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The World Trade Organization: NGOs, New Bargaining Coalitions, and a System under Stress

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CONTROVERSIES IN GLOBAL POLITICS & SOCIETIES

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The World Trade Organization: NGOs, New Bargaining Coalitions, and a System under Stress

Sylvia Ostry

After the Second World War, the memory of the disasters of the Great Depression, the failure of international cooperation, and the rise of totalitarianism provided a powerful catalyst to create a new architecture of international economics and policy. A main feature of this architecture was the international trading system first housed in the 1947 General Agreement on Trade and Tariffs (GATT) and then, in 1995, the World Trade Organization (WTO). The trade system rules of 1947 were transformed by the eighth round of GATT negotiations, the Uruguay Round, which shifted the focus from the border barriers inherited from the Depression to domestic policies and institutions. This new focus is a key part of ongoing globalization, the tightening of linkages that is fed and now led by an ongoing transformation of information and communications technology. There is in most countries today a feeling that one's independence is disappearing and that the future can no longer be shaped by one's own political system.

As the newest of the international economic bodies, the WTO has become a magnet for dissent. The anti-capitalist globalization movement, in part a reaction to the prominent role of business in the Uruguay Round, became highly visible on every television screen around the world by the demonstrations and violence at the Ministerial Meeting in Seattle in 1999. While the violence has been reduced since 9/11, there is a powerful ongoing challenge to the legitimacy of the institution. In an effort to cope with this challenge and to improve the equity of the system, it is essential for member governments to initiate a number of fundamental reforms. These are described in detail in the paper. But so is the uncertainty about whether the political leadership will be forthcoming. The stakes are high. In effect, they involve the sustainability of multilateralism.

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Introduction

In the post-war golden decades, the 1950s and 1960s, trade issues hardly made headlines. The GATT (the General Agreement on Tariffs and Trade) was described even by policy wonks as "a better soporific than hot milk" and known as "the General Agreement to Talk and Talk." By the end of the 1990s the World Trade Organization (WTO), the institution created by the Uruguay Round negotiations, had become a magnet for dissent. The street theatre of the Seattle Ministerial Meeting in 1999 was big news on television and the debacle as the meeting collapsed fed newspapers around the world.[1]

There are many reasons for the transformative change in the ambience of trade policy. Certainly economic globalization — the deepening integration among countries by trade, financial flows, investment, and the revolution in information and communications technology (ICT) — has had, and continues to have, an ongoing effect on government policy space and on people's perceptions of government. The role of the mass media and the Internet in penetrating public awareness is of increasing importance. Because of the perceived role of intergovernmental institutions (IGOs) in global policy-making, issues such as legitimacy and governance are now vigorously debated. There are no agreed definitions of "legitimacy" of IGOs and there are seemingly endless proposals for "good governance" (or goo-goo as it was called by the activist movement in the nineteenth century). But in the case of the WTO, a number of reform proposals have been made that have both procedural and substantive aspects.[2] Rather than entering into the definitional and theoretical morass, this paper will focus on reform proposals to enhance both the substantive and procedural legitimacy of the WTO.

In order to place this approach in context, I will begin with a brief account of the radical systemic change resulting from the Uruguay Round. This new global trading system catalyzed a good deal of the outcry over legitimacy and transparency. The question of fairness as a distributive dimension of legitimacy will be explored. On the procedural side, the question of transparency has been insistently proposed as an important requirement to reduce the "legitimacy deficit." Reform proposals will be suggested for both these features of the WTO.

1. For examples, see Blackhurst (2001, pp. 295–9).

2. For example, see Coicaud and Heiskanen (2001), McGivern (2004), Woods (1999), Marlikar (n.d.), Petersmann (2003), and Power et al. (2001).

Finally, the conclusion will present a brief *tour d'horizon* of the challenges confronting the system in a shifting and changing global landscape.

The Uruguay Round Legacy

The Uruguay Round was the eighth negotiation held in the context of the GATT, which came into force on January 1, 1948, as part of the post-war international economic architecture. The primary mission of the GATT was to reduce or eliminate the border barriers that had been erected in the 1930s and contributed to the Great Depression and its disastrous consequences. The GATT worked very well through the concept of reciprocity (denounced as mercantilist by trade purists) and because of rules and other arrangements to buffer or interface between the *international* objective of sustained liberalization and the objectives of *domestic* policy stability. This effective paradigm, termed "embedded liberalism" (Ruggie 1982), was also aided by the virtual exclusion of agriculture (by an American waiver and the near-sacrosanct European CAP, or Common Agricultural Policy) and the Cold War. From the 1960s onward the rounds were effectively managed by the European Community (EC) and the United States with a little help from some of their industrialized country friends. The developing countries were largely ignored as players (although this began to change in the 1970s, largely as a consequence of the Organization of Petroleum Exporting Countries [OPEC] oil shock).

The Uruguay Round was a watershed in the evolution of the system. Agriculture was at the centre of the negotiation as American exports to the European Community diminished and Europe's heavily subsidized exports flourished and even penetrated the American market. A U.S. call for negotiations had started in 1981, but was stalled by the endless foot-dragging by the Community, aided by a small group of developing countries, led by Brazil and India, which were strongly opposed to the so-called "new issues" of services, intellectual property, and investment demanded by the Americans. The Round was finally launched in September 1986, at Punte del Este, Uruguay, and concluded in December 1994, four years beyond the target date agreed to at the launch.

