

Preliminary Draft

WTO: INSTITUTIONAL DESIGN FOR BETTER GOVERNANCE

by

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Efficiency, Equity and Legitimacy:
The Multilateral Trading System at the Millennium

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INTRODUCTION

In the ongoing discussion about Seattle it's important to make a distinction between the possibility versus the probability of the failure to launch a new round. The latter required a catalyst to trigger the outcome of failure. But the transformation of the trading system combined with the structural weakness of the WTO would have ensured that even "success" could not guarantee the future of a rules-based multilateral system in the absence of fundamental reform of the WTO.

What I want to do in this presentation is first to summarize the main transformative changes in the system which include the impact of the Uruguay Round as well as changes in the policy ambience and the policy process. I will then highlight the most urgent reforms needed to keep the system going and briefly note the longer-term changes required in the international governance architecture.

II TRANSFORMATIVE CHANGES IN THE TRADING SYSTEM

Even the term "trading system" is an anachronism today since the WTO is less and less centred on trade rather than domestic regulation and legal systems. But the shift in focus resulting from the Uruguay Round is only one of the changes which has transformed the system. I have grouped these into three categories: the ambience; the political economy; and the process of policy-making.

a) The Ambience

Of course the end of the Cold War has had and will continue to have a profound effect on the role of the U.S. in international economic policy not only because of a secular decline of Congressional deference but also because the postwar spillover from “high” to “low” policy which acted as a constraint on trade disputes has now greatly diminished or even reversed. That being said, the major impact of the Cold War finale is really more relevant to the next session and the leadership issue. What I want to touch on here are more pervasive albeit less obvious developments.

There was very little public interest in the Uruguay Round negotiations. As the new Director-General of the WTO, Mike Moore, has described it: “The Uruguay Round was launched in the silence of public apathy.”¹ The same could be said about the previous seven rounds since the creation of the GATT in 1948. The negotiations were handled by governments although the GATT model involved lobbying by so-called distributional coalitions, chiefly business and trade unions, as an important element in the process and outcome. In the Uruguay Round, the role of multinational corporations and farmers was unique because of the unique character of the so-called new issues (services, intellectual property and investment) and the centrality of agriculture as a deal-maker or breaker in the ultimate settlement about which more below. While the U.S. was the leader in launching and guiding all GATT negotiations, it’s fair to argue that all the negotiations ultimately depended on cooperations between the two big players, the Americans and the European Community.

In Seattle there must have been many governments who sorely missed the “silence of public apathy.” The publicity surrounding the Seattle meeting was not only

due to the role of the street theatre on CNN. I would argue that the absence of apathy also reflects a broader and more pervasive secular change in the industrialized countries – an alienation from the elite. The American sociologist V.O. Key Jr. wrote about the “permissive consensus” of the earlier post-war decades.² While the broad public had little detailed knowledge of international policy, opinion polls demonstrated consistent support for the government’s foreign policy which would, of course, include trade policy. As Key noted: “when a permissive consensus exists, a government may be relatively free to work out a solution of the issue or it may be free to act or not to act.”³ The deference to government, and more broadly to the establishment as it was then termed, underlay the permissive consensus and has dramatically declined since the 1960’s in all OECD countries as many recent analyses of opinion polls have demonstrated.⁴ Perhaps the Uruguay Round was the last gasp of the permissive consensus – and barely that.

Of course there are many reasons for the decline in deference to government and to the elites – a word of opprobrium in North America and even in Europe today. One major cause has been the much wider access to information and the role of the media. In the context of trade policy, the latest stage in the information technology revolution – the accelerating use of the internet since the mid-90’s as exemplified by the role of the NGO’s in Seattle – will be described shortly. But another development, more difficult to discern, is also at work – the ongoing debate in academia about the impact of trade on growth and equality and the growing emphasis on issues of values and morals is generating a change in the climate of ideas which is likely, over time, to have an effect on

¹ World Trade Organization, Press Release, Geneva, Sept. 28, 1999.

² V.O. Key, Jr., Public Opinion and American Democracy, New York, 1963, pp. 27-53.

³ Ibid., p. 35.

⁴ The Economist, July 17, 1999, pp. 49-50.

policy. As Keynes famously observed : “The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Practical men, who believe themselves quite exempt from any intellectual influences, are usually the slaves of some defunct economist. Madmen in authority, who hear voices in the air, are distilling their frenzy from some academic scribbler from a few years back.”

One of the most important academic scribblers of this century was Joseph Schumpeter whose work on the capitalist engine of innovation, or creative destruction as he termed it, is enjoying a major revival in the new growth theory. But when read today his views about the future of capitalism, as expressed in his 1942 book Capitalism, Socialism and Democracy, seem absurd. His lengthy and brilliantly argued answer to the question heading Part II – *Can Capitalism Survive* – boils down to one word -- “no”. He argued that the fatal flaw at the heart of the capitalist system is that its fundamental ethos – rationality – cannot be defended against the attacks of its progeny, the intellectual. The intellectuals – defined as people “who wield the power of the spoken and the written word”⁵ -- live on criticism and their “whole position depends on criticism that stings.”⁶ Capitalism is based on freedom so the intellectuals cannot be controlled. But the “unheroic and rationalist” defense of the capitalist is no match for the criticism that “nothing is sacrosanct”⁷ and renders indefensible the system’s institutions.

So the weakness of the system which provides the target for the intellectuals (who, he notes, have many more outlets as books become cheaper, newspaper chains

⁵ Joseph A. Schumpeter, Capitalism, Socialism and Democracy, Third Edition, Harper and Bros., New York, 1942, p. 147.

⁶ Schumpeter, op.cit., p. 15.

⁷ Ibid

spread and radios proliferate) is the absence of an heroic and binding ethos, or set of moral values. As he so trenchantly put it: “The stock exchange is a poor substitute for the Holy Grail”.⁸ But there it is – how wrong could he get? In the United States, at least, the Stock Exchange is the Holy Grail!

From the vantage point of the new millennium, when capitalism has been embraced by all but a few countries in the world, Schumpeter’s dire prediction seems almost bizarre. Nor is it just capitalism that reigns supreme. It’s core ethos – economics – can well boast of having invaded most of the other social sciences, a phenomenon (proudly) termed “economic imperialism.”⁹ Even, pace Schumpeter, religion has not been safe from the discipline’s imperial reach. For example, one can develop a really neat model of church attendance as investment under uncertainty – the uncertainty being whether or not you go to heaven.¹⁰

Yet despite his erroneous forecast, was Schumpeter all wrong? Perhaps it would be unwise to dismiss the penetrating insight of his core argument about moral values. Echoes of the diatribes of his “intellectuals” can be heard daily – and certainly could be read hourly on the internet in the weeks leading up to Seattle.

Okay, I agree that the term “intellectuals”, even in inverted commas is inappropriate. Does the term “global village idiots” sound better? Or, “real nut cases”? Yet that doesn’t trump Schumpeter’s argument about the weakness of the “rationalist” defence. Unless all Americans are global village idiots, the opinion polls taken after

⁸ Schumpeter, *op.cit.*, p. 137.

⁹ Edward P. Lazear, Economic Imperialism, National Bureau of Economic Research Working Paper 7300, Cambridge, Mass., August, 1999.

¹⁰ Ibid, p. 20.

