National Sovereignty in the World Trading System

Labor, Environment, and the WTO

The "Battle in Seattle" is now behind us. But the war against globalization and the World Trade Organization (WTO) continues. This war pits supporters of national sovereignty against the forces of globalization, on whose side the WTO is said to be firmly aligned. Indeed, the December 1999 WTO ministerial meeting in Seattle collapsed largely over disagreements relating to issues of national sovereignty, and in particular over the concern

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voiced by labor and environmental groups that the WTO has become so powerful that it now overrides the will of its member governments.

The collapse of the Seattle ministerial and its aftermath have helped to clarify the lines along which future battles over globalization will be fought. In the process, these fundamental misconceptions concerning the role of the WTO in globalization have been revealed: that the WTO is in the business of "sovereignty crushing," that the creation of a WTO "social clause" will help preserve national sovereignty in the presence of globalization, and that, in a world where the pursuit of sound labor and environmental policies is valued, governments must choose between national sovereignty and international economic integration under WTO principles. The great irony is that once these misconceptions are corrected, WTO principles can be harnessed to promote the sound labor and environmental policies that the protestors in Seattle are seeking.

Sovereignty Crushing?

Labor and environmental interests fear that the WTO is a world government spinning out of control. They see the WTO as a powerful entity accountable only to wealthy corporate interests who appear to grow ever richer through their access to markets that the WTO and its predecessor, the General Agreement on Tariffs and Trade (GATT), have so successfully wrested from its member governments. This fear is grounded in the belief that, under WTO negotiations and rules, market-access concerns are paramount; therefore, concerns for national environmental and labor policies only arise in the WTO when those policies would pose a threat to the sanctity of the market-access commitments so cherished by this organization.

This fear has been fueled by a number of recent WTO rulings; for example, provisions of US laws enacted to protect sea turtles were found inconsistent with US market-access obligations under WTO rules, and European regulations blocking the imports of hormone-treated beef were similarly "struck down" by WTO panels. WTO opponents consequently see their nation's sovereign right to enact and implement domestic legislation being eroded by the trade body's constant mantra: that market-access commitments negotiated by a government under WTO rules should not be later undone by that government's unilateral policy decisions.

In fact, the fear articulated by these groups has it exactly wrong: to the extent that the WTO has any power at all, it uses this power to *discourage* attempts to tread on national sovereignty. A clear illustration can be found in the beef-hormone dispute itself. In this case, the US government successfully challenged as inconsistent with WTO rules a set of new EU regulations that denied US beef pro-

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ducers the access to European markets that the US and EU governments had previously negotiated. When the European Union refused to alter its domestic regulations, the WTO authorized the United States to retaliate, and this is where environmental groups argue that the WTO trampled on national sovereignty.

But what these groups have lost sight of is that, under WTO rules, the permissible US retaliation was limited to apply to an equal volume of European goods. Absent WTO rules, how broadly might the United States have retaliated against what it perceived were unfair European regulations, in an effort to force Europe to alter what Europe in turn perceived as a sovereign domestic-policy choice? It is likely that the United States would have been significantly less restrained in its retaliation and consequently would have put the European Union under much greater pressure to change its domestic policies had the WTO rules governing dispute settlement not been in place. Here and elsewhere, the WTO serves as a moderating force over the temptations of its member governments to utilize their power to retaliate as a means of impinging on the sovereignty of their trading partners.

And this is not an accident: it is just as the designers of GATT planned it to be. The origin of GATT can be traced to the trade-policy choices made by governments in the 1920s and 1930s, when tariff increases were matched by retaliatory outbursts in a spiral of rising protection and declining trade. As the international law expert Robert Hudec observes, "...The postwar design for international trade policy was animated by a single-minded concern to avoid repeating the disastrous errors of the 1920s and 1930s." It is in this context that, at a drafting session in Geneva in 1947, a US delegate described the basic objectives which guided the creation of GATT:

"...We have introduced a new principle in international economic relations. We have asked the nations of the world to confer upon an international organization the right to limit their power to retaliate. We have sought to tame retaliation, to discipline it, to keep it within bounds. By subjecting it to the restraints of international control, we have endeavored to check its spread and growth, to convert it from a weapon of economic warfare to an instrument of international order."

In short, the WTO (and GATT before it) is not designed to crush national sovereignty. Rather, by providing discipline over the use of retaliatory tariffs, its effect is to preserve the sovereignty of its member governments.

The Social Clause

Nevertheless, pressured by labor and environmental groups, the governments of industrialized countries (with the United States taking a leading role) have raised various proposals that would link access to their markets with the social policies of other countries. Under a so-called social clause, a set of core standards would be identified, and then governments would be allowed to raise tar-

Peace, man, or at least some fair trade rules. Seattle WTO protesters here...

