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**Keynote lecture: International Organizations:  
Aligning Mission, Means and Legitimacy**

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# **International Organizations: Aligning Mission, Means and Legitimacy**

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Since its founding at the end of the Uruguay Round, the WTO has become an increasingly controversial institution. On the one hand, it has been assailed for having gone too far. Some critics, typically reflecting the concerns of many developing countries, claim that by adopting rules such as TRIPs and TRIMs, the WTO has strayed beyond its basic mission and forced many of its members to accept obligations that are not in their interest and beyond their implementation capacities. On the other hand, the WTO has also been assailed for not going far enough. Other critics, typically reflecting the concerns of developed countries, have sought to broaden and deepen its coverage by negotiating new disciplines on issues such as investment, labor standards, competition and the environment.

At the Cancun Ministerial Meeting these conflicts came to a head when the meeting ended in an impasse over efforts to launch negotiations on the so-called Singapore Issues (Investment, Competition, Transparency in Government Procurement and Trade Facilitation) and that failure was preceded by other unsuccessful efforts such as the negotiations for a Multilateral Agreement on Investment at the OECD, and the US efforts to introduce labor standards into the WTO at the ministerial meetings held at Marrakech in 1994 and Seattle in 2000.

In this paper, I will argue that these recent controversies at the WTO are not an accident; they are the predictable result of the fundamental governance problems faced by many international organizations. In the first part of the paper I will lay describe, in general terms the nature of these problems and then illustrate how they apply in the case of the WTO. My argument is straight forward: to be effective, an international organization must obviously have the means to accomplish its mission. In addition, however, it must only be charged with those missions and means that are compatible with a high degree of legitimacy. Ensuring these conditions are met is not easy because there is an inherent tendency for international institutions to experience “mission creep.” This in turn leads to failures of one of two types: either having inadequate means to carry out the mission or problems of legitimacy.

In the second part of the paper, I consider whether supplementing the core WTO commitments with several separate agreements “or clubs” might not be a more effective means of furthering the WTO’s mission without undermining its legitimacy. I describe in some detail, how these clubs might be chosen and how they might operate. Finally I evaluate the strengths and weaknesses of this approach.

### **Part 1: The Dilemma of International Organizations.**

International organizations are inevitably subject to pressures that place them at risk because their members have incentives to expand their missions. By their nature, international organizations are founded to provide international public goods, i.e. goods in which it is often difficult to precisely match benefits and costs.<sup>1</sup> It should be no surprise, therefore, that members (and non-members) may have incentives to free ride and that they have incentives to have others bear the costs of achieving goals in which they are interested. To be sure, their ability to do this will depend on the precise nature of the institution’s decision-making rules. In particular, institutions with majority voting (based on one country one vote) in which members bear different costs and derive different benefits will be more prone to such behavior than those requiring unanimity less so. Nonetheless, many international organizations (and collective action in many domestic institutions) will be prone to common pool problems. If a country can have an international organization devote resources to a goal, it may have to spend less of its own resources on achieving it.

A second reason for mission creep, particularly for successful organizations is a variant of the Peter Principle which states that in a hierarchy people are likely to be rise to their level of incompetence. The logic is simple. Success at any particular task leads to advancement and people will be promoted until they are placed in a job they do poorly. Once this happens they will no longer be promoted. In the long run, therefore, people will all be stuck in the jobs they cannot do well. Likewise, the more successful is an

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<sup>1</sup> To be sure there is the classic notion due to Lindahl that shares in the cost of a public good should reflect individual demands, but there are problems associated with having people reveal these demands accurately.

international organization, the more complicated the missions it is likely to be asked to perform.

While there are difficulties in limiting the missions of such organizations, it is often the case they are not given the appropriate means and resources to carry out their missions. Thus the United Nations is told to keep the peace, but its soldiers are not allowed to fire their weapons. The International Monetary Fund is asked to solve financial crises but is not given powers to regulate borrowers before such crises break out and also not given sufficient resources to play the role of lender of last resort once they do. While national governments can tax and/or compel their citizens to provide the resources required to provide public goods, international organizations lack such mechanisms.