Seattle reveal that very large majorities want the environment and labour standards included in trade agreements.¹¹

These views – supported by citizens in many other OECD countries—present a formidable challenge to the WTO membership since they are adamantly opposed by virtually all non-OECD countries, who represent two-thirds of the membership. This particular north-south divide is but one aspect of the second transformative change – the political economy of trade policy-making.

b) The Political Economy

Before the Uruguay Round the GATT model of reciprocity, irrationally mercantilist though it was for Manchester liberals, worked very well. Border barriers erected in the disastrous thirties were reduced in negotiation rounds and trade grew faster than output. The model was premised on the idea that protectionist lobbies could be offset by export interests. In these rounds developing countries negotiated mainly to secure unreciprocated market access to OECD countries. Most lacked the expertise and analytical resources for trade policy-making but that didn't really matter much because of the nature of negotiations.

The Uruguay Round was dramatically different. The negotiation to launch the negotiation took almost as long as the Tokyo Round. After repeated efforts by the Americans beginning in the early 1980's, the Uruguay Round was launched in Punta del Este in September 1986 and formally concluded in Marrakesh, Morocco in April 1994, several years later than the target completion date originally announced. The extraordinary difficulty in both initiating and completing the Round stemmed essentially

¹¹ The Economist, April 15, 2000, p. 26 and Harris Poll, wto-activist@iatp.org, April 18, 2000. See also Business Week, April 24, 2000, p. 202.

from two fundamental factors: the nearly insuperable problem of finishing the unfinished business of past negotiations, most of all agriculture; and the equally contentious issue of introducing quite new agenda items, notable trade in services and intellectual property and, though in a more limited way, investment. The Europeans blocked the launch to avoid coming to grips with the Common Agricultural Policy (CAP) and a number of developing countries led by Brazil and India were bitterly opposed to including these so-called “new issues”. In the end the final trade-off involved a North-South deal across the old and new issues. In exchange for improved access for agricultural and labour-intensive products, especially textiles and clothing, the developing countries yielded on the new issues and accepted the restructuring of the GATT and the transformation of the world trading system.

Although the “new issues” are not identical -- obviously negotiations on telecommunications or financial services differ from intellectual property rights -- they do have one common or generic characteristic. Thus, they involve not the border barriers of the original GATT but domestic regulatory and legal systems embedded in the institutional infrastructure of the economy. The Uruguay Round launched the deepening integration of the global economy. The degree of intrusiveness into domestic sovereignty bears little resemblance to the shallow integration of the GATT with its focus on border barriers. Thus, for example, the barriers to access for service providers stem from laws, administrative actions or regulations which impede cross-border trade and investment. Hence liberalization or improved access of necessity involves changes in domestic economic regulatory regimes and involves an inherent pressure for convergence. Moreover, the telecommunications agreement included a reference paper that set out a

common framework for the regulation of competition in basic telecommunications. The inclusion of intellectual property rights in the world trading system was arguably an even more radical transformation of the traditional concept of a trading system and the shift to positive regulation was even more fundamental. In the case of intellectual property, the negotiations covered not only comprehensive standards for domestic laws but, perhaps more importantly, detailed provisions for enforcement procedures to enforce individual (corporate) property rights. The WTO had shifted from the GATT model of negative regulation -- what governments must not do -- to positive regulation or what governments must do. This new agenda will require significant upgrading of the institutional infrastructure of many (most?) developing countries – governance; education; legal systems; regulatory systems, etc., etc.

Moreover, it's important to underline another aspect of the irrelevance of reciprocity for the developing countries in accepting the GATS (General Agreement on Trade in services). By the end of the 1980's a major change in economic policy was underway. The revolution of what might be termed Ronald Thatcherism began in the OECD countries but was adopted by many developing countries, including countries in Latin America and in Central and Eastern Europe by the onset of the 1990's. Economic reform – deregulation, privatization, liberalization – were seen as essential elements for launching and sustaining higher growth. Even without the regulatory reform thrust from the Uruguay Round, the postwar economic regulatory state was no longer a dominant paradigm and reform of key service sectors such as telecommunications and finance were regarded as essential building blocks in the soft infrastructure underpinning growth.

But the law of unintended consequences was at work. Because of the focus of attention on economic regulation, the negotiations on social regulation concerning product standards, health and safety measures and environment received little publicity and little attention from the senior policy ranks. In the OECD countries social regulation started in the late 1960's and has been accelerating since then. The OECD has called the phenomenon "regulatory inflation." One could -- with a bit of a stretch perhaps -- say that the postwar economic regulatory state of the advanced countries is withering away, while the social regulatory state is alive, well, and growing: a curious mix of laissez-faire and laissez-regler. Thus social regulation, covering the environment, labor, food safety, product labeling, etc., has grown by 300-400% in the industrialized countries since 1970.¹² This is decidedly not the case in the developing countries, nor are they likely to embrace the social regulatory state unilaterally: au contraire! Moreover, while the positive regulatory approach in social regulation -- TBT's (Technical Barriers to Trade) and SPS (Sanitary and Phytosanitary Measures) -- is more procedural rather than substantive, the infra-structure implications are equally demanding involving sophisticated administrative procedures law as well as highly trained scientific human resources.

Thus for many developing countries, especially the poorest, the "grand bargain" of the Uruguay Round seemed by 1999, a bum deal. They got less access than they had hoped for and the burden of the new agenda was far greater than they had understood. In Geneva during the preparatory meetings for Seattle they argued for better access in agriculture and textiles as well as an extension of time before implementation of the more

¹² Organisation for Economic Co-operation and Development, Report on Regulatory Reform, Vol. II: Thematic Studies, Paris, 1997, Chapter 2, pp. 191-248.

difficult aspects of the “new issues” along with enhanced technical assistance, a kind of redress for the Uruguay deal. So a North-South divide was expected in Seattle.

Unexpectedly, however, the meeting ended with a walkout by a coalition of virtually all the developing countries from Latin America, Asia and Africa (hardly a homogenous group) not over agriculture or textile tariffs, but because of the U.S. President’s insistence on the inclusion of labour standards which would be enforced by trade sanctions. But while this proved to be the catalyst, it’s important to note that the bitterest complaints of many of these countries was the “undemocratic” nature of the negotiation process.

Finally, another major difference between the GATT and the WTO is the greatly strengthened Dispute Settlement Mechanism. This new juridified system – described by some as a form of international constitutional law – will be discussed in other papers so the only point I want to make here concerns the impact on both the political economy and the process of policy-making. Since the establishment of the WTO the most high-profile and contentious disputes have concerned social regulatory issues (food safety and environment) which are very sensitive in terms of public opinion. Inevitably the dispute panels and especially the Appellate Body have been forced to interpret the relevant WTO rules. And inevitably, as is the case with all courts and all legal rules, but even more so because some WTO rules are deliberately imprecise or “creatively ambiguous”, the interpretation has essentially involved these internationally appointed judges making law, i.e. defining the boundary for domestic policy space and reinforcing the perception – and reality – of the intrusive nature of the new system.¹³ And it is this “sovereignty” thing

¹³ See Marco C.E.J. Bronckers, “Better Rules for a New Millennium: A Warning Against Undemocratic Developments in the WTO”, Journal of International Economic Law, Vol. 2, Number 4, Dec. 1999, pp. 547-566 and Gary P. Sampson, Trade, Environment and the WTO: the Post Seattle Policy Agenda, Overseas Development Council Policy Essay No. 27, Johns Hopkins University Press, Washington D.C.

which has enraged and emboldened a new group of policy actors – the non-governmental organizations or NGO's – and will have a significant impact on the policy process.

c) The Process

“You taught me language; and my profit on't
is I know how to curse.”

