member governments within the ILO, which was set up after the First World War. The ILO is now, and always has been, an agency in which 'the trade union and employers' representatives … have an equal voice [with member governments] in formulating its policies' (ILO, 2002, opening page of text). In the OECD as in its predecessor agency, labour and business organizations have throughout been formally represented by advisory committees which have offices and staff in Paris. The committees function as channels for information, consultation, and exchange of views.

More recently, the NGOs, as distinct from business organizations and trade unions whose participation has a much longer history, have acquired a more prominent role in the working of many international agencies. In the main UN system, some notable steps towards involving them more closely were taken in the context of the 1992 UN Conference on Environment and Development (the 'Rio Summit'). Since then they have continued to grow in numbers, influence and (thanks largely to the Internet) in the ability to act in concert; and all the main international agencies, at varying stages and in different ways and degrees, and with the approval or acquiescence of their member governments, have made provision for enlarged NGO participation in their proceedings. The WTO is among these.

The question now is how much further, and in what ways, the involvement of non-governmental organizations should be taken; and though this aspect is rarely mentioned, and is not explicitly referred to by Esty, it applies not only to 'public interest' NGOs but also to representatives of business and labour organizations. I begin with some general observations, and then turn to aspects that are more specific to the WTO.

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Participation: the general aspect

It is possible to distinguish broadly between two forms of participation, both of which can be provided for within national states as well as – or possibly, rather than – within international agencies. Under the first, governments can involve non-governmental organizations more closely by making non-sensitive information widely and promptly available to them and by establishing, and treating seriously, procedures for consulting them. In such a process, the distinction between insiders and outsiders – the official participants and the non-governmental organizations – is fully maintained, though the outsiders are given more time, attention and opportunities to be heard. A second form of participation goes further, and brings closer interaction between the two worlds. It can cover active involvement of non-governmental organizations in intergovernmental meetings, substantive discussions, negotiations and decisions, and also in operations where – as with the IMF, the IBRD and the European Commission – an agency has major operational responsibilities.

The first form of participation is relatively straightforward and uncontroversial, at intergovernmental as well as national level. As noted above, governments have been taking this path in the WTO and elsewhere, with NGOs especially in mind. The Guidelines established in 1996 by the General Council of the WTO 'mention the need to make documents more readily available than in the past, require the Secretariat to engage actively with NGOs, and recommend the development of new mechanisms for fruitful engagement, including symposia on WTO-related issues' (Loy, 2001, p. 122); and since then, recent Directors-General have made clear their commitment to act on these lines. Gary Sampson has noted (Sampson, 2001, p. 12) that 'In the run-up to the [1999] Seattle meeting, all negotiating proposals were posted on the WTO website with no apparent ill effects. This would have been considered unthinkable to many delegations even in the recent past'. In the OECD, the 1999 ministerial communiqué said that 'Ministers … looked to the Organisation to assist governments in the important task of improving communication and consultation with civil society'.

Since making agencies more open and consultation processes fuller and more intensive gives rise to costs as well as benefits, there will always be questions as to how far to go. Again, there may be problems in judging the claims to recognition of NGOs in particular, and in deciding which of them are to be brought into formal consultations: the issues of credentials and 'modalities' are not to be seen as trivial. But the general principles of transparency and closer consultation are widely accepted, with good reason, and accepting them does not change or obscure the boundaries between insiders and outsiders. 'Popular sovereignty' is not given serious expression.

For Esty and those who share his views, this does not meet the main problem, which is that even democratic governments and those who work for them are insufficiently representative of their peoples. The remedy is (to use Esty's wording, p. 19) 'to establish more representative international decisionmaking bodies'.

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Non-governmental organisations would then have a recognized place of their own, alongside ministers and officials, in the substantive work and the decisions of an agency such as the WTO. This would supposedly ensure popular sovereignty and the legitimacy that depends on it.

