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Reply

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We, like Jorge Miranda, have reputations as extremists about the usefulness of GATT/WTO rules for safeguards and antidumping. As Jorge's position and ours take different directions and we have in several seminars talked past each other, it is useful that the editor of this journal has given us the opportunity to express our views in writing. Jorge's comment on *Fighting Fire with Fire* lays out his position. In this reply we will summarize the conclusions we and our colleagues reached in the book, contrast these with Jorge's, and attempt to identify why the two conclusions – based on the same experiences – differ so markedly.

The different messages

The principal message of *Fighting Fire with Fire* is expressed in its first sentence:

> This book is a report on *success* – success in trade liberalization and … how several Latin American governments created and managed safeguards and anti-dumping mechanisms *as part of this liberalization*. (page 1, emphasis added)

Jorge reaches the opposite conclusion:

> In fact … there is much evidence that directly contradicts the editors' impression that Latin American countries have tended to use trade remedies in a commendable manner.

The different perspectives

Jorge's analysis differs from that of the book's contributors in that he takes the GATT/WTO rules as the standard and evaluates Latin American policy managers against that standard.

A problem with taking the WTO rules as the standard of good performance is that the *substance* of the rules is bad policy guidance. Analysts routinely point out that 'dumping' is normal – socially beneficial – competitive practice (e.g., Mankiw and Swagel, 2005). Sykes' (2003, 2004) critique of safeguard rules is that even

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after ten years of Appellate Body interpretation, they do not sort what a country can do from what it cannot. We are hesitant to accept compliance with WTO rules as the standard of good performance not because it is 'legalistic,' but because it is an insufficient standard for good judgment.

The contributors to the book take Latin American performance as our standard, because the Latin American leaders were as competent, at least as dedicated to liberalization, and more experienced with managing liberalization than the drafters of the WTO trade remedy rules. Moreover, they have been successful at liberalizing and at maintaining that liberalization. We then ask where the GATT/WTO rules helped them, where the rules could have offered more.

To the extent that the book is about WTO rules, its messages are:

- WTO rules provided the basis for Latin America leaders to eliminate the plethora of instruments that existed before liberalization and to prevent the burgeoning of instruments that had been the means by which previous liberalizations were eroded.
- Latin American policy managers saw 'technical analysis' as a key element in changing the culture of policy management; from decisions based on relationships ('politics') to decisions based on the facts of economic potential.
- To the extent that the WTO rules let down Latin American policy managers, the fault lay with the substance – economics – of the rules, not their administrative dimensions. Rather than refuting a petitioner's case, 'technical analysis', supported it. In this period of rapid liberalization, imports *did* widely displace domestic production. '*Injury*' *did occur*.
- The innovative ways Latin American leaders found to introduce sensible economics into the rules and to build discipline on this economics were not supported by the rules. They were not able to say that the WTO rules required such elements as examination of the benefits domestic interests drew from increased imports or of an investment plan that would demonstrate an industry would not be a long-term burden on the rest of the economy. Indeed, protection-seekers cited the *absence* of such requirements in GATT/WTO rules (and in the practices of the US and other traditional trade remedies users) to discredit their governments' policy management.

Jorge's frame of thought brings him to several statements about the book that are not correct. Examples:

Procedural formalities versus substantive requirements

> *Fighting Fire with Fire* fails to recognize that WTO rules have a much broader scope than deadlines and other such procedural formalities. Much of the WTO rules set forth substantive requirements for determinations

and

> hence determinations that meet those requirements are technically more rigorous and exacting than determinations that fail to do so.

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The usefulness of the 'procedural formalities' versus the problems created by the implicit economics is treated at length. With regard to the latter point, the WTO Appellate Body has found fault with the technically rigorous and exacting determinations of the US and the EU, as well as the more 'amateurish' (perhaps Jorge would say)[1] determinations of Argentina and Mexico.

