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The WTO core agreement, non-trade issues and institutional integrity

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Abstract: WTO member countries understand the core agreement of the organization to consist of binding reciprocal market access achieved through multilateral negotiation, and supported by a system of trade policy rules and dispute settlement. Attempts to introduce social chapters into the WTO would compromise the core agreement. Specifically, authorizing the use of trade sanctions to pursue non-trade goals would diminish the value of the WTO to its members, and undermine the global trading system. WTO agreements and rules can be reconciled with environmental goals, the improvement of labor standards and the promotion of human rights through the development and strengthening of international institutions dedicated to these issues. Efforts by governments to promote new global institutions and international agreements would thereby remove political barriers to trade liberalization.

Recent protests against and criticism of the WTO have focused on its alleged lack of sensitivity to non-trade issues, such as the environment, labor standards and human rights. In particular, the more severe critics of the WTO have demanded either major institutional reforms, such as the addition of 'green' chapters to the agreement, or a radical weakening of WTO disciplines, so that its member countries can 'regain sovereignty' over their social and environmental policies that may involve import restrictions. Other commentators have seen these controversies as the signal of a 'crisis of legitimacy' for the WTO, which the institution must address in order to remain relevant in a multi-dimensional world economy (see Esty, 2002; Keohane and Nye, 2001).

This essay sets out to show that, whatever non-trade issues require global institutional coverage, the basic solution to these problems lies outside the WTO. The best approach to achieving progress on critical issues of the global commons is to develop and strengthen dedicated institutions and bargaining frameworks to negotiate environmental and other transnational issues. In addition, governments need to address creatively the 'old' problem of protectionism in their countries, which has flared up anew as part of public anxiety over globalization. For its part, the WTO as an organization needs to focus on the core agreement it maintains among its members: to provide reciprocal market access, mutually accepted rules

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of trade policy and a forum for negotiations and dispute settlement to support the gains from trade. Simple as it is, this agreement provides a clear conceptual basis for keeping the WTO narrowly focused on trade, and for understanding the expanding scope of trade negotiations over the years.

The essay begins with an explanation of the core agreement as the essence of the 'contractual' relationship among its members. WTO rules, dispute settlement provisions and governance procedures provide institutional protection for the core agreement. There follows a discussion of how WTO rules attempt to accommodate and balance issues of national sovereignty in terms of both a member's control over domestic policies and guarantees of its negotiated trade benefits. The next section addresses some of the problems of trying to incorporate new environmental and social rules into the WTO, particularly in the form of trade sanctions to pursue non-trade goals. The allowable scope of WTO activities is presented as the outcome of the political process of managing the core agreement. The final sections address the relationship between the legitimacy of the trading system and proposals for expanding international institutions to accommodate non-trade issues.

1. Institutional elements of the WTO and the core agreement

The core agreement of the WTO among its members consists of binding, non-discriminatory terms of reciprocal market access. Binding market access is established through multilateral negotiation and supported by trade policy rules and a dispute settlement system all WTO members are committed to honor. The 'new institutional' economics analysis of the WTO, based on Coase (1960), Williamson (1985), and Yarbrough and Yarbrough (1992), regards WTO membership as a contract, with rights and obligations that define the political cost–benefit calculations that countries must make in deciding whether or not to participate. Since the WTO is a consensus-based organization with no real legislative function, it has relied on this simple principle to motivate its activities and provide the essential foundation for its existence. Governments will be motivated to take part in a multilateral 'contract' such as the WTO by a *mutually welfare-enhancing goal* among its participants in which the contract *reduces uncertainty and transaction costs* compared with the alternative of a series of bilateral or regional agreements.[1] The welfare-enhancing benefit of the WTO derives from its ability to harness the basically mercantilist goal of governments to secure predictable terms of market access for their exporters. Given the desire among governments to open new trade markets, an additional benefit of the WTO is that the system reduces *transaction costs* for countries that seek to liberalize trade on a *reciprocal* basis.[2] Multilateral

1 Trachtman (1997) provides a useful literature review and summary of the transactions cost approach to understanding international economic institutions.

2 While economic theory shows the benefits of unilateral trade liberalization for any country, political models showing the influence on policy makers of lobbying among competing interest groups imply the

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trade negotiations based on the most-favored nation (MFN) principle extend market-opening measures across the board to all member countries, collapsing multiple sets of bilateral negotiations into a single set.

Throughout the millennia, market access has typically been subject to protectionist gatekeeping by sovereign governments to protect import-competing industries, which adds significant uncertainty and risk to the business of international trade. For example, firms often face considerable uncertainty in entering or sourcing from foreign markets, not knowing if governments might change their trade policies and thereby restrict market access. The denial of access would result in a loss of the value of investment in production capacity, foreign distribution, supplier relations and other trade-related activities. The role of the WTO has been to establish an agreement on rules of reciprocal market access, and in so doing to facilitate an *environment of certainty* regarding trade and investment in the world economy (Tumlir, 1985; Jackson, 2002). The political risk of international business – that is, the prospect of arbitrary actions by governments to close or restrict access to their markets – is thereby reduced. The fundamental motivation for the WTO system lies in the simple but compelling consensus among its members that adherence to common trade policy rules facilitates reciprocal and non-discriminatory market access and thereby improves national economic welfare for all participating countries. This single proposition alone unites the 144 current signatories to the WTO in their acceptance of the requirements of membership.

