

**THE CHANGING SCENARIO IN
INTERNATIONAL GOVERNANCE**

by

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November 20, 1999
Ottawa

Introduction

The financial crisis in Asia in 1997 triggered a lively and sometimes raucous debate on the need to redesign the so-called architecture of the postwar Bretton Woods institutions, the International Monetary Fund and the World Bank. What has resulted thus far is most aptly described as improved plumbing and interior design. One should not disparage these incremental improvements although basic issues, especially overlap between the two institutions and the longer-term role of the private sector in burden-sharing, have not been confronted and likely won't be until the next financial crisis.

But that's not what I want to talk about today. By a strange twist of events it may be that the "crisis" confronting the first post-coldwar institution, the World Trade Organization (WTO) could prove to be the catalyst for a serious re-thinking of the existing architecture. Fifty years ago, when the buildings were erected, the word globalization didn't exist and the environment did not appear in any of the construction documents.

What I'd like to do today is to begin with a brief account of the creation of the WTO and how it has become a magnet for dissent, before turning to the broader question of international governance.

The Uruguay 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 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, a deal which transformed 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 thus provided significant impetus to the deepening integration of the global economy or, as it’s now termed, globalization. The degree of intrusiveness into domestic sovereignty bears little resemblance to the shallow integration of the postwar years with its focus on border barriers. The WTO has shifted trade policy from the GATT model of negative regulation -- what governments must not do -- to positive regulation or what governments must do. Moreover, the WTO dispute settlement procedures -- “the most ambitious worldwide system for the settlement of disputes among more than 130 states ever adopted in the history of international law”¹ -- provides the ultimate guarantee of protection for the

¹ Ernst-Ulrich Petersmann, “From the Hobbesian International law of Coexistence to Modern Integration Law: the WTO Dispute Settlement System,” The Journal of International Economic Law, Vol. 1, No. 2, June 1998, p. 183.

negotiated

rules.

Many

legal

scholars see the WTO as embedding a global constitution overseen by a supranational juridical system -- a point I'll return to later.

The inclusion of the new issues in the Uruguay Round was an American initiative and this policy agenda was largely driven by American multinationals who were market leaders in the services and high tech sectors. These corporations made it clear to the 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. But they didn't just talk the talk, they also walked the walk, organizing 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 it's fair to say that American MNE's played a key -- perhaps even the key -- role in establishing the new global policy system.

However, it's also important to underline that by the end of the 1980's another major change in economic policy-making was underway. The revolution of Ronald Thatcherism which began in the OECD countries was adopted by many developing countries by the onset of the 1990's and this greatly reduced the resistance to negotiation of the new issues. Put another way, in January 1995 at the official birth of the WTO, as a result of a favorable confluence of different forces, support by governments for domestic and international liberalization as a dominant ideological paradigm seemed near-universal.

Because of the focus of attention on the "new issues" and economic regulatory reform, 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. While there are a number of reasons for this development a major factor has been the increasing influence of non governmental organizations (NGO’s). These advocacy coalitions are a key element in the change in ambience of trade policy today. From the apparent globophilia of 1995 we are now witness to a rising chorus of globophobia. A brief digression on the role of these new actors in the defeat of an international negotiation, the Multilateral Agreement on Investment or MAI, illustrates their remarkable role in the policy domain.

The New Actors: the NGO’s

In October 1997, 47 NGO’s from 23 countries and 5 continents met in Paris at OECD headquarters. The consultation had been arranged at the request of the World Wildlife Fund and some national representatives who had been lobbied by domestic advocacy organizations. The NGO’s argued that the MAI would undermine sustainable development and national sovereignty. The most powerful case for this argument concerned the MAI’s investor protection mechanism. This replicated the investment provisions in the North American Free Trade Agreement (NAFTA) which included procedures for resolving disputes by which private parties as well as governments could take action and adopted a very broad definition of investment expropriation, so broad it could lead to investor claims against government regulation in, say, environmental or health areas, which negatively affect the value of investment. In Canada, American

corporations had launched several cases against the Government that aroused a storm of opposition led by a coalition of NGO's. These same NGO's were among the most prominent in Paris in October 1997.