I believe that this conception of legitimacy is at fault.[3] The whole notion of a 'civil society' which has claims of its own to speak for the people of a country has no basis when that country has a democratically elected and responsible government: persons who are not elected, and who are not accountable to a duly elected and broadly representative legislature, can have no such representative status. This is not to argue that democracy is only a matter of elections, nor that the notion of 'civil society' is without meaning or value, despite the questionable use that is now often made of it. The issue is one of defining admissible roles and claims; and here the main point is contained in the view that Gary Sampson attributes to WTO member states, that 'the WTO is an intergovernmental organization and governments should represent the collectivity of their constituents' (Sampson, 2000, p. 1114).

The above argument applies to all non-governmental organizations. It is sometimes argued, or simply assumed, that the NGOs have a special claim to represent society as a whole, which is not possessed by business or professional groups, because they speak for the 'public interest'. This is doubly mistaken. For one thing, the contrast is overdrawn. The involvement of groups representing special interests, including business organizations, may serve to promote better informed and more satisfactory outcomes. At the same time, the distinction between 'sectional' and 'public interest' groups is blurred in practice: there is no reason to presume that all NGOs, particularly those with large organizations and budgets, are free from self-regarding motives. Second, it may be that arguments typically advanced by NGOs are open to question, and that their recommendations for action, if taken seriously, would be contrary to the interests of people in general. (Esty himself notes (p. 8) that 'Many of those who criticize the WTO and other elements of international economic structure have little foundation for the charges they make'.) Fundamentally, though, what is in question is not the motives or wisdom of non-governmental organizations, including NGOs, but their status as bodies that are neither elected nor politically accountable.

This does not mean that involvement of these organizations cannot properly or usefully go beyond consultation – as witness the very different cases of the ILO, with its long-established tripartite structure, and the IBRD where, with the consent of member governments, NGOs are now closely keyed into operational work. But two principles should bear on such involvement. First, its nature and extent is for governments to decide, case by case. Second, no non-governmental organization, whether speaking for businesses, trade unions, professional groups, 'public interest' concerns or any other constituency, has a valid claim to active participation *in its*

3 The argument here draws on Henderson (1999, pp. 57–60).

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own right in proceedings where the responsibility for outcomes rests, and has to rest, with the governments of member states, and is therefore exercised by political leaders and the officials who are authorized, qualified and paid to act on their behalf and in support of their role.[4]

The qualifying phrase, 'in its own right', needs to be underlined. My contention is that 'civil society' has no claim, on grounds of democratic legitimacy alone, to have a governing voice in international agencies, or even to close involvement in their substantive work. But the member governments are free to choose: it is for them to decide whether and how far to go down such a path. While they cannot shed their status or responsibilities, they can, if they so wish, assign to representatives of non-governmental organizations roles and tasks within the agencies alongside, or even in place of, official participants. I turn now to consider the case for moving in this direction within the WTO.

Participation: the WTO today

Up to now, member governments of the WTO have drawn a fairly clear line between the two forms of participation described above. While the Organization has made itself more accessible and open to the non-official world, through informing and consulting non-governmental organizations more fully, governments have not been prepared to sanction more active outside involvement. It is true that a few governments sometimes include representatives of non-governmental organizations in their delegations to biennial WTO Ministerial Conferences, but to the best of my knowledge none are directly involved in the day-to-day operations of the Organization. To quote Sampson (2000, p. 11) again: 'Unlike a number of other international organizations, the WTO permits only representatives of governments and selected intergovernmental organizations to participate in or observe the processes of its regular activities'.

There are sound reasons for retaining these restrictions on outside participation in the activities of the Organization.