It is essential to recognize both the political and the economic content of the core agreement. The WTO has made politically possible what governments have traditionally found difficult to do: resist domestic protectionist pressures in the broader interest of national economic welfare. The non-mercantilist outcome – more exports and imports for each country – results from an essentially mercantilist bargaining framework. The WTO has been described as a 'peace treaty among mercantilists' (Sauvé and Subramanian, 2001) who are otherwise suspicious that their trading partners are bent on maximizing exports and minimizing imports. Each country's market access for imports is a 'concession' that is traded for reciprocal market access elsewhere. So in order to help your exporters in one industry you typically have to 'give up' protection of your domestic markets against imports in another industry. If everyone plays by these rules, everyone can claim victory on their home political turf in opening foreign markets to their exporters. In the end, the political logic behind the WTO's mercantilist framework has made possible mutual gains from trade for all its members. The willingness of governments to follow this path reveals a widespread and deeply entrenched recognition of the broader economic gains from trade for their countries.[3]

practical necessity of reciprocal trade 'concessions' in the trade liberalization process. See Grimwade (1996, pp. 39–40).

3 This conclusion does not necessarily rely on economic enlightenment among governments regarding the efficiency gains from trade, although it certainly helps. Governments need only be convinced of a strong positive contribution of exports to economic or non-economic goals, or alternatively, the dynamic benefits

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2. WTO membership as an incomplete contract

The core agreement sets limits on the scope of WTO rules and activities. The basic problem of incorporating a set of non-trade rules in the WTO system is that it would violate these limits, which reflect the common goal among its members of achieving gains from trade, and gains from trade alone. It is important in this regard to recognize the legal nature of the WTO as an organization. Unlike a constitutionally established government, which would wield independent legislative and enforcement powers over its member nations, the WTO's administrative structure was designed conservatively, in order to protect the integrity and value of the core agreement. The WTO secretariat, for example, has a limited budget and a small staff, and cannot in principle do anything beyond what its members have specifically delegated to it. Amendments to and interpretation of WTO rules are furthermore regulated by governance mechanisms that protect its basic principles. There are no 'elastic clauses' that can create new rules outside the established bargaining framework based on consensus.

One can consider WTO membership to be an 'incomplete contract' in the sense that existing WTO rules cannot possibly cover all possible trade issues and disputes in the future.[4] The governments of member countries recognize this limitation, and therefore rely on the organization's commitment to its core principles, as well any built-in measures to protect their interests, in order to prevent the erosion of WTO benefits. An important feature of the WTO core agreement in this regard is that it is backed up by a Dispute Settlement Understanding (DSU). As in any contractual relationship, its value depends on provisions that prevent the loss of benefits due to 'chiseling' on the agreement by other members (see Yarbrough and Yarbrough, 1992, pp. 40–42). WTO members can challenge the trade practices of other members on this basis, and WTO rules provide for a review by a dispute settlement panel, which decides if the policy in question has violated WTO principles and thereby 'nullified or impaired' WTO trade benefits for the complaining country. The system encourages a negotiated settlement, but if the panel process finds a violation of the rules (subject to review by a WTO Appellate Body), it can direct the WTO member to change its policy, authorize compensation for the victimized country, or ultimately – if all other exhaustive efforts to resolve the case have come to naught – allow for retaliatory sanctions. The DSU contributes significantly to the institutional value of the WTO by internalizing the consequences of violations into the agreement with specific procedures and penalties, strengthening the incentive

of access to international products, technology, investment, and/or ideas that accompany trade, in order to recognize the 'gains from trade' and participate in trade liberalization based on reciprocity.

4 While nearly all contracts are 'incomplete' in this sense, it is noteworthy that the WTO significantly strengthened its dispute settlement system for the very purpose of improving the protection of members' core 'contractual' benefits. See Milgrom and Roberts (1992, chapter 5) for a general discussion of the issue of bounded rationality and incomplete contracts and Yarbrough and Yarbrough (1992, chapter 2) and Trachtman (1999, pp. 346–350) for a discussion applied to international organizations.

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for compliance with existing rules, and increasing the likelihood of a mutually acceptable resolution to trade conflicts, even if the parties do not specifically use the DSU process.[5] Furthermore, panel decisions may not arbitrarily create any new WTO rights or obligations: DSU panel decisions cannot engage in 'judicial activism' to extend the basic WTO agreement beyond the bounds of the organization's consensus, as defined by the core agreement.[6]

The internal decision-making structure of the WTO provides further protection for the core agreement. The WTO is an international institution based on *consensus* and without independent enforcement powers. It cannot, therefore, act as a sovereign authority over trade policy, imposing and enforcing new rules from above on an unwilling membership. In general, no one country or even a small group of countries, regardless of their size or importance in world trade, is in a position to change the content of the WTO agreements. According to the WTO rules, any amendments that change the rights or obligations of members require approval by a two-thirds majority of *all* member countries.[7] Based on current membership, a group of forty-eight or more countries could effectively block a reform program, for example. In addition, the WTO Ministerial Conference has the power to decide, by a three-quarters vote, whether countries not accepting the amendment will be allowed to remain as WTO members under an exemption from the amendment. There is thus a strong indication in the WTO rules that amendments introduced independently will require nearly universal acceptance in order to be implemented as part of the WTO core. This constraint on reform suggests that an acceptable set of rules on non-trade issues in the WTO system, for example, would require comprehensive negotiations and overwhelming support for a multilateral agreement on all the issues, submitted as a package for an up-or-down vote. These constraints explain the difficulty of extending the current framework to include trade rules for environmental protection, labor standards harmonization, or human rights abuses. The only major amendment to the GATT itself has been the agreement on trade and development (Part IV) adopted in 1964. It is noteworthy that

5 The Uruguay Round reforms to the dispute settlement process removed the veto power of individual countries, virtually guaranteeing the adoption of panel decisions. See Yarbrough and Yarbrough (1992, chapter 2) for a discussion of dispute settlement as a strategic organizational issue.