Shakespeare: The Tempest

While economists, business and trade officials ponder how E-commerce will affect the market for goods and services, few seem to have given much thought as to how the internet has and will affect the market for policy ideas and therefore the policy-making process.

We will long debate the effect of the political opera mounted by the NGO's in Seattle but it would be unwise to concentrate only on that. A major impact of the internet has and will be to make the market for ideas contestable, a radical transformation which will affect the domestic and international policy-making process. Inexpensive, borderless, real time networking provides the NGO's with economics of scale and also of scope by linking often widely disparate groups with one common theme. Equally important, it offers the opportunity to disseminate strategic knowledge formerly concentrated in governments and business. As is the case for all innovations there are also important positive feedback loops. The lessons from the attack on the MAI (Multilateral Agreement on Investment) were put to use in preparing for Seattle and the Seattle experience was helpful in planning for Washington and then for a new series of demonstrations on different occasions and different locations.

An analysis of a large number of websites concerning Seattle and post-Seattle developments suggests that there are three broad functional categories of NGO coalitions

or networks: what might be termed “mobilization networks” whose chief objective is to rally support for a specific set of activities: “technical networks” designed to facilitate and provide specific information; and networks dedicated to servicing developing countries which I call a “virtual secretariat”.

Two examples of mobilization networks preparing for Seattle were the International Civil Society Opposing a Millennium Round (ICS) and People’s Global Action (PGA). The ICS claimed to represent more than 1400 local, regional and international NGO’s from over eighty-seven countries. The list is attached to their statement and includes environmentalist, religious and human rights organizations, labour coalitions, women’s groups, student groups and, small farmer groups who are opposed to the agribusiness oligopoly, from all OECD countries and a large number of developing countries.¹⁴ The PGA is also a very broad coalition which was dedicated to organizing a conference in Seattle on November 30, at the outset of the WTO meetings. On the internet the conference was termed N30. The PGA describes itself as “an instrument for coordination, not an organization” and was formed in Geneva in February, 1998.¹⁵ The PGA organized a “carnival against capitalism” in the city of London on June 18, 1999. The J18 carnival, as reported in The Daily Telegraph, deteriorated into violence, resulting in more than six hours of rioting and vandalism in the financial district.¹⁶

The mobilization networks are coalitions of a widely diverse set of NGO’s often with conflicting interests. They pride themselves on their pure form of “participatory democracy” with no center and no hierarchy. However in Seattle (and Washington) both

¹⁴ <http://www.twinside.org/souths/twn/title/wtomr-cx.htm>.

¹⁵ <http://www.agp.org/agp/en/PGAenfes/about.html>.

¹⁶ “Mobs put city under siege”, The Daily Telegraph, London, June 19, 1999, pp. 1, 4, 5.

the libretto of the carefully choreographed street operas and the sound bites on television carried a simple, common theme – anti globalization or, rather, anti corporate globalization and pro-democracy. The charge was that the WTO (or the International Monetary Fund or the World Bank) is dominated by the interests of transnational corporations; that rules and procedures are “undemocratic”; that it is harming the environment; and increasing inequality both within and among countries. The sound bite versions were the slogans: “fix it or nix it”; “no new round but turnaround”; “shrink it or sink it”.

So one must distinguish between the loose mobilization networks of diverse NGO’s around the world and the “headquarters executives” responsible for creating and marketing the message. These H.Q. organizations such as Ralph Nader’s Public Citizen and Global Trade Watch; the U.S. based Preamble Centre; Friends of the Earth in the U.K. (which organized the ICS manifesto) were aided in logistics planning by a number of groups including the Direct Action Network or DAN and the Ruckus Society, and in press relations and media management by Turning Point, an NGO formed only in 1999 to produce a series of advertisements in the New York Times on the effects of globalization on the environment. Some analysts have argued that NGO’s like these are part of a new industry – the protest business.¹⁷

The protest business could be a new market created by the internet – after all technological innovation can generate wholly new products and services. It’s difficult at this point in time to predict the viability of the new business but it seems to have combined three key ingredients or what I’ve termed the three M’s; a saleable message; a

¹⁷ See Grant Jordan and William A. Maloney, The Protest Business? Mobilizing Campaign Groups, Manchester University Press, Manchester and New York, 1997.

skillful media strategy; and money (from mass-mailings and a number of philanthropic institutions, mainly American).¹⁸ The objective is to influence the policy process through public opinion. It's very important to underline that these new actors do not resemble the distributional coalitions sparring over the division of the pie. Indeed in the traditional version of the political economy of trade, their support is quite irrational because of the free rider problem associated with collective action for public goods. This definition of rationality needs a re-examination.

Following from that it's important to distinguish the very prominent role of a traditional distributional lobby, the American unions in Seattle (less so in Washington) from the mobilization networks. The so-called Turtle-Teamster alliance between the unions and the greens was probably a marriage of convenience to influence American trade policy but it seems unlikely that a lasting alliance could be forged given the profound divisions between these two groups. The U.S. advantage in a period of ongoing change stems from its Exit model (as compared with the European Voice paradigm) because change is governed by an anonymous mechanism that rewards the most efficient. Winners prosper and losers appear to disappear. What was heard in the streets of Seattle was the Voice externalized but workers of the world are more likely to compete than unite.

In marked contrast to the mobilization networks are the technical networks such as, for example, Centre for International Environmental Law in Geneva and Washington; the International Institutue for Sustainable Development in Winnipeg; the Institute for Agriculture and Trade Policy in Minneapolis; the International Centre for Trade and

¹⁸ The Chronicle of Philanthropy (acewald@mindspring.ca) noted that after Seattle and Washington a conference of the National Network of Grantmakers drew some 350 participants to Boston to discuss why

Sustainable Development in Geneva; WEED (World Economy, Ecology and Development) in Bonn; and the Institute for Global Communications in Palo Alto.

California (whose objectives include innovation in software to support NGO's special needs) to name but a few. The primary purpose of these, and a number of similar networks, is to facilitate the greater participation of NGO's in the policy process by providing a flow of strategic and technical information, very heavily weighted to environmental and legal issues. Some were present in Seattle but probably not many on the streets.

These technical groups are interested in influencing policy mainly by operating through institutional channels both governmental and intergovernmental. Events like Seattle provide an opportunity to access national delegations and network with other NGO's. One example of their operational effectiveness has been the ongoing debate over GMO's (genetically modified organisms). The meeting in Montreal on the Cartagena Biosafety Protocol at the end of January 2000 was widely expected to be another Seattle but, in fact, ended in an agreement (albeit as a result of brilliantly ambiguous drafting!).¹⁹ The large number of NGO's engaged in the meeting proclaimed victory, especially in inserting the precautionary principle, a very contentious subject at the WTO. En route to the WTO there will be a number of other steps being carefully planned including meetings of the Codex Alimentarius, the institution that establishes international food standards recognized by the WTO.