After the consultation the groups at the meeting organized an anti-MAI coalition and launched an international campaign on the internet to stop the negotiations. Groups in Canada and the United States provided a constant flow of information to websites in many countries to coordinate the campaign. By October 1998 the negotiations had been suspended and in December, after the official withdrawal of the French government at the request of the red-green members of the coalition, they were officially terminated. (The action of the French government is not without significance. While North American greens have chosen an advocacy route to contest the market for policy ideas, the European environmentalists formed political parties and greens are now members of government coalitions in four E.U. countries: Germany, France, Italy and Finland as well as increasingly prominent in the European parliament.)

Of course there were a number of reasons why the MAI failed but there seems little doubt that the NGO's played a key role. It's worth underlining the importance of the environmental issue because it echoed earlier events in Geneva. In 1991, after a panel ruling that the U.S. violated its GATT obligations by banning Mexican tuna caught by a process which killed dolphins American environmental groups mounted a major attack on GATT-zilla. The campaign in Washington raged against the cabal of faceless bureaucrats in Geneva who were undermining American sovereignty and subverting democracy. Although GATT survived and the Uruguay Round created the WTO, many of the themes,

albeit for the most part in less colorful terms, are at the core of the continuing environmentalist critique of the WTO. While the greens are not the only critics of the WTO they have been most effective in mobilizing support among a wide range of other advocacy groups who, although for different reasons, see the WTO as an institution captured by and serving only corporate interests.

As noted, the campaign against the MAI was greatly facilitated by the internet as use accelerated in the 1990's. While building on the experience of the anti-MAI campaign the mobilization of dissent against the WTO Seattle meeting beginning on Nov. 30 is however, far broader and deeper. A survey of a large number of websites focused on Seattle suggests that there are two broad 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 -- and "technical networks" designed to facilitate and provide specific information.

Two examples of mobilization networks preparing for Seattle are the International Civil Society Opposing a Millennium Round (ICS) and People's Global Action (PGA). The ICS claims to represent more than 600 NGO's from over seventy-five countries. The list is attached to their statement and includes environmentalists, religious and human rights organizations, labor coalitions, student groups, etc. etc. from all OECD countries and a large number of developing countries. The PGA, formed in Geneva in February 1998 is an equally broad coalition dedicated to organizing a conference in Seattle on November 30, at the outset of the WTO meetings. On the internet the conference is termed N30. 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.

The message circulated by both these NGO's, as well as a large number of others, is very similar. They charge that the WTO is dominated by transnational corporations; that rules and procedures are undemocratic and untransparent; and that it is harming the environment and creating increasing inequality. The WTO has become a magnet for dissent and a target for the inchoate but growing backlash against globalization or corporate globalization as its opponents call it. This core message is not dissimilar to that of the Council of Canadians or the US-based Preamble Centre in its new publication Globalization: A Primer, or the book released by Ralph Nader's Public Citizen, Whose Trade Organization: Corporate Globalization and the Erosion of Democracy.

In marked contrast to the mobilization networks, the technical networks such as, for example, the Geneva-based Centre for International Environmental Law and the Institute for Global Communications in Palo Alto, California, whose objectives include innovation in software to support NGO's special needs. 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 continuously updated flow of strategic and technical information. Since information is a key asset in the policy process, the basic objective of these technical networks is to ensure that the market for policy ideas is contestable and no longer the sole preserve of government and the traditional lobbies.

It seems clear, even from this brief survey, that the most dramatic change in the policy ambience today is the growing influence of new transnational actors, adept at using

and diffusing information and coordinating strategy around the globe. It may well be that their role in Seattle will be regarded by the media and the public as street theatre but the play won't end when the Ministers return home. As I said, it's difficult at this point in time to evaluate the longer-run impact. Perhaps the best way to express it is by quoting the 1960's song:

“Something's happening here
What it is ain't exactly clear...”