6 Barfield (2001) argues that the WTO dispute settlement system has rule-making capabilities that are inconsistent with the organization's consensual framework. This is a problem that inevitably arises with any body granted interpretive powers, and it is indeed possible that dispute panel rulings can extend or push the margins on WTO rules and obligations. However, there is an implicit political constraint on creative rule-making through the DSU, to the extent that WTO members will oppose the wholesale introduction of new obligations. See Hudec (2002) for a critical review of Barfield's assessment.

7 In contrast to the IMF quota system that links a member country's voting strength with relative national income and other economic indicators, and the United Nations, whose voting is dominated by the veto power of the Security Council, the WTO officially maintains a one-country, one-vote system. WTO rules do give large countries the power to block unwanted amendments, but do not allow them to push through their own amendments on the rest of the membership. See Schott (1994, pp. 138–139) and Jackson (1997).

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this amendment was motivated by a desire among the early GATT Contracting Parties – mostly rich industrialized countries – to make GATT membership more attractive to less-developed countries (see Dam, 1970, pp. 236–242). It would be difficult to make this same argument with regard to adding social chapters to the WTO.

The WTO system therefore provides an additional benefit, especially for smaller member countries, in acting as a sort of 'leveling' device. Because of the MFN clause, basic WTO rules on market access, and a dispute settlement process, smaller countries are less likely to be bullied by large countries in trade policy matters. This institutional feature is, to be sure, imperfect, since large players in the WTO, notably the United States and the European Union, have disproportionate influence on trade negotiations and the implementation of the agreements. In addition, large countries have often found ways to impose unilateral protectionist agendas through the circumvention or abuse of WTO rules.[8] However, it is significant that the WTO attempts to provide a *system* of rules and procedures that apply equally to all its members. Such an arrangement benefits the world economy as a whole in terms of reducing unilateral protectionism, and the many smaller WTO members in particular which are otherwise virtually powerless in responding to unilateral trade restrictions by the large members.[9]

3. Sovereignty and exceptions to the WTO rules

WTO member countries have joined the organization as a cost–benefit decision based on the rights and obligations of membership. In doing so, they have consciously yielded a degree of sovereignty over their trade policies in exchange for the benefits of increased trade liberalization (see Jones, 1998a). At the same time, the WTO protects the sovereign rights of its member countries, as embodied by the core agreement. The issue of national sovereignty with regard to WTO rights and obligations therefore arises in two ways. First, do WTO obligations encroach on its members' sovereignty regarding their trade-related policies, and, second, do these obligations (or interpretations of them) encroach on members' sovereign rights to trade benefits under WTO agreements?

The first of these questions deals with allegations that WTO rules unjustifiably constrain the ability of governments to pursue environmental or social objectives

8 Examples include the use of various negotiated export restraints (formally banned as a result of the Uruguay Round) and antidumping and countervailing duty law, whose administration is notorious for abuse against imports.

9 A related issue of interest to smaller developing countries is the WTO's 'green room' system of deliberation, which tends to exclude many such countries, and contributed to the collapse of the Seattle ministerial. This problem goes beyond the scope of the present article, but it does point to the concerns of smaller WTO members that large members may try to 'high jack' the decision making process and force labor and environmental standards into the WTO. See Blackhurst (2001).

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because of their impact on trade. The second question addresses the concerns of exporting countries that may suffer reduced trade benefits they legitimately expect from WTO membership. Whose sovereignty is trumping whom? In principle, the WTO rules require only that a member government's policies not 'nullify or impair' other members' trade benefits under WTO rules, particularly MFN (GATT article 1) and National Treatment (article 3). There are, in addition, a number of 'general exceptions' to the WTO rules (GATT article 20) that allow import regulation for reasons of health and safety, conservation of natural resources, and other criteria (see Jackson, 1997, pp. 232–235). These exceptions do not in general allow trade restrictions based on foreign environmental, labor, or social policies. The debate over WTO reforms has often reflected a certain frustration on the part of environmental and social activists with the apparent inflexibility of the agreement, especially when new environmental and social exceptions appear to be no less reasonable than existing exceptions for prison labor (GATT article XXe), and merely international extensions of existing measures regarding conservation of (domestic) natural resources (article XX g) and protection of human, animal, or plant life or health (article XX b). Yet the exceptions, exclusions, and all other GATT provisions that qualify the core GATT principles are largely the result of compromises negotiated in the original negotiations that founded the GATT in 1947. This arrangement does not allow room for expanding WTO exceptions beyond their current limits.

The underlying principle of WTO exceptions is to strike a politically sustainable balance among its membership between collective gains from trade liberalization, the mainspring of the entire WTO system, and the legitimate rights of governments to regulate trade according to national criteria. Recent WTO dispute settlement panels have in fact attempted to balance trade and environmental issues, as noted by Weinstein and Charnovitz (2001). An appellate body decision on reformulated gasoline upheld the right of the US to enforce its Clean Air Act, for example, as long as it does not discriminate against foreign sources of gasoline supply. In the controversial shrimp–turtle case, the appellate body ruled that the US import ban on shrimp as a way of protecting turtles caught in shrimp nets is not necessarily in violation of WTO rules as long as the US attempted in good faith to negotiate a conservation agreement with countries where the turtles were endangered. Yet another appellate body decision upheld the right of the European Union to restrict imports of asbestos products from Canada for health reasons.

