

One world, many systems: When universal trade rules collide with the need for policy diversity

The Doha Development Agenda, launched at Doha, Qatar in November 2001, may prove to be a watershed moment in the WTO's short history of trade regulation. The essential issue is whether the WTO is to continue imposing its one world—one standard system of governance in which universal standards apply to all members, or opt for a diversity-based approach to rules setting in which differing standards are applied according to the particular needs of individual nations and geographic regions. The benefits of universal standards-as-rules are their equality of treatment for all nations. In contrast, a diversity-based approach responds to the unique characteristics of individual member states and geographic regions. Social deficits arise when this principle of universal treatment exacerbates inequality. These deficits will occur less frequently if the WTO were to adopt increased diversity in its rules-setting principles and adjudication policies and practices.

THE INTRUSIVE EFFECTS OF TRADE

To date, member states have given the WTO the benefit of the doubt and tolerated their one world—one system approach; countries have permitted international intrusion into areas of domestic sovereignty, such as in food safety, international development programs, and cultural protection. It is unlikely that they will be as complacent in the future for good reason.

The non-economic impacts of trade have become more, not less, important. So far, the legal culture and institutional framework of the WTO have failed to address the growing gap between trade norms and social need. At

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THREE RECENT TRADE DISPUTES

Three recent trade disputes illustrate these kinds of policy gaps that pose a li-

ability to the integrity and legitimacy of the WTO as an international institution (the entire report is available at www.robarts.yorku.ca).

WHEN STANDARD-SETTING IS SEEN AS A LIABILITY: MEASURES CONCERNING MEAT AND MEAT PRODUCTS (HORMONES) (AUGUST 1997)

Possibly the most dramatic example of the failure of a universal rules-based system is the beef hormone case. A long-running trade dispute involving Canada, the United States, and the European Community (now called the European Union) was recently settled with the European Community refusing to abide by the outcome of the decision. At issue was whether the Community could permanently establish higher safety standards for various chemicals in food. In today's world, where minimal governmental regulation is preferred, it is somewhat a rarity in WTO jurisprudence to observe a member nation pushing for higher standards. On this occasion, the EC was insisting on a higher standard in food safety.

The WTO ruled against the European Community. The ruling was that the precautionary principle—a means of allowing governments to take action to protect human welfare in the absence of certainty regarding potential health risks—could not be employed to permanently establish higher food safety standards than international norms unless it could scientifically prove its concerns. The decision created a policy gap: international norms in food safety were not only minimum limits but became maximum standards as well. The

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WTO in its enforcement capacity turned a basic standard into a universal rule, preventing nations from exceeding the standard even when it applied its higher requirements universally to all nations.

The European Community defied the WTO's decision and continues to incur millions of dollars worth of punitive duties as a consequence. Had the Community complied with the decision, European citizens would have been exposed to the potentially cancer-causing growth hormones found in North American meat and meat products. By refusing to conform to the WTO's decision, the European Community has protected its citizens, but in so doing has raised questions. Should the WTO's basic standards be enforced as *inviolable* rules in the area of food safety, or conversely, are a *diversity* of standards possible provided they meet or surpass basic international norms while supporting the general principle of equality of application?

THE CHALLENGE OF ECONOMIC DEVELOPMENT: REGIME FOR THE IMPORTATION, SALE, AND DISTRIBUTION OF BANANAS (MAY 1997)

The bananas dispute was one of the signature cases emphasizing the diverse development needs of southern countries. At issue was whether economically advanced nations could specifically target less affluent countries for preferential trade benefits. The European Community had historically provided special consideration to some of the world's poorest countries in Africa and the Caribbean in its banana import system.

The European Community established a complex importing system to provide economic assistance to these impoverished nations. The GATT recognized the economic benefits to these countries. Hence in 1989, the Community was granted a special waiver to permit its continued operation in contravention of restrictive GATT rules, allow-

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ing it to use quotas to guarantee ACP countries (African, Caribbean, and Pacific Group of States) a share of the European banana market. Following the establishment of the WTO in 1995, the United States and four Latin American nations challenged the provisions of this waiver. The decision severely curtailed the EC's ability to use economic principles and strategies to enhance the well being of some of the world's poorest countries.

The bananas case is important because the European Community attempted to use market mechanisms to meet development needs. The Lome Convention is in many respects considered an unconventional agreement by free traders because it uses quotas to guarantee a market share for the world's poorest countries. But a non-standard approach can be an innovative one. However, the WTO failed to recognize the limits of theoretical free trade models. From a practical point of view, it believed that the abstract principles of global free trade were more important than an economic assistance program. The bananas case is a powerful illustration of

the ways multinational corporations can use a WTO decision to gain market share at the expense of poorer countries. As a result of this dispute, the European Union has pledged to move to a tariff-only system for its banana imports by 2006.