Thus the negotiations were almost as tortuous as the launch. The Grand Bargain, as I have termed it, was completely different from old-time GATT reciprocity (Ostry 1990, 1997, 2002). The opening of

Organization for Economic Co-operation and Development (OECD) markets to agriculture and labour-intensive manufactured goods, especially textiles and clothing, was conceded in exchange for the inclusion of services, intellectual property, and (albeit to a lesser extent than originally demanded) investment in the trading system. It also included as a virtually last-minute piece of the deal the creation of a new institution, the World Trade Organization, with the strongest dispute settlement mechanism in the history of international law and virtually no executive or legislative authority.

The Grand Bargain was quite different from GATT reciprocity. The Northern piece of the bargain consisted of some limited progress in agriculture; limited progress in textiles and clothing with a promise to end the Multi Fibre Agreement (MFA) in 2005, with most of the restrictions to be eliminated later rather than sooner; a rather significant reduction in tariffs on goods in exchange for deeper cuts and more comprehensive bindings by developing countries; and the virtual elimination of voluntary export restraints (VERs), most relevant to Japan. Not great on the whole, but in GATT terms, not so bad even though the results were rather disappointing in agriculture and in textiles and clothing, with the MFA elimination more than offset by the impact of China. But this is not the whole story: the Southern piece of the deal was not related to the GATT but to a major transformation of the Multilateral Trading System (MTS).

The most significant feature of the transformation was the shift in policy focus from border barriers to domestic regulatory and legal systems: the institutional infrastructure of the economy. The barriers to access for service providers stem from laws, regulations, and administrative actions that impede cross-border trade and factor flows. Further, since these laws and administrative actions are, for the most part, "invisible" to outsiders, a key element in any negotiation is *transparency*, i.e., the publication of all relevant laws, regulations, and administrative procedures as is common in OECD countries. Most important in this shift, embodied in the services agreement, is a move away from GATT *negative* regulation — what governments must not do — to *positive* regulation — what governments must do. In the case of intellectual property, the move to positive regulation is more dramatic since the negotiations cover not only standards for domestic laws, but also detail provisions for enforcement procedures to ensure individual (corporation) property rights. In the area of social regulation (covering things such as the environment and food safety), the

positive regulatory approach is *procedural* rather than *substantive*. Thus, the South side of the outcome involves major upgrading and change in the institutional infrastructure in most Southern countries, which takes time and costs money. The Grand Bargain involved considerable investment with uncertain medium-term results. It is better described as a Bum Deal.

It is important to note that the inclusion of the new issues in the Uruguay Round was an American initiative and this policy agenda was largely driven by American multinational enterprises (MNEs). These corporations made it clear to the U.S. government that without a fundamental rebalancing of the GATT they would not continue to support a multilateral policy, but would prefer a bilateral or regional track. They organized business coalitions in support of services and intellectual property in Europe and Japan as well as some smaller OECD countries. The activism paid off and American MNEs played a key role in establishing the new global trading system. This merits a brief digression (Ostry 1990, 1997, 2002; Drahas with Braithwaite 2004).

In the United States the private sector advisory process established in the 1970s for the Tokyo Round of Multilateral Trade Negotiations was designed to cope with or broker interest group pressures acting on Congress. But in the Uruguay Round its impact spread well beyond its original objective. The U.S. service sectors were world leaders and the same was true in investment and technology. American MNEs controlled 40 percent of the world's stock of foreign investment at the outset of the 1980s and the American technology balance of payments was well over $6 billion, while every other OECD country was in deficit. This was high-stakes poker and the MNEs launched the game. The U.S. Advisory Committee for Trade Policy and Negotiations (ACPTN), in cooperation with other U.S. business groups, undertook the task of convincing European and Japanese corporations to lobby for the new issues. In the services sector U.S. activism extended well beyond the two trading powers. Nine country service coalitions were organized and met regularly with the GATT Secretariat. In the case of intellectual property the U.S. group, called the Intellectual Property Rights Committee, or IPC, working through the Union of Industries of the European Community (UNICE) and the Keidanren in Japan, persuaded their counterparts to table, in Geneva in 1988, a detailed trilateral proposal for an intellectual property agreement drafted by American legal experts. This bore a remarkable resemblance to what came out of the Uruguay Round. The strategic skills of the American

MNEs were aided by the role of the American government. A multi-track policy including NAFTA helped by locking in high standards and undermining Latin American cohesion in opposition to trade-related intellectual property rights (TRIPS). Even more effective was the use of unilateralism in the form of a new Special 301 of the 1988 Trade and Competitiveness Act targeted at developing countries with "inadequate" intellectual property standards and enforcement procedures. In the case of Brazil the 301 worked, leaving India isolated.

The Uruguay Round consisted of a "single undertaking" because of some clever legalistic juggling by the U.S. and the EC in the end game (Steinberg 2002).[3] There were no "escape hatches" for the Southern countries: it was a take-it-or-leave-it deal. They took it, but, it's safe to say, without fully comprehending the profoundly transformative nature of the new system or the Bum Deal. As one of the Southern participants was reported to have said, "TRIPS was part of a package in which we got agriculture" (Drahos with Braithwaite 2004, pp. 29–30).