In cases involving environmental policy, the dispute settlement panels are typically asked to balance deference to national laws with protection of WTO members against discriminatory or protectionist policies against imports. The DSU panels and appellate bodies have attempted to strike such a balance within the confines of the WTO consensus. These decisions will inevitably be made 'on the razor's edge', and will remain controversial because they involve conflicting claims to sovereign rights of WTO members. In the end, the WTO system can adjudicate these issues only at the margin, and from case to case. A broader pursuit of environmental and

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other non-trade goals therefore cannot take place in the WTO itself, but must rely on new international agreements on these issues.

In general, all member countries will keep a close eye on any proposals that would limit or qualify market access, the main benefit of WTO membership. Any additional limitations on market access based on environmental or social criteria, for example, would typically require an offsetting concession in some other area, so that the balance of additional costs and benefits would remain acceptable. In short, governments of member countries, acting under circumstances of 'bounded rationality' tend to accept the terms of WTO membership with an implicit understanding that unforeseen circumstances will not compromise the core benefits of membership.[10] The uncertainty of future events is acceptable only insofar as the framework of the relationship among the members provides a reasonably transparent, predictable *process* of resolution, such as rules-based dispute settlement, and amendments based on large majorities or negotiations. This element of the WTO system runs directly against proposals to introduce new non-trade obligations that could compromise the market access benefit. If, however, there is a strong mandate for non-trade goals, sovereign nations that support them can either attempt to achieve the strong WTO majorities required for WTO reform, pursue the goals through new international agreements or conventions, or pursue the contrary policy and take the predictable consequences.

The example of unilateral trade restrictions based on discretionary criteria illustrates the conflict with the WTO core agreement. Consider the implications of an open-ended 'precautionary principle', which would allow a WTO member to restrict imports on the suspicion that they may cause harm to health or the environment, in the absence of scientific evidence. The EU has used this principle to justify its ban of US beef treated with growth hormones, even after several years of testing has failed to identify dangers to public health. If the WTO were to validate the unlimited use of 'precaution' as grounds for trade restrictions, without supporting scientific evidence, then the conditions of market access for imports into that country would have fundamentally changed. Henceforth, access to that market would depend on compliance with unpredictable standards that have no scientific foundation, and that would be suspected of having protectionist motivation. The concern of other countries would be that their exports to the country invoking the precautionary principle, especially exports of new products, could in the future be subject to discretionary trade restrictions, based on what trade officials there deem potentially harmful. The expected value of market access guarantees by the WTO would consequently decline, from both the present determination of potential harm and the possible future application of new measures.

10 See Williamson (1985, p. 30) and Milgrom and Roberts (1992) for a discussion of relational contracts as a type of response to bounded rationality. Yarbrough and Yarbrough (1992, pp. 34–40) offer applications to international trade relations.

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4. Trade policy, social goals, and the domestic political economy trap

In principle, trade liberalization does not conflict with environmental and social goals, and in many ways provides the economic underpinnings that actually support these goals. Reductions in agricultural subsidies and trade restrictions in foodstuffs would, for example, in many cases improve both environmental quality and economic welfare (Esty, 1996; Farrantino, 1997). Recent studies indicate that trade, by promoting development, also tends to increase preferences for environmental quality (Antle and Heidebrink, 1995; Dean, 2000).[11] Similarly, the principles and goals of the WTO support the promotion of human rights through increased economic welfare and stability (Petersmann, 2000; Lim, 2001), and the freedom to exchange goods is, in itself, arguably a human right (Sen, 1999; Srinivasan, 1996). The role of trade in economic development also contributes to worker rights and labor standards. From a strictly theoretical point of view, trade liberalization tends to benefit labor in developing countries, the abundant factor of production. It is true that the beneficial effects of trade on non-trade goals are often part of a long-term process that may take many years. Yet governments should avoid any systematic retreat from trade liberalization, even as part of a strategic effort to enforce global social and environmental standards. Such efforts will harm all countries and erode the economic foundation for progress.

Underlying much of the debate over introducing social chapters into the WTO is the issue of whether or not new rules in these areas would have protectionist effects. Strictly speaking, any trade intervention that is not correcting a legitimate 'market failure' will tend to diminish national economic welfare by distorting resource allocation and raising prices in favor of domestic import-competing industries. This outcome is independent of the motivation for the policy. Certainly, many WTO critics proclaim their innocence on the charge of protectionism, based on the declared primacy of the social goals in question, but in trade policy pure motives count for little. Various protectionist lobbies are only too happy to hitch their wagon to social causes in order to promote their agendas, as was evident at Seattle and other anti-globalization protests.[12]

Most proposals to introduce social chapters into the WTO rest, however, on a strategic argument, which is that any lost economic welfare from trade sanctions is more than offset by the benefits of forcing the target country to comply with the social goal. Threatened trade sanctions could be used in this manner to compel recalcitrant countries to protect endangered species, harmonize their labor standards to a higher global standard, or stop pollution within their borders. The

11 The profile of environmental quality may exhibit what has become known as a U-shaped 'environmental Kuznets' curve. In general, the wealth effect tends to increase both the resources available for improving environmental quality and the demand for it. See Ferraentino (1997, pp. 46–48).