As we point out, 'These countries have had problems staying within the rules no more often than the more traditional users of such mechanisms' (pp. xii–xiii). Seven of 152 (5%) of Argentine antidumping measures have been challenged at the WTO, six of 82 (7%) of Mexican. For the United States the numbers are 24 of 236 (10%); for the other five Latin American countries in the study, two of 129.[2]

Discretion versus rules

> By the expression 'discretion allowed under WTO rules', the editors refer to the fact that in some cases WTO trade remedy rules explicitly permit WTO Members to make choices that result in '*less restrictive*' trade remedy measures. (emphasis in original)
>
> discretion can be used to administer trade remedy law in a good way, or it can be used to administer trade remedy law in a bad way.

Regarding the first point, many of the instances of good judgment we report are instances in which the government used the discretion available to take action rather than to refrain from doing so. In one of the success stories the Mexican government self-initiated investigations and imposed preliminary duties on hundreds of tariff lines. Read the book.

Regarding the second point, Of course! However, we are not defending 'discretion', we are defending Latin American performance. As we point out, their performance would have been aided by rules that supported good economics; Latin American policy managers wish they had had such rules. Absent good economics in the rules, Latin American leaders still found ways to apply it. We are not attacking 'rules', just bad economics.

Resource constraints

> the book … does not present any evidence justifying the inclusion of Colombia as an example illustrating modalities in the application of trade remedy rules

1 Re Mexico's decision on high fructose corn syrup, Jorge reports: 'In short, although not in so many words, the panel concluded that the investigating authority's injury determination was an utter failure.' Re Argentina footwear: 'In sum, in its *Footwear* determination the Argentine investigating authority did not show much discipline or skill'.

2 These data cover January 1995 through June 2006 and are from the WTO webpage.

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Facing the enormous resource demands the WTO rules place on both the government and on enterprises, the Colombian government developed sensible but simplified procedures. To avoid conflict with WTO obligations, the remedies these instruments could apply were limited to tariff increases within Columbia's ceiling bindings. The study analyses some 20 cases managed under these rules. These are *trade remedy mechanisms*, even though their application would not bring forward the possibility of WTO dispute settlement process challenge regarding WTO trade remedy rules.

If the WTO is to be a service to its Members, its rules should take into account the resources its Members have to follow them. The resource constraints under which Latin American policy managers worked were critical to how they executed their responsibilities. Work such as Jorge's review of WTO Appellate Body findings on several Argentine and Mexican cases would be particularly useful if it attempted to learn why the administering authorities made the procedural choices they made. We have learned informally that Argentine officials chose to disregard the domestic price data submitted by Italian ceramics tile producers because they did not have the resources to conduct verifying audits in Italy. They used instead published price data collected by their consulate; the rationale for trusting these data was that the reputations and the long-term viability of the trade publications depended on their providing correct information.

Many of the infractions Jorge reports involve additional things administrators should have done. *Given the resources available*, did they make the best *choices*? That is the essence of *economic* analysis.

The heart of liberalization

Reading Jorge's comment recalled for one of us a conversation of a few days earlier with Domingo Cavallo who, as Economics Minister, was the architect of Argentina's reforms. After hearing the message we tried to bring out in *Fighting Fire with Fire*, Cavallo responded with a smile and with a little nostalgia, 'No one remembers now how difficult it was to liberalize this economy.'

Jorge's comments, perhaps shared by many who have never shouldered the responsibility of an ambitious liberalization episode, overlook the huge challenges faced by the leaders of the Latin American liberalization episodes: (i) overcoming generations of business lethargy, (ii) shifting from passive to active WTO participation, (iii) adjusting legislation to often ambiguous multilateral constraints, (iv) dealing with sometimes conflictive monitored by powerful WTO members, (v) developing workable institutional changes, and (vi) attempting to do all this with minimum disruption to the economy. The biggest challenge of all was to find the guts to liberalize, to say *No more!* to powerful interest groups. *Here is where the buck stops, as far as we are concerned, you will exploit this economy no longer.*

In the economic histories of these countries, trade liberalization was a major episode, an event that has marked a before and after.

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Next steps

Jorge closes as follows: 'One can hope that *Fighting Fire With Fire* will pave the way for literature that will explore how virtuosity in the administration of trade remedies can be preserved.'

One might add, 'and that administration helps to defend and to extend liberalization'. By this criterion, Latin American leaders have done well, *Fighting Fire with Fire* has provided a lot of information that Jorge has overlooked.

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