There were two significant unintended consequences of the Uruguay Round. The rise in profile of the MNEs due to their crucial role in securing inclusion of the "new issues" catalyzed the activist non-governmental organizations (NGOs) and helped launch the anti-corporate globalization movement. But, equally important and not unrelated, the Round left a serious North-South divide in the WTO. While the South is hardly homogeneous, there is a broad consensus that the outcome was seriously unbalanced. A key feature of this aspect of the systemic transformation is *asymmetry*.

Asymmetry

The definition of fairness in the literature on international institutions remains contested (Coicaud and Heiskanen 2001; McGivern 2004; Woods 1999; Marlikar n.d.; Petersmann 2003; Power et al. 2001; and Franck 1995). But most analysts would likely agree that distributive aspects of negotiated outcomes should be included in a concept of *substantive legitimacy*. While the idea of equity, which, insofar as it is included in WTO rules, relates to "special and differential treatment" (SDT) for developing countries, is both weak and ambiguous (to be discussed below), the concept of systemic asymmetry has been completely ignored. Perhaps even more to the point, the lack of

3. The description of the naked "power play" is based on interviews with participants (Steinberg 2002, pp. 359–65).

comprehension of many negotiators of the full implications of the negotiated outcome could raise questions about the legitimacy of that outcome. As this claim is a bit sweeping I will consider asymmetry *per se*. Two aspects are worth considering.

(1) Complexity

The member countries of the WTO vary widely in power and always will. That was also true under the GATT and the system was in effect managed by a "club" of like-minded rich countries. The WTO houses a very different system, which can be described in many different ways, but the word "complex" is quite appropriate. The need for advanced and sophisticated knowledge is essential. Complexity requires knowledge and knowledge enhances power. The strong are stronger in the WTO because of their store of knowledge and the weak are weaker because of their poverty of knowledge; the system creates reinforced asymmetry. Perhaps the concept of the *poverty trap* should be replaced by the *knowledge trap*.

A number of case studies by the World Bank demonstrate both the capacity deficit in poor countries and the heavy costs of implementation (Finger and Schuler 2000; Hoekman 2002). There was very little participation by the African countries in the Uruguay Round both because of the lack of secretariat in the Geneva delegations and the lack of coordination and expertise at home. The situation in Geneva has not improved much, as Table 1 demonstrates (p. 22). It has been estimated that the WTO councils, committees, working parties, etc., involve over 2800 meetings per year — impossible for the poorer countries to attend. Worse, often the WTO delegates have to cover the UN in Geneva as well as the WTO. There is still serious weakness in *domestic* coordination mechanisms among a number of ministries; this institutional deficiency is not confined to the poorest countries, but affects many developing and transition economies.[4] Finally, there is little, if any, coordination between Geneva and the home country. A former delegate noted, "During the entire duration of the Uruguay Round, our Geneva-based WTO team received two instructions from our capital" (Shaffer 2006, p. 181).[5]

4. For more information on this issue, see Shaffer (2006) and Ablin and Bouzas (2002).

5. See also remarks quoted by WTO official: "We set up a Subcommittee with a Chair and a Secretary who turned up for the first meeting on trade needs of LCD's [least developed countries]. No LDC's came. No developed countries came. No one came. Not one country showed up" (Braithwaite and Drahos 2000, fn. 10, p. 196).

Because the poorest countries are primarily dependent on agriculture and often on only a few commodities, the disappointing results of the Uruguay Round in agriculture have ensured that it remains at the centre of the Doha Agenda. But what is equally important and far less studied is the impact of the Agreement on Sanitary and Phytosanitary Measures, or SPS. Case studies from the World Bank provide incredible examples of the imposition of new standards for alleged (minor) health reasons that cut African exports of nuts and grains by 60 percent (United Nations Development Programme 2005, p. 152).[6] The poor countries play no role in the setting of international standards, such as the Codex Alimentarius, because they simply cannot participate, lacking both monetary and human resources. Thus, standards developed by a limited number of countries can get the status of international standards.

The situation is likely to worsen as developed countries increase regulation for high valued-added products and as large multinational buyers increasingly dominate the retail market. Walmartization of standards may be the new wave and the small and medium enterprises (SMEs) in poor countries, lacking information about export markets, are unable to compete. The gap between domestic and international regulation is widening. The need to reform agriculture by moving up the value-added scale would require major changes in institutional infrastructure. The cost would be high and poor countries do not have the resources. Similar problems exist in the Technical Barriers to Trade Agreement (TBT), covering trade in goods. While both the TBT and SPS were supposed to provide technical assistance, this has been inadequate and, in any case, significant infrastructure investment is required. Once again, however, some case studies demonstrate that, where investment in technology and institution building were undertaken, successful export-driven growth is feasible.[7]

These are but a few examples of how the complexity of the global trading system requires more than "trade policy" to integrate the poor countries. While the Uruguay Round agreements included some

6. A number of other dreadful examples are provided (pp. 146–65). See also Zarrilli (1999). Although the SPS Agreement included a provision for technical assistance nothing much has happened (Zarilli 1999, p. 24).

7. See United Nations Development Programme (2005, chapter 10 on Africa). Also Anderson, Martin, and van der Mensbrugghe (2005).

recognition of the need for technical assistance (TA) and the Doha Agenda is littered with reference to TA and capacity building (CB) — about which more below — it has been repeatedly emphasized that the true jewel in the crown was the creation of the WTO and the Dispute Settlement Understanding (DSU). For the first time in international law, a truly effective institutional constraint on the powerful has been achieved. Is the increased legalization a welcome offset to asymmetry? Not exactly — as this brief review shows.

