Race to the Top

The Biases of the WTO Regime

In a recent speech before the Institute for International Economics, US Trade Representative Robert Zoellick did a fairly convincing job of knocking down a straw man in his discussion of environmental concerns over trade. "Given America's respect for our sovereign authority to set environmental standards," he said, "we need to be cautious about infringing on others' sovereignty by trying to compel their standards through trade agreements." Unfortunately,

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Zoellick appears to have listened to everyone except environmentalists in determining what concerns we actually have. Environmentalists do not seek to use international trade to set air pollution standards for New Delhi, water pollution rules in Johannesburg, or standards for genetically modified foods in Italy. We do not expect the World Trade Organization (WTO) to solve the world's environmental problems. Instead, we hope it will not worsen those problems or tilt the playing field against efforts in other arenas to achieve planetary sustainability.

Globally, we seek a rules-based system that allows, and ideally encourages, societies to internalize the environmental costs of economic activities. We want to avoid three kinds of subsidies: subsidizing local producers at the expense of local communities, subsidizing present generations at the expense of future generations, and subsidizing global commodity production at the expense of the global commons. What we have received, instead, is a rules-based trade system that discourages and, in some cases, effectively prohibits certain kinds of environmental protection strategies while setting the global economy against the internalization of environmental costs. Advocates of the current system argue that existing trade rules do not encourage a "race to the bottom" with regard to environmental standards because the WTO subsidy rules could, in theory, allow challenges to a nation that degraded its existing environmental standards to gain a trade advantage. But it is not this kind of extreme race to the bottom that most concerns environmentalists.

Greenless Subsidies

Since 1960, the global trend in virtually all countries has been toward stronger environmental standards. Indeed, only a global race to the top can achieve planetary sustainability. If WTO rules discourage nations from improving their environmental stewardship, then environmentalists have good reason for concern. But in a recent issue of the *Harvard International Review* ("National Sovereignty and the World Trading System," *HIR*, Winter 2001), economists Kyle Bagwell and Robert Staiger concede that "if a country were to significantly improve its existing standards in a way that raised the production costs of domestic firms, it might wish to unilaterally raise its tariffs...This degree of unilateral flexibility is not provided for under the WTO rules." By focusing on national efforts to maintain domestic markets for domestic producers, Bagwell and Staiger ignore the heart of the problem: the most critical environmental threats to planetary sustainability are overwhelmingly concentrated in commodity production. Environmental damage is largely caused by agriculture, logging, mining, energy production, and fisheries. These industries are, in most countries, export-driven. Un-

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fortunately, current WTO rules explicitly prohibit subsidies to exports in the form of financial aid, but implicitly allow subsidies in the form of environmental degradation. For example, Canada cannot provide economic assistance to its timber industry in the form of replanting subsidies, but it can allow logging without replanting. Clearly, the odds of adopting an environmentally sound policy with such perverse incentives in place are dramatically lowered.

The WTO system is biased. It favors the least environmentally protective methods for countries seeking to increase the market share of their producers. There is no logical or systematic basis for this discrimination. In principle, it is no more difficult to identify subsidies that result from incomplete internalization of environmental costs than it is to identify subsidies that result from biased systems of taxation. The former is especially easily identified in the case of the most environmentally damaging activity— commodity production—as Robert Repetto of the World Resources Institute has shown in studies quantifying the natural capital lost as the result of clear-cut logging in Indonesia and overfishing in Costa Rica. Whenever there is environmental degradation, there is a subsidy—natural capital is being provided to the producer for less than the cost of replacing it. It is not necessary to argue that all such degradation should be prohibited by the WTO, simply that the WTO should recognize these practices as subsidies. If the WTO is going to allow challenges to financial subsidies, it should also allow challenges to ecological subsidies.

The WTO has already gone far beyond simply skewing the economic playing field based on its arbitrary definition of unfair subsidies. In addition, the WTO actually injects itself into the manner in which nations choose to protect public health and the environment. In the effort to eliminate so-called "nontariff trade barriers," the WTO enforces a broad range of limitations on domestic and international law. Health and safety standards must meet trade-driven, corporate-dominated tests on the adequacy of their scientific underpinnings. Most countries are barred from limiting imports based on the way products were produced or harvested, even if the production methods involved directly damaged global commons of vital concern to the importing country. To gain exceptions for health or environmental protection, the WTO requires that standards be "least trade restrictive." This would not be a problem if "least trade restrictive" and other WTO "disciplines" always resulted in greater health or environmental protection. Unfortunately, they often do not.

Innocent Until Proven Guilty?

The United States, for example, successfully used the WTO to challenge European restrictions on beef treated with artificial growth hormones. The United States argued that Europe's standard for hormone-treated beef was

One billion served: French farmers demonstrate in front of a McDonald's in Marseille in retaliation for US agriculture sanctions on Europe.