One reason, and arguably the most decisive, concerns the Organization's agenda. As Sampson notes (p. 11 again), 'WTO members justify their reluctance on the grounds that the WTO is both a legally binding instrument and a forum for negotiations'. The latter aspect is especially telling. More than any other international agency, the work of the WTO is linked to intergovernmental negotiations, with the national delegates chiefly acting as actual or potential negotiators and the Secretariat assisting them in that capacity. Few governments, if any, would welcome the active and regular participation of outsiders in negotiating processes, and there are valid reasons for this. An essential part of the GATT/WTO's *raison d'être* is that governments can negotiate the exchange of market-opening concessions in order to overcome the opposition of protectionist interests at home. It would hardly make

4 As noted above, Esty appears uneasy about the fact that national and international civil servants are not elected persons. But any notion that they should be elected would be absurd.

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sense to bring such outsiders inside the negotiating tent. The same argument applies to negotiations relating to revising existing rules or making new ones, where 'protectionist capture' is an ever-present threat.

Second, many if not most of the NGOs which aspire to greater influence in the WTO either do not share or actually reject the objectives of the Organization. They are opposed to freedom of cross-border trade and capital flows, suspicious of further moves in that direction, and preoccupied with what they see as the damaging effects of globalization. These attitudes typically go with a generalized hostility to capitalism, multinational enterprises, and the idea of a market economy.[5]

Third, the issue is a divisive one. The support for closer NGO involvement has largely come from some of the OECD member countries, while it is firmly opposed by the governments of most developing countries.

For all these reasons, the active formal involvement in the substantive work of the WTO of non-governmental organizations in general, and NGOs in particular, would make it a less effective institution for achieving the objectives that its member governments have assigned to it. Esty's proposals for constitutional change, however, go together with the view that these objectives should now be broadened. I therefore turn to this second element of his thesis.

4. Objectives, agenda, and the ensemble of policies

Esty believes that trade officials, national and international, need to change their ways, and hence the ways of the WTO. They should recognize that 'The WTO's impact has clearly moved beyond the narrow realm of trade economics; its decisions inescapably involve trade-offs with other policy goals, broadly affect other realms, and clearly involve value judgements' (p. 13). This recognition should go together with an administrative reorientation. They should no longer work within the now outdated 'club model' of international cooperation, under which groups of like-minded specialists conduct negotiations behind closed doors, and arrive at agreements largely in isolation from government policies in general, within what Robert Keohane and Joseph Nye (who invented the concept of the club model) refer to as 'decomposable issue areas' (Keohane and Nye, 2001, p. 291).

It is true that trade officials, like other specialists, live much of the time in a world of their own. This aspect of reality has been well described by William Letwin:

> 'Each particular field of policy is a relatively closed environment, peopled by official and private specialists, who work with recondite information and esoteric

5 In this connection, David Robertson has reported (Robertson, 2000, p. 1132) his experience that 'A search of NGOs' websites that claim to be part of "civil society" does not reveal any that support liberal trade'. The anti-liberal role of the NGOs in connection with the ill-fated Multilateral Agreement on Investment is reviewed in Henderson (1999).

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> routines, habits and precedents which can only be dislodged against considerable opposition and at the cost of upsetting time-hallowed expectations. Each field of policy therefore runs on with a momentum of its own which persists even when the ensemble of policies is changing its shape'. (Letwin, 1989, p. 633)

Up to a point, however, such things are inevitable, and serve a useful purpose: one might expect that the same situation would soon prevail, in large part for valid reasons, in the new Global Environment Organization which Esty would like (p. 17) to see established. In any case, isolation is not the whole story: in most areas, including that of trade policies, the working environment is far from wholly closed. Governments remain responsible for the 'ensemble of policies', in economic affairs as elsewhere, and in reviewing and deciding the economic ensemble they typically try to take account of a broad range of objectives and concerns including those that Esty lists. The fact that in a particular area of policy ministers and officials engage with limited and specific issues does not mean that they are required, expected or allowed to do so in isolation or without regard to wider aspects.