(2) Legalization

The WTO was not part of the Uruguay Round Agenda. The Canadian proposal was not put forward until April 1990. It was soon endorsed by the EU (which had opposed stronger dispute settlement in the Tokyo Round) because of growing concern about U.S. unilateralism. It was deemed a useful device for the constraint of power. The U.S., dubious about the quality of legal expertise in the GATT Secretariat, insisted on the creation of an Appellate Body (AB) to review the legal aspects of panel reports. A paradigm shift took place, involving, as Joseph Weiler terms it, "the juridification of the process, including not only the rule of law but the rule of lawyers" (Weiler 2001, p. 339). And since it is said that the U.S. has only 4 percent of the world's population but 50 percent of the world's lawyers, the legal culture of the WTO is, by and large, American. One could argue that the most important export of the U.S. has been its legal system: transparent, contentious, and litigious. And, of course, this system is based on common law, often different from European systems. It is no coincidence — however amusing — that, after the Multilateral Agreement on Investment (MAI) was killed at the OECD, a memorandum from the French negotiators pointed out that it would be very important for the French universities to begin teaching experts in "le droit économique international qui est encore très largement anglo-saxon" (Lalumière et al. 1998, p. 11).

Be that as it may, the main focus of concern in the context of asymmetry is whether the paradigm shift of juridification benefits the poorest countries. It is not possible to get any data on the number of legal experts in their Geneva missions or in their domestic ministries. But one can safely assume the numbers are very small or even non-existent. And, as may be seen from Table 2 (p. 23), there is no participation as complainant or respondent by any of the poor African countries. This is asymmetry writ large. But further analysis as to the reasons for this opt-out is worthy of a brief review.

There have been a number of studies on dispute settlement and the poorest countries in the WTO, many sponsored by the World Bank.[8] While much more remains to be done the research clearly documents the absence of African countries in this essential "crown jewel" of the trading system. What accounts for the mystery of the "missing cases" (Bown and Hoekman 2005)?

One clear reason is very simple and straightforward — lack of money. The absence of government legal services either at home or in Geneva would require hiring private lawyers, which is far too expensive. A conservative estimate of attorney fees in trade litigation runs from around $90,000 to $250,000 depending on the complexity of the case, plus another $100,000 to $200,000 for data collection, economic analysis, etc., plus travel, administrative assistance, and so on (Bown and Hoekman 2005, p. 12). An Advisory Centre on WTO Law (ACWL) was established in December 1999 and entered into force in July 2001 to provide some legal assistance for poor countries. It requires a membership fee based on per capita income and share of world trade, and is funded mainly by European governments plus Canada. The United States has refused to join or provide funding. While the ACWL is certainly a welcome initiative, it will require further funding and coordination with both enterprises and governments in developing countries as well as capabilities in economic research.[9] The role of sophisticated econometric research and economic evidence in WTO dispute settlement is another example of the reinforcement of power by complexity in the mechanism designed to constrain power.[10] And it doesn't end there. For example, a prominent Washington-based law firm states on its website that its specialty involves advising "numerous governments and companies in over 175 WTO disputes on intellectual property, government procurement, subsidy, trade, remedy, environment, taxation, telecommunication, and investment matters." It's great for business since the dispute settlement mechanism of the WTO is the Supreme Court of international tribunals (Bown and Hoekman 2005, p. 24).

8. Examples of these papers include Shaffer (2006), Horn and Mavroidis (1999), Hoekman and Mavroidis (1999), Bagwell, Mavroidis, and Staiger (2004), and Bown and Hoekman (2005).

9. See Shaffer (2006) for various suggestions.

10. However, one important new development has been the creation of the NGO termed ILEAP (International Lawyers and Economists Against Poverty) to provide interdisciplinary advice in trade policy for developing countries. See http://www.ileapinitiative.com.

But the cost side of the cost-benefit model for dispute participation often includes more than money or legal service subsidies. Political costs — threats by richer countries to reduce development aid or remove trade preferences — may also be very powerful deterrents to initiating a WTO dispute. An example of political deterrence is provided by a former United States trade official who argued in an African capital that "the US might withdraw food aid were the country's Geneva representatives to press a WTO complaint" (Shaffer 2006, fn. 66, p. 193).

Another clue to the "missing cases" issue concerns the WTO's institutional arrangements. The WTO rules are self-enforcing. Retaliation (imposition of countermeasures) is, in theory, a means to induce implementation of obligations. But the threat of retaliation by a poor or small country means nothing to most OECD countries. So, it is argued, poor countries are increasingly sceptical about "assured" market access or other rights. Various ideas are being floated concerning this conundrum, and one proposed recently by Mexico suggests that countermeasures should be allowed to be auctioned (Bagwell, Mavroidis, and Staiger 2004, pp. 31–2). This is most unlikely to be accepted by WTO members, but it certainly highlights the problem that small and poor developing countries have in countervailing fundamental asymmetry. And, one hopes, it will stimulate more research on a multilateral approach to enforcement for poor countries.

It is not only reform of the dispute settlement arrangements that will be required. The issue of asymmetry — a.k.a. inequity, in street parlance — will receive increasing attention. Poverty will continue to be featured in the international policy agenda along with the Millennium Development Goals; thus, increasing media attention is almost ensured. I shall return to the question of reform options to begin to tackle asymmetry, but first want to consider another feature of the WTO's legitimacy — the demand by increasing numbers of NGOs and others for greater transparency. Transparency can be viewed as one key aspect of *procedural legitimacy*.