But the new prominence of the NGO's in trade policy-making should be evaluated in a broader context. Thus it's important to note that the American business community - in marked contrast to their activist transnational role in the Uruguay Round -- has maintained a low profile with respect to the upcoming WTO negotiations. The same might be said of Canadian business. The current lack of activism is remarkable and one can only speculate as to the reasons. Perhaps global business can directly negotiate with host governments so why bother with lengthy and tedious WTO negotiations?

This lack of leadership is also apparent in the case of the US government and the two phenomena are probably inter-related. Unlike all previous multilateral negotiations led by the United States, the American objectives for a new round are minimal and defensive. However, in response to domestic pressures the Administration is proposing that both environmental and labour standards must be on the agenda. The European Union, while largely in agreement with this proposal, has been far more assertive, including new issues such as investment and competition policy and initiatives to reduce the marginalization of the poorest developing countries. No doubt some compromise will be worked out but it will not be so easy to bridge what appear to

be growing political and cultural transatlantic divisions -- captured by the current fracas over genetically modified food -- which in part reflect the growing influence of the Green Parties in European politics.

Finally, developing countries are now far better organized and informed than in any previous negotiation, reflecting in part a spin-off of the information revolution. A number of new "southern" NGO's disseminate information on WTO issues and are actively mobilizing opposition to the inclusion of the environment and labour standards in the WTO negotiations. Long-standing and influential development groups such as Christian Aid and Oxfam largely support this stance. These NGO's and coalitions of LDC governments argue that the benefits of the Uruguay Round went mainly to the advanced countries and that they cannot implement many of their commitments because of lack of technical expertise. They want a "development round" to redress what they argue is a fundamental bias in the WTO system.

Thus the prospects for North-South compromise at present look rather dim. A transatlantic compromise looks difficult. Business is passive and the NGO's are gearing up for a major event. The most cautious summary would be that the future of the world trading system is uncertain. So what needs to be done? I would argue that a minimal Millennium or Seattle or whatever Round would not be a disaster. Indeed, given the uncertainty, it might be regarded as not minimal but as good as it can get. But -- and this is a big but -- over the longer-run the multilateral trading system is unlikely to survive if Seattle does not launch a process for the reform of the WTO and of the architecture of international governance. So let me turn to that in my final remarks.

Reform of the WTO and International Governance

The political compact which created the post-war economic architecture, the Bretton Woods institutions and what was to have been the International Trade Organization or ITO, rested on an assurance that international rules would preserve space for domestic policy autonomy. The ITO never came into existence but one piece of it, the GATT, survived and indeed thrived. The objectives of the GATT were liberalizing trade through successive multilateral negotiations aimed at reducing border barriers and creating rules to govern and sustain the liberalizing momentum. The domestic policy space, defined in terms of economic regulation and the maintenance of full employment, was safeguarded by rules to permit temporary blockage of imports under clearly specified terms. These rules were intended to provide a buffer or interface between the international objective of sustained liberalization and the objectives of domestic policy, in other words sovereignty. But with the Uruguay Round, the central domain of trade policy became domestic regulation and legal systems and the definition of domestic policy space today not only differs from that of the postwar period but also differs significantly among the members of the WTO. The protective buffers have become protectionist tools, and in any case are largely irrelevant as a means of safeguarding the diverse and changing concept of sovereignty among the 130 plus members of the WTO.

It is not simply the move inside the border which represents the radical break between the GATT and the WTO. Of equal significance, as mentioned earlier, is the greatly strengthened Dispute Settlement Mechanism. It's important to note that the business groups who lobbied so successfully to include intellectual property in the

Uruguay Round did so because the U.N. agency, the World Intellectual Property Organization (WIPO) has no dispute mechanism to enforce these rights. And, of course, the same is true for labor rights in the ILO or environmental policy in UNEP, the United Nations Environment Program. That's why the WTO is not simply a magnet for discontent but also for achieving other policy objectives.