International organizations need not only to have appropriate missions and the appropriate means to carry them out. In addition both the mission and the means must be viewed as legitimate. This is not easy. Granting an organization more power and resources makes it more likely that it will be able to carry out its mission. However, the more power and resources it is given, the more likely it will be that its legitimacy will be questioned.

All international organizations are inherently vulnerable to concerns that they are insufficiently democratic. As Dani Rodrik has emphasized, there are basically two simple approaches to providing mass democratic decision-making: the Nation state or global federalism.<sup>2</sup> Acting alone, however, increasingly nation states find they cannot to provide the international public goods required to meet the needs and provide the full benefits from a global economy. Acting alone they cannot meet the functional or political requirements asked of global governance. Full global federalism permits eliminating the nation state and thus combining mass democratic politics with an integrated global economy but it comes precisely at the expense of the nation state and few seem ready for this outcome.

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<sup>2</sup> Dani Rodrik, 2000 "Governance of Economic Globalization" in Joseph S Nye and John D Donahue (eds) *Governance in a Globalizing World* Washington, D.C Brookings. Visions of Governance for the 21st Century ;

So if the nation state is inadequate, and global federalism is not wanted, then intermediate approaches that reflect some compromises will have to be crafted. Inevitably these will be imperfect and vulnerable and the more powerful organizations become, the more opposition they will generate. International organizations are always vulnerable to charges that they lack legitimacy because the standards for legitimate governance are generally set by those of the nation state. Global governance is inevitably likely to be less democratic and thus less “legitimate” than the nation state. In particular, international organizations derive their legitimacy in part from the notion that their members, national governments, accurately reflect the interests of their constituents. But this notion can be questioned either when there are other international non-governmental actors with claims to represent certain interests or when national governments are seen as insufficiently representative, or insufficiently informed and competent.

As long as missions remain fairly limited and International Organizations are restricted in their means, this will not be of great consequence. But the more ambitious the goals and the more intrusive the means, the more susceptible they will be to attacks on these “democratic deficits”.

This problem is unlikely to be exposed as long as the international organization engages in activities that are generally regarded to be “win-win.” But they are bound to come to the fore, when issues are widely perceived as having major distributional implications among the members.

This then is the basic dilemma facing global organizations: *If the missions are expanded, and the institution is given insufficient means, it is likely to fail. However, if its mission is expanded and it is given means that are appropriate, the more likely it will be that its legitimacy will be questioned.*

**GATT to WTO.** The transition from the GATT to the WTO exemplifies some of these propositions. The mission of the GATT was fairly narrow. According to its Preamble it was “to enter into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce”. After the United States was granted a waiver for agriculture in 1955, the GATT concentrated on reducing

border trade barriers for industrial products. The GATT also sought to eliminate discriminatory treatment members through rules requiring Most Favored Nation (MFN) and national treatment. GATT did not seek to harmonize standards or policies; it simply required that domestic and imported goods be treated in the same way. (GATT:Article III). Provided they respected this principle, countries remained free to implement any domestic policies or rules they desired. Policies relating to matters such as regulation, standards, intellectual property and subsidies were not covered by the GATT's disciplines.

The means the GATT used were fairly simple. Contracting parties met in multilateral negotiations to reduce their bound tariff rates. The negotiating power of powerful members was leveraged through the principle of MFN treatment to reduce tariffs for all. By and large, agreements were implemented by national governments and members did not require extensive institutional capabilities to meet their obligations. The GATT secretariat itself did not police compliance. Instead it offered assistance to contracting parties in settling disputes when parties felt that an agreement had been violated. But the settlement system itself was weak, since the consensus rule made participation by defendants voluntary. Even when they lost a case, parties were not required to give GATT rulings direct effect in their laws -- the worst that could happen was that countries could face the suspension of concessions equivalent to their infraction and prior to the formation of the WTO this never happened.