Transparency

The impact of global civil society on the WTO is a matter of ongoing debate. But there is little question that, with the ICT revolution, the NGOs have made the market for policy ideas and agendas contestable. Their influence goes well beyond the mobilization of protests at meet-

ings or the capture of the moral high ground. Less visible, but over the longer run very significant, is their repeated and insistent demand for more "transparency."

In WTO-ese there are two kinds of transparency: internal and external. On the internal front the main and increasingly contentious issue is Ministerial meetings, which involve the exclusion of many member countries (the so-called Green Room). I shall refer to this later. But the NGOs have been most active with respect to *external transparency* comprising three main requests: more access to WTO documents; more participation in WTO activities such as committee and Ministerial meetings; the right to observer status and to present *amicus curiae* briefs before dispute panels and the Appellate Body.

The WTO has made considerable progress in providing information speedily and effectively on its website and through informal briefings. It has allowed NGO representatives to attend parts of Ministerial meetings, has sponsored public symposia on trade and environment issues, and, in the case of the Committee on Trade and Environment, engaged civil society in discussions (Shaffer 2001). But all these incremental developments have been opposed by many developing countries. The derestriction of documents took four years of gridlocked negotiations and the policy passed only with continuing restrictions. Far more contentious has been the request to open up the dispute settlements to *amicus briefs*. But recently a dispute panel decided to allow closed-circuit television cameras into the courtroom. This was agreed by the three parties — Europe, the U.S., and Canada — to try as an experiment, perhaps in the hope of establishing a precedent (Esserman and Howse 2005, p. 11).

As noted earlier there have been a number of proposals for WTO reform in the years since Seattle,[11] but the issue of transparency and participation at the national level has been raised by a coalition of NGOs only once, just before Doha, in October 2001 (Open Letter 2001). There was no response; a similar silence greeted a U.S. proposal after Seattle (Ostry 2004). Yet a review of recent developments in other international institutions such as the OECD, the World Bank, and United Nations Economic Commission for Europe (UNECE) all stress the importance of engaging citizens in policy-making, or what is often termed encouraging "ownership" of policy.[12] Further, a recent UN

11. See fn. 2 and Blackhurst (2001).

12. See Ostry (2004) for a description of a range of initiatives.

report of the Panel of Eminent Persons on United Nations Civil Society Relations underlines the need to "emphasize and highlight the country level" (United Nations 2004, Executive Summary, p. 10). Indeed, an entire school of international law based on "interactional theory" points out that "law is persuasive when it is perceived as legitimate by most actors and legitimacy rests on inclusive processes [which] reinforce the commitments of participants in the system" (Brunnée and Toope 2000–2001). In a Report to the Trilateral Commission on the *"Democracy Deficit" in the Global Economy: Enhancing the Legitimacy and Accountability of Global Institutions*, one of the authors, Joe Nye Jr., suggests it might be a good idea to start at the national level (Nye Jr. et al. 2003, p. 5). The interlinking of national and global is an ongoing process and policy spillover is hardly surprising. However, it has not yet reached the WTO, and perhaps a small push could help. A proposal follows in the next section on reform.

Some Proposals for WTO Reform To Enhance Legitimacy, Transparency, and Participation

The OECD's pioneering work has been, in part, a response to a general decline in trust in government in all OECD countries since the 1970s (Ostry 2001a).[13] The data for this assertion stems mainly from the World Values Survey of the University of Michigan. There are many different views on the reasons for this worrisome phenomenon and no doubt different factors are operative in different countries. But one response, as noted above, has been to foster "ownership" of the policy process by increasing information, consultation, and active participation by a wide range of stakeholders. A set of guiding principles was enunciated and, while not binding as a form of "soft law," it was hoped to encourage a more open and participatory form of governance (OECD 2001). It is most intriguing (and not coincidental) that the current ruling party in Brazil pioneered participatory policy-making in the province of Porto Allegro — the host for the newest innovation in global civil society, the Global Social Forum (Baiocchi 2004).

While it would not be enthusiastically endorsed by many WTO members there is one mechanism in the WTO that lends itself to an avenue for external transparency: the Trade Policy Review Mechanism (TPRM). A brief review of its history is useful.

13. See World Values Survey (Ronald Inglehart, University of Michigan) for 1999 and the rest of the publications to 2004, http://www.worldvaluessurvey.org/.

One of the original negotiating groups in the Uruguay Round was the FOGS, or Functioning of the GATT System. It was designed to enhance the effectiveness of the domestic policy-making process through informed public understanding, i.e., *transparency*. Section B spells it out:

> Domestic Transparency
>
> Members recognize the inherent value of domestic transparency of government decision-making on trade policy matters for both Members' economies and the multilateral trading system, and agree to encourage and promote greater transparency within their own systems, acknowledging that the implementation of domestic transparency must be on a voluntary basis and take account of each Members' legal and political systems. (WTO 1999, p. 434)

In order to underline that the TPRM is voluntary and flexible in subject matter, the Declaration of Objectives states in Section A that "it is not … intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures, or to impose new policy commitments on Members" (WTO 1999, p. 434).