Since the establishment of the WTO, the most high-profile and contentious disputes have concerned environmental or food safety issues. The WTO does not regulate environmental or social policy but its rules, negotiated in the original GATT consensus, seek to constrain the trade restrictive impact of domestic regulation in order to prevent such regulation being used as a disguised barrier to trade. In recent cases, dispute panels and especially the Appellate Body (AB) have been forced to interpret the WTO rules which govern domestic environmental or food safety policies. Thus as is the case with all courts and all legal rules in such complex areas, that interpretation has essentially involved these judges in an international institution making law that defines the boundary for domestic policy space.

And, not surprisingly, this has spawned the criticism, especially but not only by NGO's, that the WTO suffers a democratic deficit. Trade Ministers are now learning that these arguments for "democratization" carry considerable weight among an increasing number of people in member countries. Crafting a policy response to the NGO demand for a role in the WTO, an intergovernmental institution, will not be easy and a key issue will be the need for transparency and accountability of these non-governmental bodies.

Even if the “democracy” issue is solved, the more basic problem of reconciling the WTO trade rules with the new social regulatory state remains. The task of achieving consensus in such a large and diverse institution constitutes a formidable barrier to change. I’ve made a number of suggestions for WTO reform in various publications so I won’t take the time to review them here. Most fundamental in my view to establish a smaller body or Executive Committee to provide a forum, at both the Ministerial and official level, for policy discussion including the need for forging a new international contract which would then have to be ratified by all member countries. An upgrading of the WTO’s research capability to service the Executive Committee would facilitate research networks with other institutions and with NGO’s and, over time, help promote consensus. An increase in technical assistance resources is also essential if developing countries are to cope with the deeper integration agenda. This would also facilitate coordination with the World Bank’s new development focus on what is now called “capacity building”.

The primary objective of WTO reform -- i.e. establishing the boundary between domestic policy and international rules -- is most urgent in the environmental domain. The basic issue is not whether trade and the environment are linked (they are, in both positive and negative ways) but that using trade policy as an instrument of environmental policy is both ineffective in terms of achieving environmental objectives and costly in terms of growth. However, in the absence of a strong environmental institution (which UNEP is not) redefining the boundary between domestic and international policies will not work and the WTO will continue to be under attack. Only a new WEO (World Environmental

Organization) with a clearly defined mandate in this domain will reduce the demand for second best policy substitutes like trade sanctions. Negotiations between WTO and WEO Ministers could then define the rules to govern the linkage between trade and multilateral environmental agreements.

And a similar case can be made for the labour standards issue. The trade unions and other NGO's in the OECD countries are responding to the backlash against growing income inequality within their countries. Trade and investment liberalization has increased income disparities in the industrialized countries although the estimates of impact differ among economic experts and technological change has and will play a far more significant role in reducing the demand for the unskilled and generating ever-larger rewards for education and training. While the demand for linking labour standards to trade is usually couched in terms of justice or ethics, the impact on developing countries could be serious. Once again, if the objective is to improve working arrangements in developing countries the mandate rests with the International Labor Organization (ILO). But the ILO has no power of enforcement. Moreover many of its members -- especially developing countries -- have resisted repeated attempts to improve enforcement capacity. Many of these same countries oppose incorporating labour standards into the WTO. This dilemma must be resolved with the ILO monitoring and enforcement mechanisms strengthened. A stronger ILO and a reformed WTO would encourage coordination between trade and labour ministers, and a better understanding of the need for domestic policies to cope with the ongoing impact of globalization.

In sum, my argument is that if the WTO remains the magnet for dissent and policy overload, the global rules-based trading system is at risk. Reform of the WTO itself will be necessary but not sufficient to adapt the institution to the ongoing pressures of globalization. The reform of other institutions will be required to ensure coordination of international policy which must include environmental and social policy -- to mention only two examples, and there are a number of others.

Will the threat to the trading system serve as a catalyst to rethinking international governance? Obviously I can't answer that question but I was very pleased to learn that the Canadian government has submitted a proposal to Ministers in Seattle to establish a working group on international policy coherence. If agreed, maybe the debate on a new international architecture could begin. Keep tuned.