Esty gives an oversimplified picture of the work of trade officials, and of the WTO and the GATT before it. He portrays those involved as single-mindedly pursuing the cause of freer trade, with 'economic efficiency' alone as their guiding principle. But the trade policies of member governments have never conformed to such a pattern. In a brilliant dissection of the draft Havana Charter of 1947, Jacob Viner showed that the International Trade Organisation (ITO) then proposed was a complex compromise reflecting the prevailing political realities of the time: it certainly was not a blueprint for free trade (Viner, 1947). The GATT, which then emerged as a pared-down version of the ITO, was likewise a delicate political balancing act: rules were established to liberalize trade in goods, but these were circumscribed by other rules which allowed contracting parties wide leeway to continue existing protectionist measures and even to adopt new ones.

This balancing act was maintained throughout the history of the GATT, and has now been transferred to the WTO. Trade liberalization in the GATT/WTO process has throughout been gradual, patchy and laborious, sometimes reluctant, and always subject to limitations, reservations, and even on occasion reversals. With one surprising exception, which brought with it no tangible result, no WTO member has formally endorsed free trade.[6] Over the 55 years since the GATT came into existence, even those of its member governments that have participated fully in the various 'trade rounds', and brought down their tariff rates accordingly, have pursued policies only of heavily qualified liberalism. This is hardly surprising, since

6 In a White Paper issued in November 1996, the then (Conservative) British government formally endorsed the goal of global free trade by 2020. However, a different government came into office soon afterwards, and in any case the external trade regime of the UK has long been, aside from a few residual elements, that of the European Union as a whole. The White Paper appears to have left no trace on thinking or events.

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in all of them trade policies have been, and continue to be, strongly influenced by considerations other than 'efficiency', such as concern for particular interests and groups, and conceptions of national interest which can be viewed as justifying protectionist measures. The picture of trade ministers and officials as unconditional and narrowly focused proponents of trade liberalization, allowed by governments to do their will in obscurity, is a caricature.

Admittedly, to recognize these facts does not dispose of the case for a broadening of the objectives of the WTO – nor, more generally, for discarding the 'club model'. The main aims and concerns that governments assigned to the GATT, and which they have carried over into the WTO, are indeed restricted in scope: they relate specifically to the conduct of trade policies, where they give expression to liberal principles of quota abolition, tariff reduction, and non-discrimination. While the Organization is instructed, in its Articles of Agreement, to have regard to broader objectives, which now include 'sustainable development' and ensuring that developing countries participate fully in the benefits of economic growth, these objectives form a background for officials and Secretariat, rather than serving directly as a basis for action. They do not meet the need that Esty perceives in the WTO of today, for 'rules and procedures that better balance the (sometimes) competing goals of economic integration, trade, and investment liberalization, and economic efficiency on the one hand, with environmental protection, human rights, equity and other virtues on the other' (p. 19).

It is understandable that Esty's concerns relate specifically to the WTO of today rather than the GATT of old. As a result of the Uruguay Round agreements, the WTO provides market access rules for the bulk of international trade, not just trade in (some) industrial goods; it deals more extensively with non-tariff barriers, going deeper into domestic regulations that increasingly bear upon trade flows; it covers intellectual property (substantially) and trade-related investment measures (partially); nearly all agreements now form part of a 'single undertaking', by which the obligations entered into by countries in different areas are linked; and these obligations have been made enforceable through a much stronger dispute settlement procedure. 'New issues', such as labour and environmental standards, and rules governing competition and foreign direct investment, have swirled around the Organization for the last few years. With the exception of labour standards, all these form part of the agenda for the new WTO round launched at the Doha Ministerial Conference last year. Finally, the WTO membership has greatly increased, with the accession of many developing and transitional countries.

Overall, the WTO in 2002 is more politicized and legalized than the diplomacy-oriented GATT. It is *politicized* in the sense that it is in the spotlight of public heat and controversy, to a far greater extent than was ever the case with the GATT. It is *legalized* through what is in effect a quasi-automatic dispute settlement mechanism charged with interpreting and enforcing increasingly complicated legal agreements. The combination has manifestly put the squeeze on traditional

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GATT-style diplomacy. The WTO thus operates in a changed environment. Internally, it has wider though still limited scope; and partly in consequence, it faces strong and growing external pressures.