The TPRM's origins and objectives clearly embrace the policy-making process. The WTO Secretariat is already seriously overburdened, so it might be necessary for the early volunteers in the process to ante up some funding. If a number of developing countries became involved, the issue of more permanent funding would have to be faced since there would be capacity building and technical assistance requirements. But these latter costs should clearly come under the arrangements agreed at Doha on capacity building. Enhancing capacity to improve and sustain a more transparent trade policy process sounds like a good investment, and is hardly a new idea. In the 1970s, during the Tokyo Round, an American official remarked to an academic researcher that the advisory committees established under the 1974 Trade Act were working extremely well because "when you let a dog piss all over a fire hydrant he thinks he owns it" (Winham 1986, p. 316), a rather less felicitous version of today's concept of ownership. The voluntary public release of TPRM Reports (now on the Internet) creates a feedback mechanism with considerable potential. Transparency at the domestic level creates pressure for more information from Geneva. The availability of this kind of information about some governments should encourage stakeholders (especially NGOs) to pressure their own governments to participate.

Moreover, by sharing information on national processes, stakeholders in many countries without adequate technical or financial resources — like small and medium enterprises (SMEs) — gain useful information on market opportunities. The policy process should continue to be evolutionary, reflecting systemic changes and changes in the policy environment. Of course, while benefits will accrue from a more participatory process there are also costs. There are costs for governments in terms of time, expertise, and financial resources, and there are significant differences in resources among stakeholders, another facet of asymmetry that is ignored. The TPRM project could catalyze a very useful discussion on basic policy issues, including capacity building and other aspects of asymmetry.

Asymmetry and International Coherence

One of the intents of the Uruguay Round was to improve cooperation and coordination among the main international economic institutions. Driven largely by the experience of the wide exchange misalignment of the 1980s and its impact on trade, the euphemism "international coherence" was devised. Little emerged from the objective apart from worthy rhetoric and some subsequent agreements as to who should attend what meetings and when (Ostry 2001b, pp. 374–5; Ostry 1999).

However, in 1997, a specific project was launched to coordinate trade and poverty reduction in the least developed countries. It was termed the Integrated Framework for Trade-Related Technical Assistance (IF) and involved the WTO, the World Bank, the International Monetary Fund (IMF), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Programme (UNDP), and the International Trade Commission (ITC) as well as a number of bilateral donors. An evaluation of the program in June 2000 was not very encouraging. Lack of clear priorities, ill-defined governance structure, and low levels of funding were among the problems cited. The heads of the six agencies then decided to revamp the IF. A new evaluation was undertaken in 2004 by the World Bank's Operations Evaluation Department (OED). The results of the very thorough OED analysis, as presented in the Executive Summary, are worth quoting:

> **Despite the restructuring, some of the weaknesses of the original program remain, including insufficient focus on improved trade outcomes rather than on the process alone, and the shortage of resources to meet the mounting demands for technical assistance in developing countries** … IF may have contributed to placing trade

> back on the development agenda of LDCs through the joint work of the international agencies. But the objective of fully mainstreaming trade … calls for holistic, results-based program management processes to achieve improved trade outcomes for developing countries. These need to be combined with on-the-ground action, well-defined roles of partners, and minimum transaction costs, supported by the necessary financial and administrative resources for a program that has now created too many expectations on which it is unable to deliver. (Agarwal and Cutura 2004, p. xv)

The OED study goes into considerable detail about the problem with the IF and the message is quite clear: it is a good start but a great deal more needs to be done. This seems discouraging but should not be. As must be underlined again, this is new territory and policy innovation involves learning by doing. Case studies are data and the task of absorbing and contextualizing will not yield to a minimalist mathematics model.

One policy option could be based on the IF idea — the project as process. The promotion of international coherence by a specific project for Africa that involved the WTO, the World Bank, and the new African institution NEPAD (New Partnership for Africa's Development) with the objective of integrating trade and development fits well into a "redefined" concept of technical assistance and capacity building (especially since the precise meaning of both or either is rather fuzzy and flexible). Country "ownership" would be paramount. Such a project would require funding both for the WTO Secretariat and the physical and intellectual infrastructure of the countries. Some of the problems — governance, for example — may prove insurmountable. But whatever the outcome of the Doha Agenda, it would be feasible and desirable to launch a genuine (not rhetorical) project to reduce poverty and stimulate development.

Tackling asymmetry is a formidable challenge and the Integrated Framework is one step on a long journey. The construct of the WTO is asymmetrical — judicialized but without real executive or legislative power, a very small secretariat, and a very limited budget (about equal to the travel budget of the International Monetary Fund). This comparison with the Bretton Woods twins could be described as lack of coherence writ large! The structural deficiencies greatly exacerbate the rich-poor asymmetries. Not only do the OECD countries have a wide array of research resources, they also have their own well-endowed think-tank, the OECD. The substantive scope of the OECD is very broad and its secretariat is part of a government network with

access to "soft power" — "the power of information, socialization, persuasion and discussion" (Slaughter 2004, p. 27).[14] The OECD is effective in securing adherence to rules, fostering changes in rules, and achieving agreement on policies.