12 Hoekman and Leidy (1992), for example, suggest that economic incentives allow protectionist interests to 'capture' environmental issues for their own purposes. Other groups with non-trade agendas oppose trade liberalization on ideological grounds and are openly contemptuous of the WTO; see Danaher and Burbach (2000).

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relative valuation of social goals, especially when they involve subjective criteria, is difficult. Economic analysis cannot establish, for example, the 'value' of an improved global human rights regime. Trade sanctions are therefore often presented as being above economic analysis, the necessary means for achieving overriding political and social goals.

Yet there are several serious problems with this approach. Hufbauer, Schott, and Elliott (1985, 1990) have compiled 116 case studies of various types of economic sanctions used by governments to pursue political and human rights objectives and conclude that they are rarely successful. United Nations agencies have also criticized their use (United Nations, 2000) and the 1992 Rio Declaration on Environment and Development warned against the use of trade sanctions:

> Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided (UNCED, 1992).

Trade sanctions, when they do cause harm, are crude and blunt instruments, often inflicting 'collateral damage' on those outside the target group. In addition, introducing social chapters into the WTO implies either a broad agreement on what the standards should be – which would be nearly impossible to achieve in the consensus-based WTO – or the vast expansion of unilateral restrictions, with individual WTO members asserting their own standards against other countries' under the GATT article XX general exceptions. Aside from the erosion of the WTO core agreement that would result from these reforms, it would introduce new burdens of surveillance and legal evaluation on the WTO, which would have to go into the quagmire of verifying and judging environmental violations, sweatshop conditions, and human rights violations.

Perhaps the most important objection to the sanctions approach is that it is diametrically opposed to the spirit of the WTO and its core agreement. Despite the trade sanctions contingency contained in the DSU, the authorization for such measures has been limited to a handful of cases out of nearly 300 filed from 1995 to 2002, such as the politically intractable beef–hormone and banana disputes between the US and the EU. The WTO is an organization devoted to trade liberalization, not trade sanctions, and it would be a gross perversion of its principles to introduce new rules with the intention of forcing compliance on unwilling members by using trade as a weapon. It is undoubtedly extremely tempting for those advocating global social and environmental agendas to take advantage of the ready-made WTO framework of trade policy rules and potential penalties and use it as an irresistible enforcement mechanism. But such a move would be internally inconsistent, and the WTO membership would not tolerate a high jacking of its core agreement.

The proposed 'greening' of the WTO also presents the critical problem of upsetting the outcome of trade negotiations, which comes from some inescapable facts of life in the political economy of trade. Exporting interests and the governments

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that represent them typically 'win' market access through multilateral trade negotiations by fighting against the entrenched resistance of import-competing interests in foreign countries. These negotiating battles often involve bitter wrangling and compromise, with much political capital expended by governments in order to achieve the deal. The outcome of the negotiation is typically a delicate balance between political costs and benefits, creating a political economy trap. Any introduction of a new basis for trade restrictions will automatically raise suspicions among exporters and their governments that foreign import-competing interests are trying to re-strike the balance in their favor, diminishing the value of the original negotiations. It does not matter in this regard whether or not environmental, labor and human rights standards are motivated by the craven spirits of protectionism. All it takes is a consideration of the trade impact of such standards on the price and availability of imported products. Trade restrictions inevitably create rents and transfers that are the very reason for WTO rules against such measures.

5. The scope of WTO activities

The issue coverage of the WTO has gone well beyond the original mandate of its predecessor, the GATT, which was essentially to reduce tariffs on manufactured goods. Does this development mean that the WTO door has been opened to new types of bargaining on non-trade issues? This question is best addressed in terms of the political process that underlies the WTO consensus. It is certainly true that the WTO has expanded the agenda of trade negotiations and rules; this was in fact the main reason for the establishment of a new trade institution to succeed the GATT. WTO agreements now cover a broad range of trade-related issues, including foreign investment and intellectual property rights (IPR), services, and agriculture, among others, most of which are part of a 'single undertaking' that binds the entire membership. The expansion of WTO rules into new sectors and even into new types of trade-related regulations in most cases represents a straightforward extension of the core agreement into new products or variants of market access issues.

In contrast, the expansion of WTO into policies other than those dealing with market access has proven to be problematical, in that it has complicated the simple reciprocity formula associated with the core agreement. In the TRIPs agreement, for example, WTO members have agreed to develop and/or harmonize their intellectual property protection laws to a global standard. In contrast to traditional trade rule agreements, which reduce government intervention in markets, the TRIPs agreement requires increased intervention.[13] Based on the efficient allocation

13 There are other differences. TRIPs does not enjoy the universal support among economists that free trade does, largely because it represents the protection of monopoly rights, and implies substantial transfers to patent and trademark holding countries from countries that import these products, while trade liberalization generally implies gains for all participants. Yet economic theory suggests that TRIPs can also be welfare-enhancing for both the global economy and for all participating WTO members. See Maskus (2000) for an overview of these issues and an optimistic outlook.