Even granting the differences between the GATT then and the WTO now, however, it does not follow that Esty's programme of change should be adopted. For one thing, it is far from clear what form his new 'rules and procedures' (or alternatively, as on p. 19, 'new modalities and substantive principles') might take. In this connection, his two specific proposals for the Organization fit uneasily with the idea of broadening its concerns. On the one hand, he suggests (p. 17) that 'As a critical first step, the WTO must trim its sails and reserve its strength for core liberalization activities', which would involve 'retreating from its current role as dispute resolution mechanism to the world'. At the same time, he wishes to involve the NGOs more closely in the Organization's work, even though the great majority of these are concerned with particular issues and causes rather than the ensemble of policies. More fundamentally, the whole notion of broadening the goals and concerns of the Organization is open to question.

In my view, it would be unwise for the WTO to be charged, in all its proceedings, with the duty of taking explicit account of a wide range of other objectives that governments have endorsed, but which are not directly related to the goal of a more liberal trade system. As David Robertson has noted, the fact that environment and development objectives have now been incorporated in the Organization's terms of reference does not mean that its distinctive role and purposes have to be redefined. Now as in the GATT, 'the means specified in the WTO for achieving these objectives are limited to reciprocal and mutually advantageous reductions in tariffs and other barriers to trade, and the elimination of discriminatory treatment in trade relations' (Robertson, 2000, p. 1119). The reason for retaining this focused agenda for the Organization is simply that (to quote Martin Wolf) 'experience suggests that the opening of trade … flows enriches most citizens in the short run and virtually all citizens in the long run' (Wolf, 2001a, p. 182). If anything, the WTO needs to *re-emphasize*, not redefine, the GATT's *raison d'être*, albeit with a wider agenda of trade liberalization – in agriculture and services, as well as industrial goods – and of rule-strengthening, especially in relation to anti-dumping measures and subsidies.

More broadly, and in relation to economic policies as a whole, it is going well beyond the evidence to argue that globalization has rendered obsolete the notion of 'decomposable issue areas', with its corresponding division of labour between different specialists and different international agencies. Coordination problems are present today, as always, but they have not built up in a way that requires a jettisoning of the 'club model' as a basis for international economic cooperation. There is no compelling reason to redraw the boundaries of the leading international agencies, and much to be said for the view that 'at present the world does best by constructing regimes designed to achieve specific and limited ends' (Wolf, 2001b, pp. 201–202).

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This however raises the more general issue of 'global governance', and leads onto the third element in Esty's thesis.

5. 'Global governance' and the role of the WTO

Two closely related arguments are now brought to bear, by Esty and many others, to support the view that the world now requires, and is in course of developing, a stronger system of global governance in which international agencies, including the WTO, would play a leading part. Both arguments relate to the supposed effects of globalization, and both are without foundation.

Argument Number One, in its most basic form, is that the huge size and rapid growth of international trade and capital flows establishes *in itself* the case for more effective global governance: such flows, it is presumed, cannot be left unmanaged. For some commentators, globalization has brought the dawn of a new era. One of these international dawnists is the present Secretary-General of the UN:

> Today, networks of production and trade have broken free from national borders and become truly global. But they have left the rest of the system far behind (Annan, 2001, p. 27).

A similarly melodramatic view is taken later in the same volume, by Peter Sutherland, John Sewell, and David Weiner:

> It is obvious to many observers that the development of the world economy is outpacing the capacity to govern it, at both the national and international level … The impact of globalization has made the 'logic' of the post-war period obsolete (Sutherland *et al.*, 2001, pp. 102, 103).

Argument Number Two is that (to quote Esty, p. 15) 'We live in a world where state power has been weakened, and powerful new actors have emerged'. It is now widely held, and endlessly reiterated on all sides, that globalization has deprived national governments of their ability to control events. This is often joined with a belief that the powers thus lost have passed in large part to multinational enterprises (MNEs), and indeed the MNEs may be among the 'powerful new actors' that Esty refers to.