Photo Courtesy AFP/B. Horvat

not based on science because no ill effects could be proven for people who had consumed such beef. To say that there have been no proven health effects is, however, not to say that there is no scientific basis for banning beef grown with artificial hormones. The International Agency for Research on Cancer has compiled extensive scientific evidence demonstrating that exposure to hormones of the kind fed to livestock can cause cancer in laboratory animals and in humans. In addition, the same agency has noted that exposure to hormones can magnify the effects of other carcinogens. In effect, the WTO is asking consumers to act as guinea pigs until actual health effects can be observed. Prevention of harm is, in theory, allowed, but prevention of risk is prohibited, assuring that harm will, time and time again, occur before action is taken.

The scientific evidence for concern is reinforced in Europe by public demand for regulation. The European Union adopted its bans in 1980 in response to public outcry over reports of developmental problems in infants and children caused by eating hormone-treated meat. Given the strong public demand for banning hormone-treated meat, the European Union has strongly resisted compliance with the WTO order to lift its ban, even at the cost of US-imposed trade sanctions.

The hormone-treated beef case dramatically illustrates the point that nations do not choose health and environmental standards based on what economists view as the least trade-restrictive solution. They adopt solutions that available scientific evidence suggest and that their political systems demand and can best manage. If WTO rules discourage them from adopting a least costly but strongly environmental solution, they will adopt less stringent environmental standards.

Sanctions and Sovereignty

Environmentalists generally agree that the WTO is not the appropriate forum for finding solutions to protect the global commons. We simply suggest that it acknowledge this lack of competence and step aside. Bagwell and Staiger, however, propose a different solution that is a stunning departure from established principles. They assert that "the use of trade sanctions by one country to adopt standards to which they have not voluntarily agreed...is a clear violation of national sovereignty." This statement is made explicitly in the context of the global commons. No justification is offered.

The WTO has taken the position that such sanctions violate its rules. But there is no basis for treating such rules as violations of sovereignty. Even if we grant that there is a sovereign right of access to the global commons, which has been the tradition, although not an unchallenged one, there is no sovereign right of access to another nation's markets. If the United States chose to close its borders altogether, no other nation could complain that its sovereignty had been infringed upon.

So why is a selective denial of access to goods produced in a manner which destroys the ozone layer and increases cancer rates in New England, for example, a violation of sovereignty? As a consumer, I can choose not to buy goods made in a manner that either threatens my interests or offends my values. Why is it a violation of national sovereignty for the United States, as a community, to make a similar decision? Bagwell and Staiger seem to believe that among the rights nations enjoy is not only the right to degrade the global commons, in the absence of clear international law to the contrary, but also the right to export the fruits of that degradation to every consumer market in the world. Such a right is indeed embodied in the current rules of the global trading system, it is not intrinsic to the historical rights of sovereign nations. If it exists, it is a new right, and it is this purported new right, more than anything else, which has provoked environmental organizations' resistance to the WTO.

Oceanic Implications

It is not accidental that so many of the most intense environmental trade disputes involve marine resources—tuna, dolphin, sea turtles, and shrimp. The seas are a global commons that, unlike any other, can be exploited to an almost unlimited degree by even miniscule nations. Ships carrying the Liberian flag could strip mine the ocean in a few years even if every other nation agreed to firm marine resource treaties. Only the closure of national markets to nations that mine the oceans will prevent such resource depletion. No other global commons has this vulnerability. A single rogue nation cannot destroy the ozone layer, because its economic capacity to use ozone depleters would be very limited unless it were a very large nation, like China or the

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United States, that has a substantial stake in the global system.

Allowing Liberian President Charles Taylor to determine the rules of ocean management is simply unacceptable—but that is what the WTO rules seem to envisage. Of course, this example is, in WTO terms, extreme. Taylor cannot do what this scenario suggests, because Europe and the United States could close their markets and invite him to retaliate, knowing that any bans Liberia could enforce would have minimal effects. So the WTO does not prevent the United States from closing its markets to strip-mined fisheries as long as those fisheries come from economically powerless countries with small populations unable to absorb the harvest themselves. In the real world, less extreme problems are very much at the forefront; Japan wishes to whale, India to shrimp without turtle-excluder devices, Mexico to fish for tuna with dolphin surrounds. These countries are major international players, and a set of global rules that forbids trade sanctions against such countries' environmentally irresponsible products tilts the playing field against the responsible use of resources. Indeed, in response to negative rulings in trade tribunals, the United States recently weakened its standards for "dolphin-safe" tuna.

Most trade economists would oppose such "unilateralism," even to prevent environmental problems. So do many representatives of developing countries, who say it is unfair that only wealthy nations can use market access to express their values in the utilization of the global commons. Why do environmentalists disagree? If the global commons can only be defended once international treaties are binding, they often will not be defended adequately or in time. This is not to say that good-faith efforts to negotiate treaties should not normally be attempted before a nation acts alone to protect global resources. After all, a single nation can only use the leverage of its own market against commons-damaging products. A treaty, if negotiated, can establish global standards applying to all markets, disrupt trade less, and better protect the commons. But after a reasonable time period, if an adequate agreement cannot be reached, the trading system must leave nations free to act in the interest of preserving the global commons.