Finally, although some disparaged the GATT efficacy and power -- it was sometimes labeled the General Agreement to talk and talk and at other times even said to be dead -- the GATT's legitimacy was generally accepted.<sup>3</sup> Essentially, members participated in and adhered to the GATT because they believed to do so was in their interest. Decision-making based on consensus ensured that in principle, every agreement made every party better off. Assuming that nation's accurately represented their interests

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<sup>3</sup> One noteworthy exception related to the United States perspective on the GATT's origins. The GATT was negotiated by the United States under the 1945 extension of the trade agreements authority. US negotiators were not given the authority to negotiate an agreement establishing an organization. See John Jackson 1998 *The World Trading System* Cambridge:MIT Press Chapter 2.

this practice ensured that every agreement was a Pareto Improvement.<sup>4</sup> Countries were not required to remove all their trade barriers or even to match the reductions of other parties. Instead reciprocity was the guiding principle, but it required each party to agree to a volume of new imports that matched the volume of exports others would grant it. While this notion of reciprocity was never precisely enforced, it did serve as a guiding myth that helped create the perception that agreements were fair.<sup>5</sup> All told most parties agreed that reducing some trade barriers was desirable and conforming to the rules was compatible with a significant space for divergent domestic policies.

The principle that countries are not expected to make concessions unless other nations provide them with reciprocal benefits comports with several perspectives on the trading system. From a mercantilist view, if imports are bad, they should only be increased in return for additional exports. In this view, agreements that increase the trade balance are particularly good, while those reducing it are especially bad. If a country obtains an agreement that boosts its trade balance, others must be experiencing declines. However, a system that preserves balanced trade is more plausibly fair for all.

From an economic standpoint, reciprocity takes care of the terms-of-trade problem that large countries face when liberalizing unilaterally. As Bagwell and Staiger have emphasized in a model with two large countries, world relative prices will remain unchanged if the value of increased sales of imports due to an agreement is offset by an equal value of exports.<sup>6</sup> Thus negotiations based on reciprocity allow countries to set their tariffs in a manner that is desirable from a domestic viewpoint without having to worry about their terms of trade.<sup>7</sup>

From a domestic political standpoint, reciprocity helps deal with the collective action problem that hinders unilateral liberalization because consumers are poorly

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<sup>4</sup> The virtues of the unanimity rule are explored and emphasized by Buchanan and Tullock in James M Buchanan and Gordon Tullock (1974) *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, Ann Arbor University of Michigan Chapter 7.

<sup>5</sup> For a more detailed discussion see Robert Z Lawrence 2004 *Crimes and Punishments: Retaliation Under the WTO* Washington DC: Institute for International Economics. Chapter 2.

<sup>6</sup> Bagwell and Staiger show that if two countries act independently, and take each other's tariff's as given, they will reach a Nash equilibrium that is not Pareto optimal. Each is reluctant to liberalize further because it will be hurt by the associated decline in its terms of trade. However, in a cooperative negotiation based on reciprocity, each can be sure that its trading partner's actions will keep the terms of trade constant. This allows both countries to liberalize further and they will achieve agreement that *is* Pareto optimal.

organized. The reduction in foreign trade barriers generates support from producers in export industries that can offset the opposition of producers competing with imports.<sup>8</sup> From an international political viewpoint, reciprocity appears to be a rough and ready way of ensuring that relative gains are similar.<sup>9</sup>

Politically, relative gains may matter. In a bilateral trade negotiation, if nation A receives some benefits, but the benefits to nation B are perceived to be even greater, there may be a sense within A that the deal is unfair. In addition, if the other side is left with large benefits, the negotiators for nation A may face complaints that they have not done as well as they might have. Reciprocity helps quell these concerns and aids in the normally difficult relationship between negotiators (the agents) and their domestic constituents (the principals).<sup>10</sup>

The GATT was remarkably successful. Its membership grew and tariffs came down steadily. This success in reducing tariffs, however, led to additional demands. One set of demands came from developing countries that sought special preferences and differential treatment. Another was to extend the rules to cover non-tariff barriers and other practices that distorted international trade. Here already we see the dynamic of mission creep in operation.

The Tokyo Round agreement, concluded in 1977, therefore included an “Enabling Clause” that created more scope for special and differential treatment. Special and differential treatment clearly and explicitly represents a departure from the principle of reciprocity. As long as developing countries are relatively small players in the world economy this may not be a matter of great concern. But once they become large, the myth of reciprocity becomes increasingly less tenable.

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<sup>7</sup> If countries are simply maximizing domestic welfare they would then move to free trade. If, for political reasons, they apply different weights to output, they may prefer to have tariffs.