A presumption that globalization has had these effects often leads on to the thesis that increasingly there will be, and should be, greater involvement of NGOs and international businesses in shouldering the now heavier burdens of global governance. For example, the World Economic Forum, in a document issued after its annual meeting for 2002, advances the view that

> Transparent multi-stakeholder networks will likely emerge as the most legitimate form of global problem solving in the 21st century. Governments must join with business, international organizations and the emerging transnational civil society to form coalitions around critical challenges on the global agenda and collaborate in flexible frameworks to resolve them (World Economic Forum, 2002, p. 3).

Other business spokespersons and organizations have voiced the same idea.

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These twin arguments, or assumptions, take no account of the fact that closer international economic integration, both in recent years and farther back – for it is by no means a new phenomenon – has in large part resulted from decisions voluntarily taken by national governments. Generally speaking, governments have made their economies more open not because they were forced to but because, with good reason, they considered such actions to be in the interests of their citizens. In taking this course, they accepted specific constraints on their freedom of action; and in some cases, most notably the members and would-be members of the European Union, they have even ceded the right to determine their own trade policies. But they have done these things of their own accord. More than technological advance, national policies and institutions have determined the pace and depth of globalization, and governments remain free to decide how much further to go towards fuller economic integration with the rest of the world.

Aside from such constraints on external economic policies as they have freely accepted and wish to maintain, national states today remain almost as free to act and decide today as they were 10, 20 or 30 years ago.[7] Even small states, provided they have stable governments, retain in full the power to run their affairs in relation to such matters as defence, foreign policy, constitutional arrangements, the electoral system and voting rights, residence, citizenship, the legal system, public provision for health, pensions and welfare, and the status of the national language or languages. Even in relation to the choice of taxation rates, the evidence clearly shows that there remains substantial freedom of choice. The notion that today's more economically integrated world is one of 'post-sovereign governance' has no basis.[8] As to the dreaded MNEs, the freeing of cross-border trade and investment flows tends to weaken such economic power as they may possess, because it widens the scope for competition.

For some commentators, globalization enhances the role of international agencies: thus Miles Kahler writes that 'Growing international integration points to greater delegation' to the agencies (Kahler, 2001, p. 104), while Keohane and Nye (2001, p. 265) begin a sentence with the words 'As these institutions become more important …' There is in fact no such general tendency for the power of the agencies to increase. Both the IMF and the IBRD are less influential than they were 20 or 30 years ago, the Fund because its lending operations are now limited in practice to developing countries, and the Bank because of the growth of private lending to an increasing range of its borrowing countries. All the agencies, now as before, are the servants and instruments of their member governments. There is little or no evidence of any wish or tendency to delegate powers to them.

7 Arguments and evidence in support of this statement are set out in Wolf (2001), in Chapter 5 of Henderson (2001), and in the final chapter of Sally (1998).

8 Such an assertion is to be found in a journal article on the WTO (Scholte *et al.*, 1999), where it is also stated that 'Recent intensified globalization has broken the Westphalian mould of politics'. All this is pure fantasy.

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The WTO and global governance

It is true that the WTO can be portrayed as an exception to this generalization. At the time when the Organization was set up, John Jackson observed that its establishment marked 'a watershed in the international economic system', resulting from 'the mere fact of creating a definitive international arrangement, combined with the extraordinary expanse of the Uruguay Round negotiations' (Jackson, 1995). As noted above, the formal establishment of the WTO as an international agency (as distinct from a mere agreement), the extension of its concerns to a range of new areas, the notion of a 'single undertaking', and, most notably, the enormous strengthening of the dispute settlement mechanism, have between them created a new political-legal situation for the agency and its members.