Finally, a remarkable and recent development has been the proliferation of NGO's dedicated to providing information and undertaking advocacy on behalf of developing

philanthropies should care about globalization and promote NGO's concerned with the issue.

countries – a virtual secretariat. Examples are Third World Network in Malaysia with offices in India, Uruguay, Ghana, London and Geneva, and established links with other NGO's in both north and south and a wide range of publications; TWN collaborates with the South Centre in Geneva which is funded by LDC members with the mission of networking with other institutions “to promote South solidarity” on policy; SEATINI (Southern and East African Trade and Information and Negotiations Initiative) with several offices in African countries and funding from UNDP and UNCTAD and a mission to build the knowledge base and capabilities of African countries; Focus on the Global South in Thailand with a mission to link grassroots NGO's working on development issues to broader policy concerns including WTO and APEC; and CUTS (Consumer Unity and Trust Society) in India with a research and advocacy mission in trade and sustainable development. In addition, there are also a number of northern NGO's with a focus on Southern issues in the WTO such as Rongead (European NGO Network on Agriculture, Trade Environment and Development) based in France and funded by the European Commission, the French government and a private Foundation; Intrac (International NGO Research Centre) based in Oxford to train NGO's in developing countries and act as a consultancy; as well as a number of traditional development NGO's (such as Oxfam, Christian Aid and other religious organizations) which are now focusing on trade and environmental issues.

This South “virtual secretariat” provided a continual flow of information on negotiations in Geneva; helped formulate policy positions on all major issues; and many of their leaders were present in Seattle. Once again, they are not a homogenous group

¹⁹ See World Trade Agenda, Geneva, Feb. 14, 2000, pp. 7-9, Economist, Jan. 29, 2000, p. 107, and Feb. 5, 2000, p. 69.

and may differ on specific subjects but, as Seattle demonstrated, the strategic assets of information and political know-how can provide a base for a significant increase in bargaining power in the WTO.

Finally, the new prominence of the NGO's in trade policy-making should be evaluated in a broader context. Thus the American business community – in marked contrast to their activist transnational role in the Uruguay Round – has maintained a low profile with respect to WTO negotiations. Apart from the service industries, the business community in both Europe and the United States has demonstrated little in the way of what might be termed generic or systemic interest and even in the case of services the interest is sector-specific rather than cross-cutting, although that may well change over time, and perhaps E-commerce will be the catalyst. However, the current lack of activism is remarkable and one can only speculate as to the reasons. Perhaps the Uruguay Round was truly a singular event because it involved a radical transformation of the GATT system and the stakes were very high. Moreover, the global span of many corporations today facilitates direct negotiation with host governments so, ask many of them, why bother with lengthy and tedious intergovernmental negotiations? Privatization of trade policy may be an attractive option. Another factor is the restructuring of American corporations over the past decade which has required a sharper focus on a limited number of specific governmental lobbying objectives with shorter-term impact on the bottom line. Thus Chinese accession to the WTO has been a top priority. (That also seemed to be the case for the U.S. government whose objectives for a new round were minimal and defensive, while the EU position was far more assertive, including new issues such as investment and competition policy.) In the absence of a multilateral option

which would require a narrowing of the transatlantic divide not only over agriculture but also more fundamental issues (of which more below), as the 1980's so clearly demonstrated, a revival of unilateralism, bilateralism and regionalism should not be ruled out.

To sum up if one were asked to predict the future of the world trading system the best single word would be "uncertain." But maybe that's too terse a reply. A layman's definition of Heisenberg's uncertainty principle is: we can know where we are but not where we are going, or we can know where we're going but not where we are. So, how about Heisenberg squared as a more specific response? Yet that too is not adequate. Many lessons can be learned from the Seattle experience. But most important is the urgent need to reform the WTO, a necessary but not sufficient condition to ensure the survival of a global rules-based trading system since there will also have to be some change in the existing architecture for international cooperation.

III GOVERNANCE OF WTO

a) Policy Forum

It is not clear that the negotiators really understood the full implications of the fundamental shift in policy template marked by the Uruguay Round. However, there was recognition that the GATT would not provide an adequate foundation for the much more ambitious and comprehensive trading system embedded in the negotiating agenda. Thus, the Punta Declaration established the Functioning of the GATT System or the FOGS negotiating group. FOGS was promoted by a coalition of middle powers, both developed

and developing, since institutional issues were not a priority for either the United States or the European Union. The middle powers recognized that the alternative to a rules-based system would be a power-based system and, lacking power, they had the most to lose.

Nonetheless, the goals of FOGS were relatively modest: to improve the adaptability of GATT to respond to accelerating change in the global economy through improved surveillance of country trade policy and regular Ministerial Conferences designed to raise the public and political profile of trade policy; to improve the “coherence” of international policies by establishing better linkages between the GATT and the Bretton Woods institutions; and, most importantly, to strengthen the enforcement of the trading system’s rules of the road by improving dispute-settlement arrangements. The creation of a new institution was not included among these objectives, and the proposal by Canada for a new institution, the WTO was not put forward until April 1990. It was soon endorsed by the European Union, which had opposed stronger dispute settlement in the Tokyo Round and which had taken a position of benign neglect with respect to FOGS. The European Union became an active supporter of a new institution that could house a single, strong dispute settlement mechanism, out of growing concern about U.S. unilateralism.

Unfortunately an attempt to establish a successor to the Consultative Group of Eighteen (CG18) the GATT’s policy forum for debate and discussion failed and the WTO is a minimalist legalist institution – a Mercedes Benz without gas, as I’ve called it. Since Seattle the issue of the governance structure of the WTO has again hit the radar screen but only in terms of the negotiation modality. That issue, while important, is

rather like putting the cart before the horse. If there's no understanding let alone agreement on the broad and complex policy issues the best negotiating structure in the world won't help much.

A brief review of the history of the CG18²⁰ is useful in the light of the current debate on the structure or governance of the WTO. It was established in July 1975 not by trade ministries but as a result of 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). Originally termed the GATT Management Group, the name was changed because its purpose was to provide a forum for senior officials to discuss policy issues and not to, in any way, challenge the authority of the GATT Council. 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. In 1979 the GATT Council agreed to make CG18 permanent but it was suspended in 1990 by the Director General (for reasons that have never been made public) and has never met since.

Because it was a forum for senior officials from national capital it provided an opportunity to improve coordination of policies at the home base. And 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. Papers were prepared by the secretariat on important global economic issues such as, in its early years, balance of payments and related financial matters and the nature and

²⁰ The Consultative Group of Eighteen, MTN.GNGIN14/W15, June 1987, secretariat document prepared for Negotiating Group on FOGS.

scope of cooperation with the Fund. 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. Indeed the CG18 was the only forum for a full, wide-ranging, often contentious debate on the basic issues of the Round. There was an opportunity to analyse and explain issues without a commitment to specific negotiating positions. Negotiating committees inhibit discussion because rules are at stake. The absence of rules is essential to the diffusion of knowledge which rests on a degree of informality, flexibility and adaptability. Thus a policy forum can promote discussion of norms, principles, and concepts which may or may not underlie longer-term strategies for new rules.

The establishment of a policy forum (or executive committee if that term is preferable) is essential to fostering more comprehensive structural reform and should be accorded highest priority. Since Seattle the mindset in Geneva is pretty much that the WTO ain't broke so why fix it. There has been some discussion about "transparency" and the opacity of that word has now been significantly increased by distinguishing between internal transparency (WTO – speak for adapting the traditional negotiating process to include more developing countries) and external transparency (improving access to documents etc. and dealing with demands of the NGO's for more participation). The I-transparency issue is gridlocked essentially because of disagreement over how to design the main negotiating committee or, in other words, what weights should be assigned to economic power, numbers and geography. The so-called trade-off between efficiency and inclusion will involve delicate negotiations and is unlikely to be settled on its own but only as part of a package for a new round. Even more conflicted is the E-

transparency issue and the role of NGO's, about which more below. But, of course, these and many other issues could be the subject of discussion and debate in the policy forum which could meet regularly at the official level and, as required, at the Ministerial level.