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of issues to institutions, one could argue that such negotiations belong in a strengthened World Intellectual Property Organization (WIPO) rather than the WTO. However, the key element is to examine the role of TRIPs in expanding the gains from trade, as viewed by the WTO members themselves. Intellectual property violations are in fact closely associated with heavily traded goods and services such as computer software, pharmaceuticals, recorded music, and movies, and so it is not surprising that exporters of these products lobbied heavily to include IPR in the Uruguay Round negotiations. Yet more importantly, the IPR issue was ultimately accepted as a negotiable bargaining chip in the Uruguay Round by the participating countries, notably by developing and other importers of IPR-intensive products. The TRIPs proposal represented by most accounts a counterweight to developing countries' demands for trade liberalization in textiles and apparel and agriculture (see Schott, 1994, p. 115). In addition, developing and other countries realized that the incentives for increased direct foreign investment in their countries would depend in many cases on improved IPR protection, and TRIPs provided possible future gains from domestically developed intellectual property. In the end, a broader trade agreement, expanding the reach of the core agreement, was arguably made possible by the TRIPs agreement. It is noteworthy in this regard that the alternative to TRIPs would have been the continued and probably expanded use of unilateral measures by the United States, especially under the 'Special 301' provisions of US trade law (Stegemann, 2000). In addition, some of the more controversial aspects of TRIPs, including compliance timetables for developing countries and the coverage of critical medicines, have been subject to revision and re-negotiation. These complications indicate the problematic nature of WTO bargaining outside the traditional framework of trade negotiations.[14] Yet, while these negotiations are often messy and inelegant from a theoretical point of view, the final test of their contribution to the gains from trade must be measured at the bottom line – do they or don't they contribute to the process of trade liberalization? In the case of TRIPs, the tentative answer appears to be yes. In the case of the environment, labor standards, and human rights, the answer would almost certainly be no.

The critical determinant in setting the effective scope of WTO negotiations thus depends on its relationship to the core agreement. Despite strong reservations, developing countries accepted TRIPs as part of the Uruguay Round bargain. In contrast, it is difficult to imagine how WTO social chapters and related proposals could be successfully negotiated within a WTO framework. Developing countries would certainly resist even minimal environmental and labor standards enforceable through trade measures, due to the fear of standards escalation and suspicions of the link with protectionist interests in the developing countries, which could never be easily dispelled. It would represent, from the perspective of many

14 See Finger (2001) for a discussion of the cost of TRIPs compliance and other Uruguay Round commitments for developing countries. Finger suggests that the World Bank is better suited than the WTO for building the necessary trade policy infrastructure in developing countries.

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developing countries, a wholesale sell-out of the WTO core agreement. On the other hand, what would the developed countries be willing to concede in return? Free trade in textiles and apparel, steel, and agricultural products? These are sacred cows in developed countries that have resisted trade liberalization for decades, but are of greatest interest to developing countries. In any case, the bargaining price for social chapters would be high, if indeed they became negotiable at all. Progress in these areas is much more likely in a bargaining framework that can more easily internalize both the economic and political trade-offs of an agreement.

6. Legitimacy

The expansion of global institutions to accommodate various non-trade issues will also be an essential element of establishing a legitimate system of governance for all countries and advocacy groups. It is curious in this regard that the legitimacy of the WTO should be questioned or debated when 144 countries, representing well over 90% of the world's population, are WTO members, with most of the remaining countries having applied to join. There is, to be sure, opposition to open trade, in part from import-competing industries and from those who are anxious about economic change, crystallized in the fear of 'globalization'. These are actually age-old fears that focus on the problems of adjustment to competitive change rather than on the WTO itself. Members of the WTO have agreed to regulate their trade policies through a global agreement designed to increase their national economic welfare. The gains from trade occur in part from the reallocation of resources within trading countries, which necessarily entails such adjustment. It is left to individual sovereign countries to maintain the necessary domestic political support for the requirements of WTO membership.

In this sense, the question of 'legitimacy', if it is to be understood as the acceptance by the governed of the outcomes of a political structure or process, must be applied to national governments, not the WTO. National governments are, in the end, politically responsible for the economic environments they create. WTO member countries have all voluntarily joined the organization and adhere to its rules as fully sovereign states. The adjustment that typically accompanies increased trade implies the need for effective domestic economic policies, including sound macroeconomic management, an adequate educational system, flexible labor regulations, possible transfer payments or adjustment assistance and other incentive measures to facilitate structural economic change. One of the great challenges of globalization has been for governments to develop and maintain *politically* necessary channels of adjustment. Such policies have varied from country to country, from an emphasis on government intervention and 'safety nets' to accommodate displaced workers to a reliance on market-driven adjustment mechanisms. Governments' ability to manage the adjustment process is indeed a crucial element in maintaining domestic support for open trade policies, but it should not be viewed as a matter of the WTO's legitimacy, which rests on its ability

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to deliver the benefits of its core agreement: to generate gains from trade for all its members. Based on this criterion, there is strong evidence that the GATT/WTO system has achieved the primary goal of its members through trade liberalization since 1947 (see Frankel, 2001; Irwin, 2002).

The other challenge to the legitimacy of the WTO comes from those who advocate the pursuit of non-trade goals within the WTO system, and demand increased representation and access to trade policy decision making. In this case the issue is one of an alleged 'democratic deficit' in the representation of non-trade views in WTO negotiations and deliberations. This allegation clashes directly with our expectations from the WTO consensus: how could so many countries be doing harm to their own people through trade liberalization? International trade policy is typically a two-tiered process, in which national trade negotiating positions are the outcomes of a domestic political process (see Putnam, 1988). The WTO core agreement, as noted earlier, presumes a national political consensus on the benefits of trade, based on the mercantilist model described earlier. The political process typically involves an accommodation of opposing constituencies. Specifically, compromises with trade opponents have always been part of the process of trade liberalization, and have given rise to antidumping and countervailing duty law, trade adjustment assistance, subsidies to politically influential industries, the GATT escape clause, the multifiber agreement and other sectoral protectionist policies. In addition, domestic lobbying, especially in the US and the EU, continues to shape national bargaining positions on politically sensitive trade issues. While trade liberalization under the GATT and WTO has indeed been impressive over the years, it has not proceeded without hard bargaining and compromise within countries, as well as between countries.