<sup>8</sup> In the formal economic explanation that relies only the terms of trade effects, there is no need for a separate domestic politics rationale for reciprocity. However, despite the very impressive theoretical accomplishment of Bagwell and Staiger there remains considerable skepticism about explanations giving terms of trade effects a dominant role particularly since these are almost never mentioned (and rarely recognized) by trade policymakers. See the discussion on the practical relevance of terms of trade considerations in Chapter 11 of [Bagwell, 2002 #150]

<sup>9</sup> Actually, even if concessions are balanced in this way, the gains could be very different.

<sup>10</sup> For a more detailed discussion see Robert Z Lawrence 2004 *Crimes and Punishments: Retaliation Under the WTO* Washington DC: Institute for International Economics. Chapter 2.

The Tokyo Round also concluded seven codes dealing with import licensing, technical barriers to trade, customs valuation, subsidies and countervailing duties, antidumping, civil aircraft and government procurement. However, the focus remained on rules and barriers that were clearly related to trade in goods. The fact that the GATT parties that did not sign agreements were not bound by them clearly aided their acceptance and legitimacy.

The codes represented an expansion in the WTO's mission to cover non-tariff barriers and rules governing fair trade, but the means to back up these rules were sometimes lacking. The Codes had disparate and separate dispute settlement systems. Moreover, as the disputes between the US and the EU made clear, the combination of a weak dispute settlement system and opaque rules made it particularly difficult to impose disciplines on agricultural subsidies. In addition, parties resorted to extra-legal measures such as voluntary export restraints and unilateral retaliation that violated basic GATT principles such as avoiding discrimination and the use of quotas.

The institution became much more controversial as a result of the Uruguay Round. This was because of a major expansion in the mission, an increase in the means and as a consequence increasing questions about legitimacy.

The Uruguay Round Agreement dramatically increased the organization's mission by including agreements on services (GATs), Sanitary and Phytosanitary Measures SPS, technical barriers to trade (TBT) trade-related investment measures (TRIMS), Trade Related Intellectual Property (TRIPs) and a new agreement on Subsidies and Countervailing Measures.(SCM). The TRIPs is particularly noteworthy since it requires countries to implement policy regimes that achieve a minimum level of intellectual property protection. Moreover the WTO was a single undertaking in which most of the codes in addition to the new agreements were all made part of the same agreement. This dramatically increased the obligations of the members.

In addition to this large expansion in the WTO's scope, the Uruguay Round Agreement also enhanced the power of the dispute settlement body (DSB) to enforce trade rules. It required unanimity to prevent proceedings meaning that no one country could block the panel from hearing a dispute. The single undertaking meant that all WTO rules and most agreements were subject to dispute settlement understanding WTO

members therefore had the ability for cross-sectoral retaliation. For example, if a country violates the TRIPs agreement's intellectual property rules, it can be subject to the loss of other trade benefits, such as low tariffs on manufactured goods.

When trade policies cover only border barriers, they bring a fairly narrow group of producers and consumers into the political fray, but as they expand to constrain national regulatory policies, many more players will seek to enter the game. Some of these see trade agreements as an opportunity to further their agendas; others see trade agreements as a threat. One concern in particular is that trade officials will be allowed to decide among competing values.

What explains this expansion in the organization's mission? It is important to understand that a major source of pressures for expansion is functional. As the world economy becomes more integrated, there is a growing need for greater governance. The more complex nature of cross-border economic activities, the more agents will require a secure framework in which to operate. As trading, financial and investment relationships deepen there are benefits from deepening the rules and making enforcement more effective. At the same time, as countries became increasingly interested in attracting foreign investment, they too had a growing interest in locking in their policies to give them greater credibility.

The second driver is political. The most important forces in our societies, business, labor and environmentalists each find themselves competing with their counterparts in other countries and they all claim to seek level playing fields and to have their issues subject to international rules.

As its rules have become more expansive and enforcement more effective it should be no surprise that the WTO has also become increasingly controversial. To be sure, since the Uruguay Round Agreement was adopted on the basis of consensus, all WTO members indicated implicitly that they viewed the agreement, on balance, as in their interest. But since the rules had become increasingly complex, some members complained that they did not fully understand their implications. In other cases, even where national governments found the agreement beneficial, some of their important constituents did not.