There is currently no policy forum in the WTO. There used to be one — the Consultative Group of 18 (CG18), established in 1975 as a recommendation of the Committee of Twenty Finance Ministers after the breakdown of Bretton Woods (the Committee of Twenty also established the IMF's Interim Committee). The forum involved senior officials from national capitals and proved very effective in helping launch the Uruguay Round. Its purpose was to provide a forum for senior officials from capitals to discuss policy issues and not, in any way, to challenge the authority of the GATT Council. Because of the creation of the Interim Committee, the Committee of Twenty felt the need for a similar body in the GATT to facilitate international coordination between the two institutions. The composition of the membership was based on a combination of economic weight and regional representation, but there was provision for other countries to attend as alternates and observers or by invitation. Each meeting was followed by a comprehensive report to the GATT Council.

Because it was a forum for *senior officials from national capitals* it provided an opportunity to improve coordination of policies at the home base. This is now far more important because of the expansion of subjects under the WTO. (Indeed, there is no "Minister of Trade" today but a number of Ministries with concerns covered by the WTO.) After the Tokyo Round, the CG18 was the only forum in the GATT where agriculture was discussed and, in the long lead up to the Uruguay Round, trade in services. The CG18 was the only forum for a full, wide-ranging, often contentious debate on the basic issues of the Uruguay Round. There was an opportunity to analyze and explain issues without a commitment to specific negotiating positions. Negotiating committees *inhibit* discussion because rules are at stake. Words matter and might be used, for example, in a dispute settlement ruling, as was a report by the Committee on Trade and Environment with a predictable chilling effect on constructive dialogue. Thus, the *absence* of direct linkage to rules is essential to the diffusion of knowledge that rests on a degree of informality,

14. The OECD in Slaughter (2004) is described as a global government network — a forerunner of the New World Order.

flexibility, and adaptability. This is the OECD model of soft power. The CG18 was never officially terminated, but meetings ceased at the end of the 1980s.

Establishing a WTO policy forum would be a great step forward. But it is unlikely to function effectively without an increase in the WTO's research capability. Analytical papers on key issues are needed to launch serious discussions in Geneva and to improve the diffusion of knowledge in national capitals. The basic issues of trade and development need country-specific case studies. There is no agreed model — indeed, there is growing dissent. A top priority for the forum should be to undertake a thorough analysis of the unsolved issue of SDT. The WTO research secretariat would form part of a research or knowledge network linked to other institutions, including the World Bank, as well as academics, NGOs, business, and labour organizations.

The Sutherland Consultative Board (CB) has recommended that there be more political involvement of Ministers and senior policy-makers from national capitals in WTO activities and puts forward a number of suggestions among which is the establishment of a senior level "consultative body" — CG18 redux (Sutherland et al. 2004, chapter viii and conclusions). Obviously there will be opposition from some countries to these proposals. But the dissenters should be encouraged to consider the alternative — an ongoing erosion and decline of the multilateral rules-based system.

Finally, the membership of the policy forum will be the most contentious aspect of the proposal. This, of course, is the same issue as the conflict between "legitimacy" and "efficiency" in the negotiating modalities — the Green Room syndrome. While in theory the consensus principle that governs the WTO should require that all 149 members (soon to be up to 170) be present in every negotiating group, paralysis by consensus is guaranteed. But the reality of the GATT/WTO decision-making rules has been aptly described as "organized hypocrisy in the procedural context" (Steinberg 2002, p. 342) with the Big Two running the shop. Green Rooms are essential whether "informal" or "formal." However, perhaps the organized hypocrisy worked in the past because of the transatlantic alliances. What happens with the ongoing shift in the balance of power — the new geography?

Conclusion

The consensus on the post-war paradigm of embedded liberalism was,

in fact, not really much of a consensus. The British (and later most Europeans) were committed to Keynesianism — the creation of full employment and the welfare state — the Americans far less so. There was no government-constructed "social contract" as in the UK's Beveridge Plan. While an Employment Act was passed in 1946 in the U.S., the Republican-dominated Congress ensured that the role of the Council of Economic Advisers was limited. The European "social compact" involved an expanded role for the state alien to the historical and deeply held conception of the government's role. (American support for the GATT largely stemmed from its investment abroad and America's lead in the world economy [Ostry 1997, chapters 2 and 3].)[15] These transatlantic differences have not disappeared but may have widened since they reflect deep-seated historical and cultural legacies. In many European countries a "renegotiation" of the social contract is ongoing and promises to be a long and difficult process — most prominently in France and Germany, hardly marginal players in trade issues!

Of equal, if not greater, significance is the ongoing shift in the "balance of power" engendered by the rise of China and India. The "new geography," as it's been termed, first became visible in a striking fashion at the WTO Ministerial meeting in Cancun in September 2003. The two new coalitions of Southern countries — the G20 led by Brazil, India, and China, and including a number of Latin American countries and South Africa, and the G90 coalition of the poorest countries, mainly from Africa — have continued to play a role in the ongoing Doha negotiations. The G20 has been a major player in agriculture and both coalitions have managed to withstand strong threats and pressure from the U.S. and Europe. There have been Southern coalitions before, of course, most notably the G77 during the 1970s. But the demand for a New International Economic Order (NIEO) failed and the 1980s debt crisis ushered in the infamous Decade of Despair. However, the comparison between these new coalitions — especially the G20 — and the G77 is not very compelling. The demand for a NIEO reflected the "commodity power" of OPEC. The new geography involves a genuine transfer of power within the international system. The comparison is often made with the rise of Germany in nineteenth-century Europe. But as Henry Kissinger has argued in a recent article, "The rise of China as a potential superpower is of even greater historical signifi-

15. See also Ball and Bellamy (2003).

cance, marking as it does a shift in the center of gravity of world affairs from the Atlantic to the Pacific" (Kissinger 2004, p. 32). Contrast and compare the executive summary statement of the Report of National Intelligence Council's *Mapping the Global Future*: "The likely emergence of China and India, as well as others, as new major global players — similar to the advent of a united Germany in the 19th century and a powerful United States in the early 20th century — will transform the geopolitical landscape, with impact potentially as dramatic as those in the previous two centuries" (National Intelligence Council 2004, Executive Summary, p. 9).