How would the policy forum be established? One possibility is to use the Trade Policy Review Mechanism as a formula. For the TPRM, after lengthy and difficult negotiations, an agreement was forged that different countries would be subject to different review schedules on the basis of geography and share of world trade. Thus the TPRM formula could be used for establishing a committee of reasonable size and rotating membership which would ensure that all countries and regions would be represented within a given time frame. If a formula cannot be agreed it may be necessary to make the establishment of the policy forum part of a new North-South package which would include the so-called "confidence-building" measures of zero tariffs for the products of the poorest countries; extension of implementation periods of some measures such as TRIM's, TRIPS and customs valuation; and, most important, enhanced technical assistance and training.

While the establishment of the policy forum would be a great step forward, it is unlikely to function effectively without an increase in the WTO's research capability. If member governments are unwilling – as they have been up to now – to provide funding other avenues should be explored such as private donors – after all Ted Turner donated one billion dollars to the U.N.! As was the case for CG18, it will be necessary to provide analytical papers on key issues to launch serious discussions and to improve the diffusion of knowledge in national capitals where improved coordination of policy among a number of different governmental departments and agencies is essential. If such a forum

was deemed necessary in 1975 when border barriers were the main focus of trade policy, it is obviously crucial today if the system is to survive. There is no “trade” minister any longer because the domain of trade policies spans a growing range of both international and domestic policies and is linked to other policy domains such as the environment or competition policy, and so on. And the dominant global paradigm of neoliberalism is being challenged by an emerging new model, unclear and inconsistent as yet, which asserts the need to meld efficiency with ecology, equality and community. Quite a challenge!

In order to keep up to date and reasonably small in size, the WTO could not possibly generate all its policy analysis in-house. Like most research bodies today, the WTO secretariat would have to establish a research network linked to other institutions such as the OECD, the Bretton Woods institutions, private think tanks, universities and the like. Knowledge networks are key elements in promoting cooperation and coordination and fostering the achievement of consensus. This networking should also include NGO’s such as environmental groups; business groups; international labour associations and intergovernmental organizations such as the ILO and UNEP. The establishment of a research or knowledge network – “soft power” – is also important to enhance the ability of the WTO Director-General to play a more effective role leading and guiding the policy debate. In the terminology of the international regime literature the policy forum could become a broad meta-regime founded on mutually agreed basic principles and fostered by a combination of strategic assets: a knowledge infrastructure in the form of a research capability; a meeting infrastructure for knowledge diffusion,

debate, peer group pressure; strategic planning and monitoring of policy performance. But no “hard power” to make or enforce rules.

Thus it is essential to underline that the new forum must not be a decision-making body and must report regularly to the General Council. Of course, as was the case for CG18, it should be able to make recommendations to the Council and proffer suggestions for further analysis or action. In reading the document prepared for the FOGS group by the GATT secretariat, one is struck by the perceptiveness and prescience of the Committee of Twenty. But perhaps an even more prescient historical footnote is the Report on Organizational and Functional Questions adopted by the Contracting Parties in 1955 which recommended that an “Executive Committee, restrictive in size and representative in character” be established!²¹ Let’s hope an executive committee be established before 2005 – after all, fifty years is more than enough.

b) Transparency

The GATT decision-making system worked well because there were far fewer countries and the issues were less complex. The traditional Green Room process, inherited from the GATT, has not been established by explicit rules but by a self-selection process and includes a small and varying number of participants involving the larger OECD countries and a group of middle powers; a number of the more powerful developing countries; and perhaps a few of the transition economies. The demand for change came not only from the largely excluded poorer countries, but also from Pascal Lamy, the Trade Director-General of the E.C., whose term the “medieval process of decision-making” was widely quoted. A number of suggestions for structural reform

²¹ Ibid, p. 6.

have been made by trade experts²² and some minor, mainly procedural changes have been put forward in Geneva – but none agreed. This is hardly surprising since any significant restructuring of the negotiating committee arrangements would involve “winners” and “losers”. In the absence of an agreed target date for the launch of a new round, there is no incentive for the countries now inside the “Green Room” to agree to any change. And as noted above this is not a serious matter for concern since the priority should be the establishment of a policy forum where, *inter alia*, the negotiating structure, or improved I – transparency, could be discussed and alternative proposals from a range of countries and outside experts considered.

However, the question of E-transparency, or the role of NGO’s, is much more complex and contentious and raises a number of issues concerning the WTO’s institutional design. There are, broadly speaking, three main requests in the NGO’s demand for democratization: more access to WTO documents; the right to observer status and to present *amicus curiae* briefs before dispute settlement panels and the Appellate body; and more participation in WTO activities such as committee meetings, i.e. “a seat at the table”, though this usually stops short of a request to be included in negotiations. Of these three, the first is generally agreed by most member countries though there will be niggling and haggling over release of some documents. Indeed the WTO has already greatly improved the access to documentation via its website and this is likely to expand either voluntarily or by leaks! The other two aspects of E-transparency are, however, very contentious and will not be easily or quickly resolved.

²² See, for example, Jeffrey J. Schott and Jayashree Watal, *Decision-Making in the WTO*, International Economic Policy Briefs Institute for International Economics, Washington, March 2000, and Bhagirath Lal Das, “Full participation and efficiency in negotiations,” *Third World Economics: Trends and Analysis*, Penang, Malaysia, Jan. 16-31, 200, pp. 14-16.

The U.S. has been the strongest proponent of “opening up” the WTO dispute procedure including the right of private parties to submit amicus briefs to panels and the Appellate body. This proposal is supported not only by environmental, labour and human rights groups but also by private lawyers who specialize in international trade and by the international businesses who are their clients. Indeed, since amicus briefs often carry little weight in judicial decisions, it is likely that the next step for all these non-governmental actors would be a demand for the right to bring cases directly: real democracy must be based on laissez-litiger!

These demands are strongly rejected by Southern governments and their NGO’s who regard the present evidentiary-intensive and increasingly legalistic system as already biased against them. (Indeed these legitimate complaints have resulted in the establishment of a legal advisory center housed in the WTO.)²³ A number of these countries have voiced serious concern over the 1998 ruling of the Appellate Body in the turtle-shrimp case which opened the door to amicus briefs. This reaction underlines a broader complaint, not confined to Southern countries, that the A.B. is engaged in law-making and, in this instance, taking a position in a highly sensitive political debate. As Robert Hudec asserts, a demand for “a right to appear before an international tribunal is a partial repudiation of the role being performed by national governments in those proceedings.”²⁴

The amicus/right of standing aspect of E-transparency is, of course, also related to the broader issue of the reform of the dispute settlement mechanism noted earlier.

²³ Kim Van der Borght, “The Advisory Centre on WTO Law: Advancing Fairness and Equality”, Journals of International Economic Law, Vol. 2, No. 4, Dec. 1999, pp. 723-728.

²⁴ Robert E. Hudec, “The New WTO Dispute Settlement Procedure: An Overview of the First Three Years”, Minnesota Journal of Global Trade, Winter 1999, p. 470.