**WTO Under Fire.** The Uruguay Round Agreement and the establishment of the WTO has therefore been extremely controversial. One set of criticisms has been that the purview of trade agreements has been extended too far. Developing countries complain about the TRIPs which channels rents to developed country inventors. Environmental groups argue that the WTO advantages trade at the expense of other considerations. Yet there are others who argue the WTO does not go far enough. Some have in mind extending the rules to deepen international integration by making international markets more contestable through liberalizing investment, increasing disciplines on regulation, making government procurement more transparent and applying competition policies. Others believe that extending social rules relating to labor and environmental standards can help ensure that the benefits of globalization are more equitably distributed. And many emphasize the need for additional measures such as capacity building to promote development.<sup>11</sup>

Yet questions can be raised about whether the organization has the means to implement comprehensive agreements on all of these issues. The WTO relies on national implementation of agreements, but many developing countries lack the requisite resources and capacity. The WTO also relies on the dispute settlement system to police enforcement – yet many of the least developed countries have not found it easy to use the system. In addition, it should not be a surprise that since market access negotiations are based on reciprocity, the agreements generally reflect the priorities of the nations with large markets. Since these are mostly developed countries and barriers have remained highest in the labor –intensive manufactures and agriculture.

While the mandate of the WTO has been enlarged considerably as Richard Blackhurst has noted, it has been not been given adequate resources to carry out the

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<sup>11</sup> A comparison between the chapeau of the GATT with that of the WTO reveals that whereas the GATT emphasizes the importance of efficiently allocating the world's resources, the WTO calls in addition for "sustainable development" and ensuring that trade leads to development. The WTO chapeau states... while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development, Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development,

mandate. The WTO's budget and staff are extremely modest and far smaller than many other international organizations with much more modest mandates.<sup>12</sup>

For a number of reasons, therefore, the legitimacy of the organization has been called into question. In many developing countries, trade liberalization remains controversial; even more questionable are disciplines on domestic policies such as subsidies and selective government procurement that are viewed as placing excessive constraints on national development strategies. In addition the associated difficulties of implementing such reasons are also a source of concern.

A second concern relates, paradoxically, to the fact that the dispute settlement system has become more effective. WTO agreements require consensus. Inevitably this means they are incomplete and imprecise and reflect the use of "constructive ambiguity." This becomes problematic for those called upon to adjudicate. One response could be for the dispute settlement process to fill in the blanks but this raises issues of legitimacy and is expressly prohibited. For this reason, the DSB is enjoined from adding to or subtracting from the obligations contained in the agreement. Despite considerable effort to hew closely to the texts of the agreements, there have been allegations that the DSB has been excessively activist and has undermined the decisions that sovereign governments have embodied in the agreements.<sup>13</sup>

A third complaint relates to the disparities among members when it comes to differences in the ability to use retaliation. The system is widely seen as inequitable since small, less powerful countries have less ability to retaliate. Indeed, while several members have been authorized to retaliate (e.g. Ecuador, Brazil and Canada) only the US and EU have actually done so. This appears to violate the basic principle that all members should have equal rights.

A fourth set of concerns has been raised about the lack of representation in the institution for non-governmental actors, although it is unclear whether or not allowing such representation and participation would increase or decrease concerns about legitimacy.

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<sup>12</sup> Richard Blackhurst "The Capacity of the WTO to Fulfill its mandate" in Anne Krueger 1998 (ed) *The WTO as an International Organization* Chicago: University of Chicago Press chapter 1.

<sup>13</sup> See Claude E Barfield (2001) *Free Trade, Sovereignty, Democracy: The Future of the World Trade Organization*. Washington DC American Enterprise Institute (AEI Press).

Finally there are issues relating to the organization's alleged lack of transparency. On the one hand, many members are seeking to open up the process, whereas others feel this would be incompatible with the institution's fundamental role as an intergovernmental organization.