However, there is another side to the picture. It is also possible to take the view that, to quote from a recent book by Douglas Irwin, 'The World Trade Organization is something more, but not much more, than the GATT …' (Irwin, 2002, p. 186), and that both agencies should be seen as closely restricted in their capacity to act independently and to influence events. Four aspects of the WTO's inherited limitations are worth nothing.

First, like the GATT, the Organization has a notably small Secretariat with a strictly limited role. Its complement of 575 permanent staff, plus some 200 persons on short term contracts, compares with a figure of over 2,800 for the IMF (counting 'contractual employees' as well as regular staff), and some 11,000 staff names listed in the IBRD's current directory. The difference reflects the fact that both the Fund and the Bank, and especially the latter, have large operational responsibilities. By contrast, the primary role of the WTO Secretariat is to service national delegations. In this it resembles the OECD, where however Secretariat numbers are much larger, both absolutely and – still more – in relation to the numbers of national officials in permanent delegations, and where the scope for the Secretariat to do independent work is greater than in the WTO.

Second, the WTO like the GATT is an organization where decisions are made by consensus. The limits that this tends to impose are reinforced by a third factor, which is that, like most international agencies but unlike the Fund and the Bank, the Organization is financed by direct contributions from member governments which are subject each year to prolonged, detailed and often contentious scrutiny. Agreement on the budget is subject to consensus.

The last and most fundamental factor is that those who make up the Organization, whether in the Secretariat or the permanent delegations, have virtually no power to act independently. Generally speaking, though exceptions can occur, national delegations to the WTO are under close and continuous control from their capital cities. They are not independent actors, but persons under instruction.

Despite its enlarged scope and capacity to act, therefore, the Organization is not a powerful instrument of global governance, nor is it in course of becoming so, because this is not what its members wish or require of it. Here as elsewhere,

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national governments remain in charge, and show little tendency to cede or delegate authority.

Twin illusions of globalization

In so far as the WTO is required by its members to act in ways that constrain or put in question their conduct, the need for this does not mainly arise from globalization. To the contrary, the main activities of the Organization, and most of the debates and disputes that take place within it, arise from the fact that member governments have not fully liberalized their trade. Their failure and reluctance to do so gives rise to the rich and varied array of exceptions, qualifications, derogations, reservations and outright departures which go along with the rules, the handling of which accounts for a substantial part of the Organization's proceedings. If and in so far as member countries were prepared to liberalise unilaterally, as many of them have in fact done in the past, this would both increase the extent of globalization and reduce the WTO's present restricted role in global governance.

The notion that closer international economic integration demands new forms of collective action rests on a misconception, a distorted picture of what such integration involves.[9] In this picture, the growth of cross-border trade and capital flows, in response to liberalization, appears as an anarchic melée or tidal wave, which puts hapless people and governments at the mercy of events and forces which they cannot control. Alternatively, or even simultaneously, it is depicted as a means through which human lives are made subject to dictation by impersonal and uncaring markets. A recent and striking instance of this second line of thinking is to be found in a document issued by the European Commission:

> Existing international economic and social rules and structures are unbalanced at the global level. *Global market governance* has developed more quickly than global social governance (European Commission, 2001, p. 3, italics added).[10]

More justly seen, the freeing of trade and capital flows is a source of neither disorder nor constraints. It is first and foremost a means by which people and enterprises, and even governments themselves as purchasers of goods and services, are enabled to realize more fully their legitimate goals and desires. Everywhere, it widens opportunities and enlarges the domain of individual freedom. There is no reason to treat it as a generalized threat, nor to suppose that it is inherently a subject for new forms or extensions of official regulation through mechanisms of 'global governance'.

9 Of course, today's argument for stronger global governance rests in part on the need to deal with external effects that are global rather than local, and in particular, to handle problems that could arise in connection with climate change. It is widely believed that greenhouse gas emissions should be substantially curbed, and the argument that this would require some form of binding international agreement is hard to question. But greenhouse gas emissions are not a product of closer international economic integration: they are generated in closed as well as open economies.