Suggestions to reduce the legalization of the WTO and even to go back to the GATT mode of diplomacy or perhaps conciliation and arbitration in the case of politically sensitive disputes deserve to be considered because the fundamental question of the boundary line between international rules and domestic policy space should be determined by Governments and not by Judges.²⁵ The international compact which underlay the GATT involved liberalizing trade through successive negotiations aimed at reducing border barriers; creating rules to govern and sustain the liberalizing momentum; and safeguarding domestic policy space by rules to permit temporary blockage of imports under clearly specified terms as a buffer or interface to safeguard domestic policy. That compact is, it hardly needs repeating, no longer relevant in the new global trading system. Sooner or later it will have to be renegotiated or the system won't survive. So while some redesign of the dispute mechanism is desirable (perhaps even urgent given the growing concern over sovereignty in the United States)²⁶ the broader debate should be launched in the policy forum as a matter of highest priority. And that debate should include the role of the NGO's in the WTO – the third issue in E-transparency.

The NGO demand for participation – a seat at the table – is the most difficult and controversial. The WTO is an intergovernmental organization and most member governments want to keep it that way. They argue that NGO's should deal with their

²⁵ See, for example, Sampson, op.cit.; Claude Barfield, "More than You can Chew?": The New Dispute Settlement System in the World Trade Organization, Paper Prepared for the International Financial Institution Advisory Commission, Nov. 15, 1999, (mimeo.); and see also Final Report of that Commission which recommends that any ruling by the WTO "that extends the scope of explicit commitments under treaties or international agreements must remain subject to explicit legislative enactment by the U.S. Congress", Washington, 2000, p. 1116.

²⁶ The above-cited Meltzer Commission recommendation reflects a much wider attack on the issue of the international incursion into U.S. domestic sovereignty and is not confined to leftist NGO's and trade unions. Justice Robert H. Bork, for example, has argued that the trend toward legal globalism "may be capable of changing our Constitution." (United Press International April 4, 2000, re speech to American Enterprise Institute).

own governments if they wish to play a role in the policy process. The response of the NGO advocates of participation is that only they have a truly transnational vision which is lacking in national governments so that, for example, “a citizen who cares very deeply about ending whaling ... will find his or her views better represented in international fora by the Worldwide Fund for Nature than by his or her own government, which has many goals it must simultaneously pursue.”²⁷ But it’s not clear what the word citizen means in this context. There are no “world” citizens but only citizens of nation states.

Governments are accountable to their citizens, albeit some more so than others. How would we define accountability in the case of non-governmental organizations? And what about transparency? Who and where are their members? What is their source of funding? Are they “accountable” to their membership or to their funders? These are simply examples of some of the questions that would have to be settled before a meaningful proposal on “participatory democracy” in the WTO could be debated. But any such proposal would be fiercely opposed by most developing countries in the WTO - especially after their experience in Seattle.

Another complication in this debate is that there is enormous diversity among NGO’s. There are operational NGO’s whose main function is service delivery in developing countries. Some of these are local but others are “subsidiaries” of Northern NGO’s or funded by Northern governments and foundations. Among the advocacy NGO’s, as noted earlier, there are wide differences in focus and function between the mobilization networks in the “protest business” and the technical groups which lobby

²⁷ Daniel C. Esty, “Non-Governmental Organizations at the World Trade Organization: Cooperation, Competition or Exclusion”, *Journal of International Economic Law*, Vol. 1, No. 1, March 1998, p. 133.

inside the system. Nor is there any agreed taxonomy among the NGO's themselves or the international institutions, especially the U.N. agencies with whom they have the closest contacts. And among these agencies and others such as the World Bank or the Multilateral Environmental Agreements (MEA's) there is a wide variation in the specific terms for accreditation and the nature of participation.²⁸

Yet there is an interesting new development in the NGO community which might be worthy of exploration by the WTO. As their profile and influence has been heightened many positions of the NGO's have been criticized as simplistic, ignorant and driven by a need for media attention. The Brent Spar oil rig controversy is often cited as an example of a major policy shift catalysed by Greenpeace's erroneous information. But many other examples could be cited for example in the ongoing debate over GMO's as well as, their attacks on the WTO and the Fund and Bank. Of course other actors distort and manipulate information or are economical with the truth. But if corporations engage in serious distortion and are exposed (which is increasingly feasible in the new information environment) they are accountable to shareholders. The same thing is true of governments (at least democratic government) and of unions in democratic countries. There is no comparable constraint on NGO's or, at least, no visible or obvious one. In response to the continuing criticism, that NGO's are the only major policy actors who are not accountable, some have undertaken new self-regulatory initiatives.

Because the NGO world is so diverse and covers so many different functions, a universal system of accountability would likely be impossible. But there are now a number of examples of a code of conduct drawn up by NGO's and monitored by them,

²⁸ For a very useful review see ICTSD, Accreditation Schemes and Other Arrangements for Public Participation in International Fora, Geneva, November, 1999.

covering ethical practice, transparency, funding accountability, accuracy and other factors. A comprehensive example of self-regulation at the global level is the NGO Steering Committee of the UN Commission on Sustainable Development which includes NGO's, trade union representatives and corporations.²⁹ This is an experiment which deserves to be closely monitored and indeed is being emulated in other UN forums. It is, in fact, part of a broader trend toward what has been called hybrid governance which involves a combination of "hard law" (implemented by the coercive power of the government or intergovernmental institutions) and "soft law" or codes of conduct which provide principles and norms for guidance and emulation.

However, these developments alone will not solve the problem of the demand by NGO's for a seat at the WTO global table side by side with national governments. Certainly it would assist the WTO in formulating more meaningful accreditation procedures for NGO participation in symposium and other fora such as TPRM meetings on a voluntary basis.³⁰ But even for that purpose there would need to be some concerted effort at capacity building in developing countries whose NGO's lack the personnel and expertise to implement the codes. The charge, by some Southern countries of neocolonialism is not without merit. Moreover because the WTO is an intergovernmental organization which administers and enforces global rules negotiated by nation states it is argued that NGO's should be involved in the policy process through national mechanisms. But, of course, because of cultural political or legal difference, not all member countries are willing to permit this. As a recent survey by Freedom House

²⁹ This and other examples are discussed in Michael Edwards, NGO's and Global Governance: Rights and Responsibilities, Foreign Policy Center, London, June 2000.

demonstrates 58 percent of the present WTO membership (calculated in terms of population) can be considered democracies and after China accedes the percentage will fall to 43 percent.³¹

So what is to be done? Certainly the new experiments in codes of conduct should be monitored by the WTO and perhaps it would be useful to convene a symposium to discuss these and other ideas with NGO's, governments, unions and business. Among the most important issues to be discussed should be the national mechanisms required to involve accredited NGO's, parliamentarians, academics and business groups in the formulation of policy. Through discussion and peer group pressure (and considerable patience!) it may be possible to improve the "transparency" of policy-making in countries which at present may well regard the term transparent governance as an oxymoron.

c) Accession of China

The third and final issue to be considered in WTO governance concerns the accession of China which will be followed by that of Russia, the other large economy in transition. While the negotiators were haggling over the new issues and agriculture in Geneva the Berlin Wall fell and the former Soviet empire began to disintegrate. Thus there's no forum in the WTO or provisions in the Uruguay Round to deal with the generic issue of "economies in transition" to a market model. This is not a serious lacuna in the case of the smaller central and eastern European countries which are, for the most part, willing or anxious to adopt the EU acquis. But it is a very serious matter in the case of China and will be, albeit for different reasons, for Russia.