These controversies have placed the WTO in a difficult position. They confirm that more ambitious missions and enhanced power place pressures on perceptions of legitimacy. At the same time, however, there is also considerable evidence that global integration remains seriously incomplete and that there could be substantial additional benefits from deeper integration. Even when tariffs are removed, border effects continue to impede the free flow of goods and services. This was surely the experience of Europeans who concluded in the early 1980s that despite the virtual elimination of internal tariffs their markets remained fragmented. The considerable extent of fragmentation even among developed countries is documented by Bradford and Lawrence as are the large welfare benefits that could be enjoyed from price convergence that would result from the elimination of the obstacles that borders continue to present to increased international integration.<sup>14</sup>

As this account of the WTO recent problems underscores, however, it is important to proceed with caution and care. Success requires recognizing the basic vulnerability of the system. It requires selecting only those missions that are strictly necessary (e.g. genuinely global public goods) which have the highest likelihood of the greatest payoffs and for which the institution has adequate means. Success also requires ensuring that agreements command a high degree of acceptance by those who sign them. One approach would simply be to reflect the lowest common denominator. But while this would help retain acceptance, it could also lead to frustration that the institution was not fully realizing its potential. At the opposite extreme, even more ambitious rules and enhancement of the WTO's enforcement power could be contemplated. But as Cancun has demonstrated this is not yet feasible. Accordingly, it appears that inevitably a middle course will have to be found. Let us turn therefore to evaluate the potential of an alternative approach to the single undertaking: having the WTO act as a club of clubs.

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<sup>14</sup> See Scott Bradford and Robert Z Lawrence *Has Globalization Gone Far Enough? The Costs of Fragmented Markets*. Washington DC Institute for International Economics.

## **Section II: Would a Club of Clubs Make the WTO a More effective Institution?**

Several years ago, in the capstone of volume of over twenty studies on Integrating National Economies undertaken by the Brookings Institution, Albert Bressand, Takatoshi Ito and I wrote *A Vision for the World Economy*.<sup>15</sup> In that monograph we argued that there was a need for new global institutions and agreements. However, we emphasized that these institutions needed to be developed with great care. In particular, whatever their purposes they needed to be crafted to achieve a balance between three desirable objectives: openness, diversity and cohesion. We argued that this balance could best be achieved through an international architecture comprised of three different sorts of arrangements which we called clubs.

We suggested that some of these clubs would be functional and devoted to single or related issues. Examples include the International Labor Organization and the Bank of International Settlements. Other clubs could be regional and might contain several issues – such as APEC or the EU. In addition we advocated global coordinating clubs to deal with linkages among the functional and regional clubs. These we called the club-of-clubs. We pointed out that the United Nations, the WTO and the OECD already embodied elements of such an institution. In our proposal we envisaged a greater role for the “Clubs of Clubs” in coordinating functional and regional organizations, initiating new clubs and encouraging dialogue and greater coherence among the clubs.

In this paper, however, I will not be looking at the potential role for the WTO as an overarching organization coordinating the relationships between organizations or clubs with agendas that are not directly related to trade, nor will I focus on the WTO’s role as an institution that helps attain greater policy coherence between the Bretton Woods Multilateral Institutions. Instead, I will focus on the role that a club of clubs

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<sup>15</sup> Robert Z Lawrence, Albert Bressand and Takatoshi Ito 1996 *A Vision for the World Economy: Openness, Diversity and Cohesion*. Washington DC Brookings Institution

approach could play with respect to agreements that relate specifically to international trade. In what follows I will build on the ideas of the previous section to provide criteria for how issues should be chosen. Next, I lay out some specific proposals for how clubs might operate within the WTO and finally I evaluate whether the club of clubs approach would improve the effectiveness of the WTO.

### **Selecting the Issues.**

In line with the considerations laid out in the previous section, the WTO should only host clubs that are (a) related to its mission; (b) enforceable by the means available to the organization and the members who join the club and (c) compatible with maintaining and enhancing legitimacy.

Mission. The Chapeau of the WTO Agreement indicates that the WTO is an organization which seeks to enhance welfare by (a) reducing barriers to trade. (Such as tariffs); (b) reducing discrimination in trade. (e.g. requirements for MFN and national treatment), and (c) enhancing development through trade. *Accordingly, the issues that are chosen should be trade related in at least one of these respects and ideally in all of them.* In this context, trade should be interpreted broadly to include international exchanges of goods and services and the movement and location of firms and people designed to accomplish such trade. The coverage should relate either to policies which directly affect market access (e.g. border barriers) or to the aspects of other policies which can materially affect such access. The aim is to facilitate trade in both goods and services while at the same time preserving adequate scope for national policy differentiation. While there are many other issues that may be important subjects for international cooperation (e.g. environmental policies and human rights) and many other policies that could contribute to economic development, (education, health etc) trade-relatedness should be the sine-qua-non for inclusion. In addition, to the maximum extent possible, agreements should provide the maximum space for other functional clubs to implement non-trade related international agreements and for members to have considerable scope for differentiating their domestic policies to match their conditions and requirements. They should also not overlap with issues that are already part of the WTO's single undertaking.