Death on the high seas: Japanese whalers haul in a whale in the Southern Ocean.

Trade economists, perhaps disingenuously, often claim that the WTO must bar any and all unilateral action to defend the global commons in favor of multilateral solutions. They ignore the reality that many nations will only negotiate if they know that the alternative is trade restrictions that will deprive them of valued markets. Each nation in the global community will set a different priority for protecting the commons; typically each will have a different set of interests affected by commons degradation, a different valuation of present and future outcomes, and different discount rates. Without trade sanctions, nations placing a high value on the commons and great importance on the future will simply not be able to extract treaty agreements from nations with different values, and the race to the bottom will continue.

The three great global commons are not equally at risk from the WTO. Unlike the first global commons of the seas discussed above, the atmospheric/climate system probably can only be preserved by international agreements, because the emissions that threaten this system are not usually linked to specific exported goods and because the actions of the world's most populous and prosperous nations will determine whether the climate is stabilized. Rogue nations are only a limited threat to climate. As I indicated, marine ecosystems are at the greatest risk from the WTO's rules because they are the most vulnerable to rogue states, which are largely motivated by export markets.

Photo Courtesy AFP/Greenpeace

The third great global commons, the genetic diversity of the biosphere, is barely recognized as a commons by most observers. Endangered-species treaties such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) have been effective at protecting diversity, but only where supported by import restrictions. Unlike the atmospheric/climate system, the biosphere can be severely degraded by the action of rogue states. A single nation in a migratory-bird corridor can wipe out species that are the common inheritance of dozens of nations. Yet the United States, the world's most powerful trading nation, insists that the WTO should be able to restrict the use of trade restrictions to enforce international environmental treaties that protect the global commons. It is true that trading blocs with rich consumer markets, like Europe and the United States, will have greater leverage over the rules of exploitation of the global commons in this scenario. But the consumption of rich individuals is already driving the demand for such exploitation. To say that individuals in rich nations can encourage the strip mining of the ocean in the pursuit of cheap shrimp, while communities that wish to protect sea turtles cannot act collectively in the pursuit of ecological sustainability, is to privilege material consumption above all other values.

On the Road to Disaster

As long as environmental standards are set domestically, a set of international trading rules that makes it preferentially easier to achieve the goal of enhancing exports at the expense of the environment will tend to lower environmental standards. Global environmental treaties, while usually too late, are indeed the best solution for protecting the global commons. Environmentalists cannot support a system of global trading rules that restricts the ability of those communities that have been mobilized on a given environmental issue to exercise leverage globally by using market access, at a time when other values (e.g., intellectual property rights) are being enhanced by market-access preferences.

Regrettably, trade versus environment conflicts may worsen before they improve. The draft declaration for the next round of WTO talks merely pays lip service to environmental protection, recognizing the rights of governments to "take measures to uphold and enforce the levels of health, safety, and environmental protection they deem appropriate," but it then proposes a series of negotiations that could do precisely the opposite. For instance, talks on "services" could force developing countries to open domestic mining sectors to transnational companies, increasing pressure on, say, rainforests that happen to be situated above deposits of copper and gold. In addition, the service talks are likely to give the WTO oversight over domestic technical standards and licensing requirements, potentially weakening standards for oil tankers' safety or for hazardous-waste disposal.

C. Fred Bergsten, president of the Institute for International Economics, cites the "bicycle theory" of trade negotiations to explain the need to press ahead with further trade talks before existing trade rules have been fully implemented. The theory holds that trade negotiations must move forward without stopping in order to keep ahead of governments' tendency to create new protectionist barriers. Without a rapidly moving schedule of talks, the entire trade system will simply tip over. A theory that might better fit the facts is the "bum's rush" theory. In this theory, the trade establishment wants to craft a comprehensive framework of trade restrictions on domestic law, which deals with investment, services, agriculture, intellectual property, and more, before citizens realize that many principles of constitutional government have been traded away.

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World trade is not in jeopardy. Trade, after all, has grown steadily at twice the rate of the gross national product for the last 50 years. However, a more deliberate pace to trade negotiations would ensure adequate scrutiny of the WTO's agenda and might curtail the ability of corporate interests to outdo democratic governments. Properly balanced, a rules-based trading system could be environmentally neutral or even environmentally protective. But the particular set of doctrines and rules set by the WTO are detrimental to the environment. They constitute a trade-driven regime that elevates material consumption and the interests of multinational producers above such values as the ecological heritage of future generations. Economic integration can have beneficial or detrimental effects, depending on how it occurs. Even the multinational titans who meet annually in Davos, Switzerland, have come to realize that the world they are creating may not be safe for life. Economics should catch up with the real world. H