³⁰ This is a proposal of the European Commission Trade Directorate submitted to a Workshop on WTO Institutional Reform sponsored by the South Center and Oxfam, Geneva, Feb. 2, 2000. They also recommended the establishment of a WTO Parliamentary Assembly.

China is unique in many respects but in the one most relevant to the WTO, it is the only country which has not adopted the Western concept of law based on individual rights. The concept of separation of powers is alien and thus there is no independent judiciary. Even if the constitution were amended to establish an independent judiciary, the Chinese concept of rule by law rather than rule of law will take time – lots of time – to erase. It is deeply embedded in thousands of years of history, in a tradition far older than Western legal tradition.

If China had joined the GATT in the 1980's the negotiations would have centred on traditional border barriers. That still would have been difficult but not of overwhelming importance to the functioning of the institution. But the WTO, of course, is also about domestic regulatory reform, the independence of regulatory agencies governed by principles of competition and the rights of due process and the protection of private property rights. And the basic underpinning of the whole system is transparency (that word again) which includes the publication of all laws and related regulations and judicial review of the rule-making and other actions of independent regulatory agencies.

Even if China wanted to abide by the basic norms of the WTO – especially transparency – it would be unable to do so for some years to come. The WTO concept of transparency (which was originally Article X of the GATT but has been greatly expanded) is essentially an international system of administrative procedures law designed to control what government bureaucrats do and how they do it. The Chinese legal tradition did not include the concept of control of the mandarins (except by the

³¹ David Jessup, Executive Director, New Economy Information Service, Feb. 4, 2000, <http://www.newecon.org>.

Emperor!) While changes are underway and will continue³² one should expect that the transition to the Western legal system may take decades. After all, the Japanese adopted European legal codes at the end of the nineteenth century. A comprehensive administrative procedures law – to improve transparency – was adopted in 1995.

The accession protocol in Geneva already includes the concept of transition periods of varying length for different parts of the liberalization commitments. What is required is to house these specifics in an overall transition framework which would be time-certain; include specified benchmarks for review by a WTO committee (either a new committee for economies in transition of the existing Trade Policy Review Mechanism)³³ at designated dates; and would result in full WTO membership at the end of the period when the TPRM certified full adherence to the transition protocol. To ensure the credibility of this mechanism the committee should have the right to apply sanctions for a specified period if China failed to deliver the commitments at any of the designated benchmarks.

Finally, this approach to accession (which would also apply to Russia where the institutional underpinning is far more chaotic) and other transition economies in waiting, should be coordinated with World Bank programs. The technical assistance should be jointly supplied by the two institutions although this would require an increase in WTO training and legal resources (or the dispute settlement mechanism might not survive the flood of cases likely to stem from Chinese accession). In addition since China's integration into the WTO will involve major restructuring of the State Owned Enterprises

³² See Sylvia Ostry, "China and the WTO: The Transparency Issue", UCLA Journal of International Law and Foreign Affairs, Vol. 3, No. 1, Spring/Summer, 1998, pp. 1-22.

³³ See Mark A. Groombridge and Claude E. Barfield, Tiger by the Tail: China and the World Trade Organization, The AEI Press, Washington, D.C., 1999, pp. 76-81.

(SOE's); radical reform of the banking system; and the need to create an effective social safety net, coordination with Bank programs to facilitate this massive structural change would help ensure the sustainability of both the domestic reform and the liberalization process.

This example of the need for coordination between the WTO and the World Bank is but one example of a broader issue which goes beyond WTO institutional reform and comprises our final set of policy proposals – the coherence of international policy-making.

IV COHERENCE

As noted above, one of the goals of FOGS was to improve the coherence of international policies by establishing better linkages between the GATT and the Bretton Woods institutions (also one of the goals of the Committee of Twenty, twenty years earlier). A largely rhetorical Ministerial Declaration on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policy-making was the only result of the FOGS group negotiation over seven years. The coherence objective in the agenda of the Uruguay Round stemmed from the serious current account imbalances, i.e. the growing American deficit and the Japanese surplus, which had emerged in the first half of the 1980's and fanned the flames of protectionism in the U.S. Congress. The term "coherence" was essentially a euphemism for curbing extreme swings in exchange rates and the phrase "greater exchange rate stability" is highlighted in the Ministerial Declaration although other examples of cooperation – for example developing country structural adjustment and food aid – were also mentioned. The

Declaration concludes with an “invitation” to the Director-General of the WTO “to review with the Managing Director of the International Monetary Fund and the President of the World Bank, the implications of the WTO’s responsibilities for its cooperation with the Bretton Woods institutions, as well as the forms such cooperation might take, with a view to achieving greater coherence in global economic policymaking.”³⁴ The results of this review were agreements with the IMF, at the end of 1996, and the World Bank in the spring of 1997, that carefully detail who can attend which meeting; what information can be exchanged; and provide for the possibility of consultation between secretariats on trade policy-related issues. There’s no mention of external imbalances and exchange rate misalignment. This hardly came as a surprise since a 1989 meeting of the Director-General of GATT and the heads of the Bretton Woods institutions, requested by the 1988 Ministerial Meeting (the so-called mid-term review), concluded that there was not enough evidence to link exchange rate misalignment and protectionism and in any case such problems were the “least amenable to improvement through action by the international agencies themselves.”³⁵

While it’s fair to say that the original Uruguay Round objective of coherence concerned with exchange rate misalignment is pretty well dead, the overall umbrella of improved coordination among international institutions is more important today – albeit very different – than the negotiators could have foreseen in 1986 when the FOGS group was created. So far as the Bretton Woods institutions are concerned the main partner for

³⁴ The Results of the Uruguay Round of Multilateral Negotiations: The Legal Texts, World Trade Organization, Geneva, 1994, pp. 442-3.

³⁵ Gary, P. Sampson, “Greater Coherence in Global Economic Policymaking: A WTO Perspective”, in Anne O. Krueger (ed.), The WTO as an International Organization, University of Chicago Press, 1998, p.267.

cooperation must be the World Bank, as the China example suggests. This is because of a marked change in the Bank's development policy approach in the late 1990's.

The Bank now sees its role in development as encompassing governance, economic regulation, competition policy, the legal system, education, social policies, competition policy, and the environment, i.e. the entire "soft infrastructure" of the country. What is striking, of course, is the virtually complete duplication of the WTO's current and prospective agenda. Thus trade policy and development policy are becoming more and more intertwined. What the WTO calls trade policy the World Bank calls the second generation of reform.

Thus the China project is really an exemplar of a broader issue, the need for far more effective cooperation between the two institutions to be achieved through specific projects rather than more declarations on process.

Indeed, there is another example of a joint project launched to deal with the growing marginalization of the poorest countries. As a result of an initiative launched by Renato Ruggiero, the WTO Director-General, at the G-7 Summit in June 1996, the WTO Singapore ministerial meeting in December of that year endorsed the Integrated Framework for Trade-Related Assistance to Least Developed Countries (IF). This was the first project involving the major international institutions in a coordinated approach to technical assistance for the least-developed countries. It included UNCTAD, and UNDP as well, and linked the trade-related training programmes of the agencies in order to upgrade the capabilities of the poorest countries. This important initiative, the first of its kind, was described by Ruggiero as "a new partnership against marginalization".