This is hardly the place to get into balance of power discussions, but it is important to make a different, though related, point. The weakening of transatlantic consensus is now joined by a wide disparity of views between the major players in the WTO — the Big Two and the Big Three (China, India, and Brazil), for example. And we must add to this the views of the NGOs who are also players in the trade policy arena.

There is no room here for a review of the history and role of the NGOs in the trading system. Nor am I suggesting that here is a homogeneous set of institutions called NGOs. But the most visible groups — which I term the mobilization networks — for whom a major object is to rally support for dissent at a specific event such as a WTO Ministerial meeting — are beginning to fade, in part, no doubt, because of 9/11 and, earlier, the violence at Genoa. Although there is as yet no coherent strategy emerging from the movement, there appears to be a move from dissent to dialogue and debate (Ostry 2006). Moreover, and of great significance, since the end of the 1990s the spread of civil society into the South has been remarkable (Kaldor, Anheier, and Glasius 2003, p. 83).

Another development worth noting (as mentioned above) has been the success of the World Social Forum at Porto Allegro. Established after Seattle as a counterpart to the World Economic Forum at Davos, it has attracted a large and diverse collection of NGOs. Porto Allegro is not staged as a dissent platform and the event is self-selecting. It is described as a "movement of movements" and of supporters determined to create "democracy from below." The yearning for a utopia seems alive and well, not only at Porto Allegro. But how this will solve the problems of global governance is not clear.

Since incremental innovation is not as exciting as a "big breakthrough" there is an irresistible desire for romantic journeys even if

the destination cannot be reached. But in the search for a new consensus, WTO reforms can help shore up the institution and the system. The concept of "deliberative democracy" enunciated by Jürgen Habermas is not unrelated to some of the proposals for WTO reform to improve legitimacy (Habermas 2001). Some may work and some won't. What is required, of course, is political will. When there's political will, there's a policy way.

Table 1: Numbers of WTO Delegates (2005)

Country	Number of WTO Geneva-Based Delegates	Number of WTO Delegates Not in UN Directory	Remarks
Nigeria	7	7	
Congo, Dem. Rep.	4	2	
South Africa	9	0	
Tanzania	9	0	
Kenya	4	0	
Uganda	4	0	
Ghana	3	0	
Mozambique	2	0	
Cameroon	7	1	
Cote d'Ivoire	5	0	
Madagascar	3	0	
Angola	4	0	
Burkina Faso	4	0	
Zimbabwe	8	0	
Malawi	0		
Mali	3	0	
Niger	0		
Senegal	5	0	
Zambia	8	0	
Chad	4	4	No UN delegation list found
Guinea	3	0	
Rwanda	2	0	
Benin	8	0	
Burundi	2	0	
Sierra Leone	0		
Togo	0		
Central African Rep.	0		
Congo	4	0	
Lesotho	4	1	
Mauritania	3	0	
Namibia	1	0	
Botswana	8	0	
Djibouti	1	1	No UN delegation list found
Gabon	5	0	
Gambia	0		
Guinea-Bissau	0		
Swaziland	0		
Mauritius	7	0	

Sources: WTO Directory (circa May 2005) and United Nations (2005)

Table 2: Participation in WTO Dispute Settlement Cases (1995–2005)

Number of Appearances as Complainant		Number of Appearances as Respondent	
Complainant	**Number of Disputes**	**Respondent**	**Number of Disputes**
United States	79	United States	89
EC	69	EC	55
Canada	26	Argentina	17
Brazil	21	India	17
India	16	Japan	14
Mexico	15	Korea	13
Korea	12	Canada	12
Thailand	11	Mexico	12
Japan	11	Brazil	12
Chile	10	Chile	10
Argentina	9	Australia	9
Australia	7	Turkey	7
Honduras	6	Egypt	4
New Zealand	6	Peru	4
Guatemala	5	Philippines	4
Hungary	5	Ecuador	3
Philippines	4	Belgium	3
Switzerland	4	Ireland	3
Colombia	4	Nicaragua	2
Poland	3	Venezuela	2
Indonesia	3	South Africa	2
Costa Rica	3	Romania	2
Pakistan	3	Pakistan	2
Turkey	2	Slovak Rep.	2
Ecuador	2	Dominican Rep.	2
Peru	2	France	2
Pakistan	2	Czech Rep.	2
Norway	2	Trinidad and Tobago	2
China	1	Poland	1
Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu	1	Malaysia	1
Antigua and Barbuda	1	Croatia	1
Bangladesh	1	Slovakia	1
Nicaragua	1	Uruguay	1
Chinese Taipei	1	Greece	1
Czech Rep.	1	Netherlands	1
Sri Lanka	1	Panama	1
Hong Kong	1	Thailand	1
Uruguay	1	China	1
Venezuela	1	Sweden	1
Singapore	1	Denmark	1
		UK	1
		Portugal	1

Source: WTO Dispute Settlement (circa May 2005)

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