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iffs against exports from countries that did not meet these standards. Compliance with such standards would effectively become the "admission price" for exporters from developing countries to sell in the markets of the industrialized world.

But the social clause risks turning the WTO into precisely the sovereignty-crushing organization that the protesters in Seattle erroneously believe it to be. A reading of the WTO panel and appellate reports regarding the sea turtle case helps to provide an understanding of why a nation such as India might be particularly worried about its own sovereignty whenever talk of the social clause arises. More generally, cases like this demonstrate why developing countries are concerned that wealthy countries like the United States might use such a clause to impose US standards on poorer trading partners.

The WTO sea turtle case actually involved shrimp, and the case arose in response to restrictions placed by the United States on shrimp imports from India and several other countries that did not mandate the installation of US-approved "turtle extraction devices" in their shrimp nets. The WTO resolution of this dispute turned on a special legal issue: whether it is legitimate for one country to use trade sanctions to attempt to force other countries facing widely different circumstances to adopt its domestic standards. It is this feature of the application of US law, and this feature alone, that the WTO appellate body ruled against in the sea turtle case. In opposing the basis for this ruling and by raising it as evidence of the broader need for a WTO social clause, the protesters in Seattle appear to be contributing toward the creation of a WTO that would serve as a tool for powerful countries to impose their will upon the rest of the world, the very thing that these groups claim to be fighting against.

Even if the proposed social clause does impinge on policy areas that traditionally have been the domain of national governments, might not some ceding of national sovereignty now be necessary? Advocates of this position point to the competitive pressures that accompany the continuing process of international economic integration. These pressures can possibly fuel a self-defeating "race to the bottom," in which each government resists raising—and perhaps even lowers—the labor and environmental standards that it applies to its producers, in order to preserve or enhance the competitive position of these producers in the international market. For example, in a case such as the shrimp and turtle dispute, the United States surely faces higher political and economic costs from adopting higher standards if shrimp fishermen elsewhere do not also adopt these standards. In a world where the pursuit of sound labor and environmental policies is valued, this logic suggests that governments are now confronted with a painful choice: they may avoid a race to the bottom by ceding national sovereignty to a global government that harmonizes standards across countries, or they may reverse the trend toward greater international economic integration and thereby diminish the underlying competitive pressures. From this perspective, the social clause simply makes the sacrifice in national sovereignty that is necessary, if we are to avoid a race-to-the-bottom trap in an integrated international market place.

Yet as a means to prevent the race to the bottom, the social clause is misguided because it offers a solution that does not target the source of the problem. In effect, the social clause creates a link between one country's (e.g., India) domestic standards and another country's (e.g., the United States) punitive tariffs, and thereby aims to force the adoption of a set of minimum standards in the developing world. But the standards of the developing world are not really the source of the race-to-the-bottom problem. Fundamentally, the possibility of a race to the bottom arises under WTO rules only if the link between a country's tariff obligations and changes in its *own* domestic standards is insufficient. Accordingly, if governments are to be granted the right to offset the competitive effects of standards choices by raising their tariffs, as social-clause advocates propose, then the appropriate policy would ensure that a country could offset the competitive effects of changes in its own standards choices with increases in its tariffs.

Two examples illustrate the real source of the race-to-the-bottom problem. Consider first a government that is facing pressure from domestic producers to offer import relief in an industry where it has agreed, as a result of WTO negotiations, to hold tariffs low. With its tariff options restricted, this government might be tempted to offer relief to its producers by eliminating costly environmen-

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tal, health and safety regulations, much as those concerned with the race-to-the-bottom possibility would fear. In a second example, a government might be tempted to delay or even cancel its plans to implement tighter standards if its WTO tariff commitments prevent it from offsetting the competitive consequences of these tighter standards for its domestic firms.

Now, in both of these situations, and more generally as well, the race-to-the-bottom possibility is not driven by the standards choices of foreign trading partners. Instead, in each example the fundamental factor which tempts the government to depart from sound labor and environmental standards is the competitive advantage that weakening its standards (or choosing not to strengthen them) can produce, an advantage which may be especially valued by the government when its ability to raise tariffs is restrained by WTO commitments. If this temptation were eliminated, by forging a link between a country's tariff obligations and changes in its domestic standards, the possibility of a race to the bottom would be eliminated as well. But this is not the link envisioned by proponents of the social clause.

The social clause is therefore a sovereignty-crushing and misguided means of pursuing sound labor and environmental policies in an integrated international marketplace. But what is the alternative? We suggest next an ironic answer: advocates of sound labor and environmental policies might best contribute to their goals by harnessing the power of principles that are already found in the WTO.