While it is not clear precisely what “trade-related” training means, the phrase carries echoes of the GATT rather than the WTO. This is not meant to diminish the initiative (which will help the LLDC’s improve their export capabilities and therefore their growth potential) but to argue that it should be regarded as one part of a much broader project which would include improved access for these countries’ products and a far more comprehensive approach to deal with the upgrading of soft infrastructure. Granted this won’t be easy because even the present IF has hardly been a success. As reported in the World Bank’s Development Committee report of March 2000 Uganda is the only case so far in which new projects have been developed under the Framework and an independent review has been established to assess the weaknesses of the IF process.³⁶

There remain two other aspects of an updated concept of coherence today: one concerns the environment and the other labour, sometimes called the “trade and” issues. Both are characterized by a strong North-South divide since most developing countries are firmly opposed to linking either with trade rules in the WTO.

Of course the two issues are very different since environment is already part of the WTO and trade and environment are linked in both positive and negative ways as the most recent report by the WTO clearly demonstrated.³⁷ While a new WEO (World Environment Organization) with a clearly defined mission, policy influence and analytic resources could launch the policy dialogue on the relationship between ecology and economy including, of course, the role of trade, the likelihood of establishing any new international organization today is close to zero. A more practical approach would be to house all the existing Multilateral Environment agreements (MEA’s) in UNEP (which

³⁶ Development Committee, Trade, Development and Poverty Reduction, Washington, March 31, 2000, pp. 31-140.

would need more resources) with a mandate for review of the agreements and proposals to improve consistency among them so that the current incoherent system can be reformed. This would permit the launch of a joint project by the WTO and UNEP on the relationship between the MEA's and the WTO rules which is one of the most important and contentious issues in this domain.

In order to begin to tackle the North-South divide it might be useful to consider a new approach to the "win/win" policy of eliminating subsidies in selected sectors – an idea that dropped off the table when Seattle shut down. Recent studies suggest that the subsidy reform benefits to developing countries in terms of increased growth are significant.³⁸

To stimulate an informed policy dialogue on this issue the Committee on Trade and Environment, in cooperation with the OECD and the World Bank, should establish a Subsidies Policy Review Mechanism (SPRM) to discuss commissioned research on this issue in both the OECD and developing countries. The purpose of the SPRM would be to submit policy proposals to be considered by the Committee on Trade and Environment. This should be done, if possible, in time to report to the next Ministerial Meeting.

These suggestions are simply examples of initiatives intended to promote more informed debate within the WTO itself, and also in cooperation with other institutions, on the linkage between trade and the environment. This highlights the difference with the other "trade and ..." issue, labour. As was evident not only in Seattle but in the prior

³⁷ World Trade Organization, Special Studies 4, Trade and Environment, Geneva, 1999.

³⁸ See for analysis and research review André de Moor and Peter Calamai, Subsidizing Unsustainable Development, Earth Council and Institute for Research on Public Expenditure, Costa Rica and the Hague, 1997.

negotiations in Geneva there's no agreement among members to bring that camel into the tent.

If the objective of the American and other OECD unions is to improve working arrangements in developing countries, the mandate rests with the ILO. (If it's not, then it's a matter for domestic policy designed to ameliorate the distributional consequences of adjustment to global forces. This is especially important in the U.S. so that the externalized Voice will be muted.) But the ILO has no power of enforcement. Moreover, many of its developing country members have resisted repeated attempts to improve enforcement capacity – while at the same time opposing labour standards in the WTO. This dilemma (or hypocrisy) must be resolved and the ILO monitoring and enforcement mechanisms strengthened. But development institutions will also have to play their role since labour standards are clearly linked to growth. What will be needed, in effect, is reform of the ILO and more effective coordination with the WTO, the World Bank and UNCTAD.

It's worth noting that while this "macro" approach to labour standards would rest on government policy, an innovative "micro" policy is now rapidly evolving independently of government and, indeed, generated by "technical" NGO;s. The Washington-based Council on Economic Priorities (CEP), is a consumer organization established in 1969. (51) In 1998 SA8000 was launched – on the Fiftieth Anniversary of the Universal Declaration of Human Rights. CEP had established a separate accreditation agency (CEPAA) only the year before which developed a "social accountability" code that includes the ILO basic labour rights plus rules on wages and hours. The codes are technically designed for auditors and their development involved

large corporations, unions, and NGO's. They have been endorsed by international certification agencies. Monitoring of the developing country subsidiaries of the transnational corporations which have adopted SA8000 will be carried out by a network of NGO's linked to CEPAA. While the information is designed for a consumer audience, the next step will be to involve investors, beginning with large pension funds. The core strategy of this micro policy is market-like: consumer and investor pressure will force an increasing number of firms to join the SA8000 crowd with a little help from global whistleblowers and the media! This policy innovation is quite new and is also a spin-off from the information technology revolution. As CEP has noted, "With instantaneous media connection and the internet... today's remote factory scandal can become tomorrow's global headline."³⁹

But SA8000 is just one example of an enormous proliferation in labour codes of conduct and labeling.⁴⁰ The codes and labels are all voluntary and the product of self-regulation although governments may be involved in facilitation. There are significant variations in monitoring and accountability and very little analysis of impact. What would be useful is a comprehensive survey of these developments and a project to evaluate their impact which, of course, could be both beneficial or deleterious to improving labour standards in developing countries.

The EU, unlike the U.S., proposed that labour standards should not be discussed in a new WTO Committee but rather in joint forum organized by the WTO and ILO but outside both. The purpose of the forum (equipped with research capability) would be to

³⁹ SA8000: Setting the Standard for Corporate Social Accountability, <http://www.cepaa.org>.

⁴⁰ For a useful review of this development see Janelle Diller, "A social conscience in the global marketplace? Labour dimensions of codes of conduct, social labeling and investor initiatives", *International Labour Review*, Vol. 138, No. 2, 1999, pp. 22-129.

analyse the relationship between trade policy, development and core labour standards.⁴¹ This forum would be the appropriate venue for the discussion of these innovations in “soft law”. This would open the door for a discussion about the opportunities for going the route of hybrid governance rather than governmental or intergovernmental regulation. Granted this approach won’t satisfy either the proponents or opponents of the trade and labour debate but perhaps it could be made more attractive if the member governments of the WTO and the ILO considered the alternatives, à la Winston Churchill.

V CONCLUSION

This discussion on improving WTO governance has suggested a number of small or incremental initiatives rather than a new architecture. But even improved plumbing and interior decoration – resting on a new foundation of the policy forum – might not be feasible because of the lacking ingredient – leadership. The hegemonic theory of Kindleberger would suggest that that negative view is correct as would the notion of “embedded liberalism” and shared norms and values. The end of the Cold War, the decline of Congressional deference in trade policy and the increasing transatlantic friction hardly help.

Yet the global public good of stability and predictability probably matter more today when the threats to stability are far more diffuse and diverse. These (or other) incremental improvements need not – should not – await a new round and coalitions of middle powers have the greatest stake in a rules-based system. So, indeed, does the U.S. if there is a proliferation of bilateral and regional agreements which exclude them because of lack of fast track. So coalitions allied with one or another of the global

⁴¹ Speech by Pascal Lamy, EU Commissioner for Trade, Inside U.S. Trade, Nov. 30, 1999.

powers could begin the process and lay the groundwork for a new round in 2001 or even later. Indeed without these changes it might be very unwise to wish for a new round in case that wish were granted.