10 The Commission goes on to say that 'global social governance' should take effect mainly through 'the universal application of core labour standards'.

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6. Conclusions: the challenges facing the WTO

Historians often treat events with reference to two contrasting but ever-present elements, continuity and change. In the case of the WTO today, as compared with the GATT, both elements are very much in evidence. Like many commentators, Esty gives too much weight to the element of change; and in particular, he overstates the extent to which the external environment of the Organization has been transformed. Now as in the past, international agencies derive their legitimacy from their member governments; and in the case of the WTO, the fact that it is today more subject to attack, by NGOs especially, does not establish the existence of a genuine 'legitimacy crisis'. Now as in the past, WTO members are committed to freer trade only with many and substantial reservations: they are not subject to a narrow preoccupation with an 'efficiency' criterion which has outlived its usefulness. Now as in the past, national governments possess substantial powers of action and decision. Globalization has not deprived them of these powers, and it does not render necessary, or even advisable, the creation of new modes of 'global governance' in which they hand over responsibilities to international agencies. All three related elements of Esty's case for radical reform have little or no foundation of fact.

All the same, substantial changes have taken place in the role and status of the WTO, as compared with the GATT before it, and it is clear that these have brought with them problems as well as opportunities. The main problems that have emerged are summarized by David Robertson (p. 1131) as follows:

> Extension of the GATT rules to services, government procurement and intellectual property has already stretched the system dangerously … With the dispute settlement process generating new rules which also extend the scope of the WTO into new areas, the cohesion of the membership is weakening.

In addition, two recent developments have given rise to procedural problems. One is the large influx of new members. A second is the growing desire on the part of many members to participate more actively in WTO business as the Organization's agenda expands to include new and often potentially divisive subjects. As a result, changes in internal structure may well be needed in order to improve the conduct of business. One possibility, which has been proposed by Richard Blackhurst, is the creation of a formally constituted Consultative Board (Blackhurst, 2001).

Last but not least among the problems that the Organization now faces is the growth in numbers, activity and influence of anti-liberal NGOs. This too is a relatively recent development, though it is linked, not with globalization as such, but with mistaken notions as to its meaning and effects.

I believe that the main threat today to the WTO, and still more to the purposes for which it and its predecessor were created by member governments, does not come from an erosion of democratic legitimacy. It arises from several sources, some old and some new. As ever, there is the combined influence of protectionist ideas and pressures, which remain strong almost everywhere, and the inherent and continuing sensitivity of trade policy questions. Alongside and reinforcing these are some newer

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interrelated elements. Internally, there are the problems that now arise from the combination of the Organization's expanded agenda and membership. More disturbing are external factors: the hostility of many NGOs to its aims and even its continued existence; the disposition of many member governments, as also of large and growing numbers of multinational enterprises, to fail to contest, or to make substantial concessions to, the dubious or unfounded arguments and claims of these organizations;[11] and the tendency of some member countries, including the US and the EU, to lend support to notions of 'global governance' through which common international norms and standards could be defined and imposed without due regard for differing local circumstances, so that they became elements of disintegration in the world economy.

On this diagnosis, the way ahead for the Organization is not that prescribed by Esty – involving the NGOs in its substantive discussions and decisions, broadening its objectives and concerns, and extending its powers in the name of global governance. Rather, its future usefulness depends on the member governments consulting effectively with non-governmental organizations in general, especially though not only within their own borders; devising better ways of conducting the internal business of the WTO; using the now enlarged scope of the Organization in ways that are not unduly ambitious or divisive; and above all, being ready to defend the idea of trade liberalization against its many opponents and to give expression to it in their actions.

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11 The readiness of many MNEs to engage in appeasement of their critics and enemies has been treated in an incisive essay by Robert Halfon (1998), and in Henderson (2001) which further argues (1) that enndorsement as well as appeasement may be involved, and (2) that generally speaking the contribution of the international business world to public debate on leading current issues of economic policy has been inadequate or worse.

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