Yet some critics see the trade policy framework as inadequate in terms of addressing new issues, and call for increased participation by advocacy groups, including non-governmental organizations (NGOs), in both domestic policy formulation and the WTO itself (Esty, 1998, 2002). Most governments do in fact concentrate trade policy matters in executive (as opposed to legislative) agencies, an arrangement that tends to streamline the negotiating process and remove a bias towards protectionism.[15] It is also clear that the WTO's core agreement tends to focus governments' attention directly on trade and the traditional domestic trade-offs associated with it. Governments implicitly understand that opening WTO negotiations to non-trade issues will complicate the negotiations, although both the US and the EU have introduced such issues into trade discussions as a result of domestic pressures.[16] In order to make progress on reconciling trade policy with

15 In the United States, trade policy has been largely relegated to the executive branch since the Reciprocal Trade Agreements Act of 1934, which was designed to prevent legislatively generated tariff 'logrolling', which reached its peak in the Smoot-Hawley Act of 1930. Schattschneider (1935) presents the classic account of this process.

16 Since 1948, the US has attempted many times to introduce labor standards into trade agreements. See Watson, Flynn and Conwell (1999, pp. 63–76).

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non-trade issues, it may be useful to re-formulate the problem. Access to influence on trade and environmental, labor and human rights policies is politically contestable and subject to the available policy channels for deliberation. The final international negotiating position of governments on trade and other issues depends on its judgment of the national interest and the available venues for pursuing multiple goals. In the absence of an international bargaining framework on the environment, for example, environmentalists must compete with trade interests (and any other lobbyists with trade axes to grind) in order to attain influence in trade policy. From their perspective such a policy process may appear to be unfair, given the government's participation in the WTO consensus. But the most promising alternative would be to develop international bargaining channels on the environment, where their views and positions will encounter a more efficient negotiating framework. In other words, the alleged 'democratic deficit' would be more easily rectified through the creation of dedicated global institutions or other negotiating opportunities to deal with these issues. Instead of seeking to close the gap by adding social chapters to the WTO – which would erode the WTO consensus by undermining the core agreement – advocates of non-trade goals should push hard for new international agreements, conventions, and organizations that will give them a direct voice in these matters.

7. Expanding global institutions

It will be difficult to develop new global institutions and to strengthen existing ones to promote environmental quality, human rights, and labor standards, because these issues do not enjoy a global WTO-like consensus on a framework of commonly accepted rules, rights, and obligations. In this regard a World Environmental Organization (WEO), for example, may be too ambitious at present, but there are other possibilities. Regional economic pacts may allow for smaller-scale international agreements on non-trade issues, for example, as has been attempted in the NAFTA (Jones, 1998b). Newell (2002) has suggested that a smaller sub-set of developed countries could conclude a global warming treaty without the need for a universal WEO.

Whalley and Zissimos (2002) have asserted the requirement that such institutions internalize the economic costs and benefits of pursuing their goals. Constructing institutions on the hard rock of economic logic is in principle the most efficient way to improve global welfare. Yet such agreements and institutions will need to internalize the *political* costs and benefits of cooperation as well. It is instructive to remember that, if trade institutions relied on economic logic alone, there would be no need for the WTO, since all countries would unilaterally adopt a policy of free trade. In trade policy, finding the trade-offs to ensure a consensus at both the domestic and the international level is difficult and messy, and is certainly not ruled entirely by economic logic, but a practical bargaining framework is the sine qua non of any effective international institution. For this reason, achieving various

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non-trade goals may require a 'variable geometry' of institutional arrangements, from regional economic integration agreements to specific treaties to multilateral organizations. Outcomes may therefore be dependent on a specific coincidence of bargaining interests.

The expanded institutional framework could take varying forms: extensions of regional economic integration agreements to harmonize environmental standards, issue-specific treaties to protect certain species or reduce certain types of pollution, development and aid pacts with human rights commitments, a strengthened International Labor Organization to promote labor standards, etc.[17] This approach would allow increased participation by issue-oriented NGOs, whose expertise and advocacy could thereby be applied most directly to specific goals. Instead of unilateral trade restrictions, such agreements would also allow a broader range of compliance measures, such as diplomatic sanctions and negotiated agreements. Positive incentives might incorporate foreign aid and technical assistance. It is also clear that such non-trade agreements may include trade restrictions – some environmental agreements, such as the Montreal Protocol, already have such provisions – and this issue will also have to be addressed. However, legal conflict between the WTO and other international agreements could then be regulated within the framework of public international law. The WTO Committee on Trade and the Environment (CTE) has already established a framework for discussion and deliberation that could act as a useful bridge between institutions (see Marceau, 2001). Similar bodies could be established to discuss and facilitate cooperation and reconciliation between the WTO and non-trade institutions and agreements.