TESTING CULTURAL SOVEREIGNTY: CERTAIN MEASURES CONCERNING PERIODICALS (MARCH 1997)

The Canadian periodicals dispute exemplifies the WTO's position on the trade-culture relationship. Culture has never been covered by WTO trade codes, although it has not been totally excluded either. Many countries protect their cultural industries while others have adopted a more laissez-faire approach. As US cultural industries have increasingly dominated book and magazine publishing, television, film, music, and the Internet, culture has become a hot-button item for the WTO. On one side, Washington has been aggressive in pressuring countries to regard their industries as simply a commercial opportunity. With such a commanding position, US industries dominate globally, much as McDonald's and Walmart dominate the food and retail sectors. The counter-movement against US cultural imperialism emerged on the streets of Seattle and Quebec City. But as a trade issue, Europe, Latin America, and Canada have taken a lead in demanding that culture not be included in WTO rules and negotiations and that there be a cultural exemption clause.

The dispute involves a challenge by the United States against Canadian measures to protect its magazine industry in order to promote Canadian culture. It is estimated that US magazines account for approximately 80 percent of the shelf space in the Canadian retail market. In an attempt to level the playing field for Canadian magazine publishers, the Canadian government effectively imposed a ban on split-run magazines and prohibited companies from claiming tax deductions for advertising

in non-Canadian publications.

In 1993, *Sports Illustrated* disregarded these measures aimed at protecting Canada's magazine industry. *Sports Illustrated* was able to avoid the Canadian ban because it was produced in Canada even though its editorial content was transmitted from the United States. In 1995, Canada responded by adopting an excise tax of 80 percent on advertising revenue for magazines originating abroad. To avoid the tax, a split-run magazine would have to produce a publication that featured 80 percent Canadian content. The United States objected to the measures as being trade restrictive and protectionist and filed a complaint with the WTO.

The WTO ruled in favour of the United States, concluding that the Canadian government unfairly restricted the sale of US magazines in Canada. The WTO treated cultural goods and services like any other tradable commodity, encroaching on Canada's cultural sovereignty to further its own goal of trade liberalization. By defining what is acceptable and what is not, the WTO has significantly narrowed the scope for cultural diversity and the opportunity for countries to implement national policies and goals aimed at protecting their national cultures in the face of globalizing forces.

UNIVERSALITY IS A DIFFERENT KIND OF BARRIER

From the inception of the GATT in 1947 through to the creation of the WTO in 1995, the foremost purposes of these institutions have been reducing barriers to trade through the creation of a universal set of international trade rules, and the adjudication of trade conflicts between member nations when they arise. The WTO is therefore a necessary institution in order to regulate the field of international trade. However, difficulties are created when the effects of WTO trade rules and decision making in trade disputes are not confined to the realm of business and economics. All too often they spill over into the political and social realms with unintentional and often significant side effects. These effects oc-

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cur in large measure because of the stringent conformity the WTO places on establishing and enforcing basic trade principles and standards as universal rules.

So far, the WTO has failed to respond to the challenges that result from its narrow view of universality in applying international trade laws. The result is discrimination against diverse domestic policy initiatives, including setting food-safety standards, creating economic development programs, and preserving national culture, which the WTO mistakenly interprets as non-tariff barriers to trade. In the Doha Round, these kinds of non-tariff barriers are targeted to be dismantled. Significantly, what the WTO defines as non-tariff barriers are the very instruments that helped northern countries develop. The international trade system has a short memory indeed. It has lost sight of the continuing importance of these established trade strategies now that industrialized countries require open markets for further development.

The need to integrate the interests and goals of diverse countries more effectively into the world trading system was the main focus of the Doha Development Agenda. The agenda of negotiations include a wide range of such trade-related issues as enhanced market access, balanced rules, and effectively financed technical assistance and capacity building programs.

The Doha Development Agenda is important in bringing to the fore the important and legitimate concerns of developing countries. Future negotiations

will have to address the substantive issues facing developing countries, rather than merely agreeing to review them. Its future success lies in its ability to resolve these challenges in a way that is sensitive to the diverse needs of the developing world. Such sensitivity is crucial in light of the current lack of diversity as exemplified in the above three cases. The WTO seems to have no room for flexibility and rejects national initiatives that go beyond the narrow market model that it promotes.

REFORMING THE RULES

When the leaders of the world's most affluent countries met in Kananaskis, their discussions were supposed to help define the developed world's approach to global economic development. Part of a global rethink must begin from the premise that diverse strategies will be required to address the non-economic effects of global free trade: social issues such as health standards, economic development, and cultural sovereignty.

If the WTO continues to reject rules-based diversity—freedom to set higher international standards, to provide special consideration for economic development within the poorest countries, and to allow global cultural diversity to grow and flourish—it will face growing opposition from the anti-globalization movement. If the institution wishes to increase the economic and social well-being of its member nations, in particular those in Africa, the G8 leaders need to consider how to implement principles of diversity at the WTO. This will require a major transformation in the WTO's legal culture.

Time is short and the WTO ought to stop trying to prevent countries from setting real and meaningful standards. Its binding dispute procedures have become a flashpoint for international civil society. If there is an object lesson here it is that trade negotiators are not the right body to set the rules of the game or interpret them. Public opinion wants better rules all around. It is no wonder that public resentment has hardened and not softened post-Doha. 