Means. The WTO itself and members of the clubs must have, or be readily able to acquire, adequate means to carry out the missions. WTO itself must have adequate expertise, resources and authority. For example, a competition policy agreement that envisaged the WTO Club operating to provide consent on international mergers would have to be equipped with the expertise and resources and authority of the US Justice Department or the European Commission. However, a weaker agreement that entailed simply providing an opinion would need similar expertise but less power. In addition, since most clubs would rely heavily on national implementation, members should have, or be readily able to acquire the necessary capacity. Only the able should be encouraged to join.

Legitimacy. The desirability of the issue as an item for inclusion in the WTO club framework should enjoy widespread acceptance by the membership. Members should view issue as welfare enhancing. Even if members are themselves not ready to accept binding obligations and club membership there should be a consensus WTO is the appropriate institutional setting. Finally, the approach should minimize inhibitions on national autonomy required to achieve any given objective i.e. subsidiarity is a key element

### **Selecting the Operating Rules.**

How would the clubs operate? Who would negotiate and determine their rules? When would these negotiations take place? What rights would WTO members that are not club members have? What would be the relationship between the clubs and the WTO dispute settlement process? These are some of the questions that need to be answered before the approach can be fully evaluated. Fortunately, the WTO rules themselves provide some initial answers. The WTO already operates as “a club of clubs” because it contains several pluri-lateral agreements. In this respect, the most interesting is the Agreement on Government Procurement Agreement (AGP). It provides useful guidance for how the clubs might operate.

*Negotiations.* All the contracting parties participated in the negotiations for the AGP in the Tokyo Round. Even though all members did not sign the agreement they all had the ability to craft the agreement in a manner which reflected their interests. Arising

as it did in the context of a broader negotiation, cross-issue trades undoubtedly played some part in obtaining the agreement.

*Non-Members.* Those that do not accept the obligations of the agreement do not enjoy its benefits. India did not sign the AGP. However, its government argued that because of the MFN provisions of the GATT, Indian firms should be treated in the same way as those from countries that had signed the agreement. The case brought by India against the USA clarified, however, that the general MFN provisions of the GATT do not apply to the AGP.

*Dispute Settlement.* Originally, the AGP and other Tokyo Round codes had their own dispute settlement procedures. However, after the Uruguay Round, these procedures were replaced by those of the Dispute Settlement Understanding. (DSU). By and large disputes under the AGP follow the general procedures laid out in the DSU (such as consultations, panel hearings, appeals etc). One difference, however, is that panelists are only drawn from members who have signed the agreement. “Only members of the WTO Party to this agreement shall participate in decisions or actions taken with respect to disputes under this agreement. “

*Retaliation.* If a party to the agreement is found to have violated the agreement and fails to come into compliance, other parties can be authorized to suspend concessions. These authorizations are made by the panel that heard the dispute. *However, only obligations from the GPA itself can be used for these suspensions.* No cross-agreement retaliation is allowed. “Suspensions of concessions or other obligations under the Agreement on Government Procurement cannot result from any dispute arising from other agreements and any dispute arising under the AGP agreement shall not result in the suspension of concessions or other obligations under any other Agreement” (AGP XXII 7)

Should these rules of the AGP be emulated by other clubs? Let us consider them in turn:

***Participation.*** Should all members be allowed to participate in the negotiations as they were in the case of the AGP? My answer would be yes. Regardless of whether they currently wish to join, all WTO members have an interest in the nature of the rules determined by the institution. Indeed, the ability to participate in deliberations should be

a fundamental feature of membership in the overarching club of clubs. Currently, any sub-group of WTO members could negotiate a pluri-lateral agreement relating to issues not covered by the WTO outside the WTO. (This would have been the case, for example, had the ill-fated Multilateral Agreement on Investment actually been negotiated). And forming a club outside the WTO could be the fallback position if recalcitrant members that had no intention of joining a club chose nonetheless to use the consensus rule to block other members from forming a club under the aegis of the club of clubs. However, important benefits could result from conducting the negotiations under the WTO aegis: namely, the legitimacy conferred by the stamp of approval of the organization, access to WTO resources and dispute settlement facilities, the ability for other members in the future to join a club with rules that they had previously endorsed and the ability to integrate club formation into other negotiations to allow for cross-issue trades.