It remains for governments and advocacy groups to develop the necessary international global institutions. As a practical matter, the problem with proposed non-trade institutions lies in the fact that they would require a new, more cooperative approach, as well as large amounts of political will and funding. In the meantime, trade sanctions remain a politically easier, and therefore more attractive, way for lobbying groups to pursue non-trade goals. The anti-WTO position is strengthened to the extent that environmental and other social issues resonate with many elected officials who have influence over trade policy. To propose new or enhanced international institutions to 'channel' non-trade issues is therefore at least partly a proposition by which to buy off opposition to trade or to diminish its leverage among policymakers. Just as political fixes such as adjustment assistance and illiberal trade provisions have attempted to neutralize protectionist opposition to general trade liberalization in the past, such proposals would re-direct anti-WTO sentiment towards new institution building. They would carry a potentially

17 Comprehensive global institutional frameworks for the environment (see Lodefalk and Whalley, 2002) and human rights (see Stirling, 1996) are weak and will require major international efforts to build them. The existing ILO structure is already set up to address labor standards and rights, however (see Charnovitz, 1997).

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expensive price tag in terms of government funding and support. However, the gains from trade would justify this strategy from a national perspective.[18]

Yet, assuming the successful establishment of the new institutions, what if the non-trade activists become dissatisfied with them, since the new institutions may not, in fact, achieve a global mandate to accomplish their ambitious goals, at least not right away? What if they insist then on re-focusing the debate on the politically easier method of using trade sanctions? The answer to these questions, if the integrity of the WTO is to be maintained, will depend on the consistent support for trade liberalization by major WTO member governments. The creation of new non-trade institutions will increase the chances for a favorable outcome because legislators who may otherwise vote against trade liberalization are more likely to support it if given the opportunity to vote for a WEO (or other comparable institutional measure) as part of the package. And given the opportunity to establish a dedicated international agreement for their cause, advocates would find it difficult to reject the compromise of getting a WEO in exchange for leaving the WTO alone. If they come back later, disillusioned and disappointed, returning to their demand for anti-WTO trade policies, their leverage will have diminished in the trampling of sour grapes. If the cause is just, the new institutions will now have their own advocates, and the erstwhile legislative opposition to the WTO will be split.

At the same time, the WTO is part of the broader world community and the integration of trade policies with related non-trade issues will be a necessary feature of any future system of global governance. Part of the process of integration will require the WTO to have improved communication with the public and access to its activities by outside organizations, which the WTO secretariat has addressed by improving its website and making most WTO documents available on it. It also credentialed 647 NGOs for attendance at the November 2001 Ministerial meeting in Doha, Qatar, and has organized public symposia on trade issues with broad participation by many groups, including those that have been critical of the WTO. The agenda for the Doha round of trade negotiations will include discussions on trade provisions in multilateral environmental agreements (MEAs).[19] Trade-related aspects of environmental issues will remain as a significant negotiating topic within the WTO, due to the existence of MEA trade measures, the recurrence of environmental issues in trade disputes and the established role of the CTE. However, significant progress on global environmental agreements themselves will continue to depend on separate negotiations on the environment. Discussions on labor and human rights issues, on the other hand, are likely to stay formally outside of trade WTO negotiations, since no similar institutional links exist with trade, and

18 Public choice models warn of the inefficiency of international bureaucracies and the rent-seeking behavior of bureaucrats (Vaubel, 1986). The challenge will be to design agreements and institutions that secure cooperation and work towards mutually beneficial goals. See Blackhurst and Subramanian (1992) for a discussion of international cooperation incentives.

19 Information on the agenda for the Doha round is available at the WTO website, www.wto.org.

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developing countries especially will resist attempts to bring these issues into trade agreements.

8. Conclusion and outlook

The core agreement of the WTO focuses on the gains from trade, with rules establishing the terms of market access and non-discriminatory treatment in trade relations among members. This is the glue that holds the organization together, and is the principle reason for the existence of the WTO. Making market access contingent on new rules to protect the environment, labor standards, or human rights would severely compromise the core agreement and be unacceptable to a large portion of the WTO membership. The problem lies not in the merits of the goals, but in the fact that there is no comparable global consensus on these issues to support the use of trade measures to pursue them. If members cannot get market access guarantees through the WTO there is a very real possibility that they will withdraw from it and look elsewhere for them, probably through regional or bilateral arrangements. If this were to occur, the multilateral trading system could fragment and collapse. At the same time, progress towards global environmental and social goals would be compromised as well.

Non-trade goals cannot be achieved cheaply, through the forced grafting of contingent trade sanctions on to an organization committed to trade liberalization. Pursuing and reconciling them with the WTO system will therefore be most successful if it takes place through a further development of international institutions. The problem lies, not in a WTO democratic deficit, but in a global institutions deficit. In particular, countries must identify and develop bargaining frameworks of politically supportable trade-offs in order to move towards international agreements in these areas. These arrangements will provide political alternatives that allow trade liberalization to take place.

Building new international institutions will be challenging. The experience of the WTO suggests, among other things, that successful negotiations on these issues will require their own basic core agreements in order to assemble a broad international consensus on the goals and benefits of participation in them. They will also require leadership and funding from governments. The WTO consensus grew out of the bitter consequences of rampant protectionism in the 1930s and the cataclysmic events of world war II, and even then required much painstaking negotiation, both domestically and internationally. Finding an equally compelling sense of urgency and global consensus on other issues will test the commitment and political skills of their advocates. Yet these goals are no less deserving of a carefully planned and solidly constructed institutional framework.

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