Economic Integration Trilemma

To develop this answer, we must first explore the general manner in which concerns for domestic standards are reflected in WTO principles. In fact, the prospect that negotiated tariff liberalization could tempt governments to distort their domestic standards for competitive advantage—the essence of the race-to-the-bottom logic—was covered by a broader concern which was very much on the minds of those who designed the articles of GATT. Hudec describes the problem as it was perceived by the original drafters of GATT:

"...The standard trade policy rules could deal with the common types of trade policy measure governments usually employ to control trade. But trade can also be affected by other 'domestic' measures, such as product safety standards, having nothing to do with trade policy. It would have been next to impossible to catalogue all such possibilities in advance. Moreover, governments would never have agreed to circumscribe their freedom in all these other areas for the sake of a mere tariff agreement.

"The shortcomings of the standard legal commitments were recognized in a report by a group of trade experts at the London Monetary and Economic Conference of 1933. The group concluded that trade agreements should have another more general provision which would address itself to any other government action that produced an adverse effect on the balance of commercial opportunity..."

It was understood by the drafters of GATT that governments value tariff reductions from their trading partners because of the increased access to foreign markets that these tar-

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Photo courtesy A. Cho

iff cuts imply, and there was a concern that subsequent changes in domestic standards—whether intended for commercial advantage or not—could undercut these implied market- access levels. This concern eventually found its way into the articles of GATT and is in turn reflected in WTO principles.

Hudec's description suggests that the principles of GATT, and now the WTO, are equipped to handle the possibility that governments might manipulate domestic standards to gain competitive advantage. But, as we have argued, such manipulations rest also at the heart of the race-to-the-bottom problem. This suggests in turn that WTO principles may promote sound labor and environmental policies by helping governments avoid the race-to-the-bottom trap.

Before developing this suggestion further, though, we note that this is not the only problem with which advocates of sound labor and environmental policies must contend. A second problem is that of the "global commons." A global-commons problem arises whenever there is a shared resource (such as migratory endangered species or the ozone layer) across international jurisdictions. Typically, if left unchecked, global-commons issues lead to the overuse and possibly the depletion of the shared resource. To be sure, there are important global-commons problems facing the world, and such problems are a big part of the concerns voiced by labor and environmental groups. But global-commons problems are most naturally addressed through direct international negotiations outside of the WTO, such as those that led to the 1973 Convention on International Trade in Endangered Species (CITES). Why? The WTO is a negotiating forum—no more, no less—whose principles and rules of negotiation are designed to assist member governments in reaching voluntary and mutually beneficial tariff-reduction agreements. The global-commons problem is fundamentally different in nature, and WTO principles are not particularly well-equipped to deal with this problem.

At the same time, there is an important and unresolved issue about how an international agreement that addresses a global-commons problem is to be enforced, and whether trade sanctions should be part of the enforcement arsenal. It is here that the WTO might become involved in helping to address a global commons concern. In particular, the WTO might further consider developing links to other international organizations such as CITES or the International Labor Organization (ILO), so that the commitments governments voluntarily negotiate within those organizations may then be enforced with the threat of trade sanctions. But even this more limited enforcement role for the WTO in addressing a global-commons problem must be distinguished from a deceptively similar sounding alternative, namely, the use of trade sanctions by one country to force other countries to adopt standards to which they have not voluntarily agreed. The former can facilitate the implementation of an international agreement to address a global-commons problem; the latter is a clear violation of national sovereignty.

Let us now return to our earlier suggestion and consider further the manner in which WTO principles may promote sound labor and environmental policies. At a broad level, WTO principles are allied with the interests of labor and environmental groups who work to prevent a race to the bottom because these principles help to ensure that governments do not manipulate their domestic standards for commercial gain. At a more specific level, labor and environmental interests who worry about a race to the bottom have both reason for comfort and cause for concern in current WTO rules.

There is a reason for comfort because if the United States (or any other WTO member) were to degrade its existing domestic standards in a way that lowered the production costs of domestic firms—effectively reducing access to US markets below the level that US trading partners had anticipated—WTO rules would in principle permit exporting countries with which the United States had previously negotiated tariffs to lodge a formal complaint. This right reflects the flip side of the primacy of market- access commitments made in the WTO, and it can in principle work to guard against the most extreme forms of a race to the bottom, in which countries would degrade their existing standards with the aim of international competitiveness in mind.

However, there may also be cause for concern because, if a country were to significantly improve its existing standards in a way that raised the production costs of domestic firms, then it might wish to unilaterally raise its

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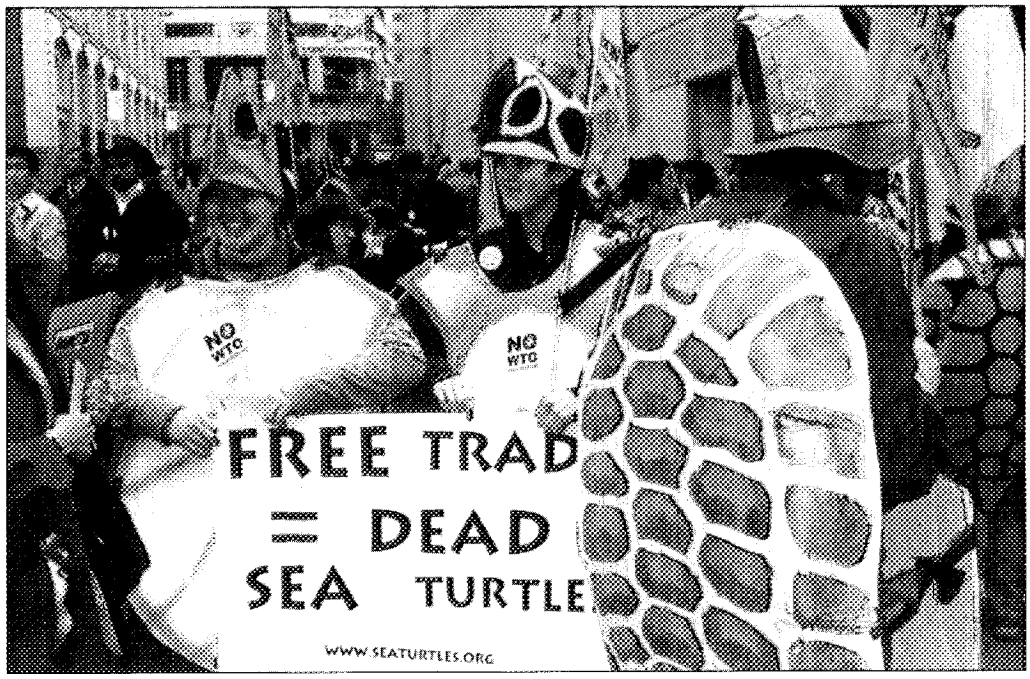

tariffs to preserve the market access levels that it had previously negotiated (and presumably desired). This degree of unilateral flexibility is not currently provided for under WTO rules, and hence it might be argued that a government would be less willing to undertake significant improvements in its domestic standards as a result of its WTO tariff commitments.

It is here that WTO rules might be adjusted with concerns about a race to the bottom in mind. Weighing against these concerns would be the Pandora's Box that such a rule change might open: adjusting WTO rules to allow governments to unilaterally raise their tariffs so as to stabilize their market-access commitments when they raise their standards would, like the proposed social clause, open the very real possibility of abuse for protectionist purposes. In stark contrast to the proposed social clause, though, the described adjustment to WTO rules would grant governments more sovereignty, not less, since they would be given greater freedom to choose the combination of policies with which to deliver their negotiated market-access levels. Under this approach, then, labor and environmental interests need not be pitted against national sovereignty concerns as they work toward the prevention of a race to the bottom.

US Treasury Secretary Lawrence Summers recently described the broad challenge faced by the United States and the world economy in reconciling international economic integration, proper domestic policies and national sovereignty. He describes this "economic integration trilemma" as follows:

"International economic integration is a good thing, and it is in the US national interest. But it raises tensions with other good things. In the view of most of us, public management of the economy is a good thing in helping stabilize and regulate economic activity and in providing some degree of social insurance to citizens. So also, in the view of most of us, is sovereignty a good thing. We do not just want regulation and a government that can provide social insurance: we want the relevant choices to be made by our government officials, who are elected by our country's citizens, and for whom our interests are paramount.

"Every country and every supporter of integration faces the challenge of overcoming the special interest with the general interest. These arguments point up a, if not the, broad task of international political economy in the years ahead. That is, reconciling as well as possible the three goals of greater economic integration, proper public economic management, and national sovereignty — or the 'economic integration trilemma.'"

Any proposed solution of the economic integration trilemma entails a sacrifice in some dimension. But what sacrifices "should" be made? In the context of international trade, WTO principles offer a coherent and compelling response to this question. Where preventing a race to the bottom is the central concern, these principles suggest that national sovereignty over domestic policies should be respected, up until the point that such policies threaten negotiated market-access commitments. When national policies do nullify or impair such commitments, there arises an inescapable role for retaliation. But retaliation should be limited in frequency and severity, so that its effect is to enforce negotiated market access commitments rather than to otherwise force changes in the domestic policies of trading partners. Finally, it is possible that the threat of retaliation through the WTO also may be useful in addressing global-commons problems. In this case as well, though, the retaliation threat should be limited. All things considered, we believe that WTO principles may provide the best hope for a solution to the economic integration trilemma in the international-trade arena. ■

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