This approach would represent a noteworthy contrast with MAI approach in which one group negotiating an agreement and presenting it to new possible members as a *fait accompli*. To be sure, some might object to having members who have no intention of every joining a club from having a say in its rules, but it would be problematic to identify such members before the club is actually formed. After all, even those intending to join would not commit themselves unconditionally before the specifics of the agreement had been laid.<sup>16</sup> Instead, it is more appropriate for an organization of sovereign nation states to assume that all those who participate in a negotiation are acting in good faith.

**Launching.** New clubs and amendments to club rules could certainly be formed as part of new Rounds as were the plurilateral codes, such as the AGP that were the result of the Tokyo Round. Under these circumstances, if combined with the consensus requirement for establishing a club, there could be some cross-issue trading. However, one of the benefits of a club of club approach is that it could also allow for agreements to be negotiated outside the confines of Rounds. The Club of Club approach would thereby facilitate early harvests and could help to make future rounds more focused and less complex and time-consuming.

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<sup>16</sup> It would be possible to limit the ability to amend all or some parts of the agreement to members that had signed it.

***Treatment of non-members.*** Provision of benefits to non club members signatories should not be required, as was the case with the AGP but they could be allowed. Doing otherwise would clearly reduce the incentives to join. For example, as part of a competition-policy club members might agree to extend to each other comity or more extensive cooperation in anti-trust enforcement. They might be willing to do the same for less developed WTO members but not for developed members that refused to reciprocate. Thus developed country WTO members might not be allowed to free-ride but the least developed WTO members might enjoy some benefits. In addition, even when they are not part of the club, outsiders may derive benefits. For example, if a group of countries agree to implement a set of standards all who compete with them may benefit, regardless of whether or not they are part of the agreement.

***Dispute Settlement.*** Clubs should be required to use the WTO system for settling disputes. In particular, using a common Appellate Body would help assure cross-club consistency in the interpretation of the rules. This would represent an improvement over the approach adopted in the Tokyo Round in which each code had a separate dispute settlement system and there was no overall Appellate Body. However, there is some logic to the AGP provision that panels should be drawn from neutral members of the Club and not more broadly from the WTO. Again this might create a small additional incentive to join the club and it could be argued that countries actually implementing codes could have a better understanding of their operation.

***Cross-Retaliation.*** The great attraction of the WTO for many proponents of new issues is the ability to use the enforcement mechanism and in particular the suspension of tariff concessions for enforcement. For example, advocates of TRIPs were particularly eager to have it made part of the single undertaking and enforced via the DSU. To be sure the DSU has provisions which call for retaliation to take place under the same sector and agreement in which the violations occur, but adherence to these provisions are not obligatory and countries are given considerable scope to engage in cross-sectoral retaliation. Countries committing TRIPs violations could therefore face trade retaliation. This phenomenon, which Steve Charnovitz has aptly termed “sanctions envy”, runs the risk of attracting new issues to the WTO not because they are highly germane to its mission, but rather because of the desire to have them enforced through the DSU.

Among other reasons, to avoid this development, it seems appropriate to confine the ability to suspend concessions only in the same club where the violations have occurred, is done with the AGP. For example, only suspensions of concessions in competition policy could be used to respond to violations by members of the competition club. In addition, club concessions should not be used for cross-retaliation. For example, members should not be allowed to withdraw competition club concessions in response to violations under TRIPs, GATT or GATs.

To be sure this approach might mean that club rules would be enforced by a somewhat weaker process than in the core WTO agreements. But this is not necessarily a bad development. It could help to encourage members to join since there would be fewer risks associated with default. It would also re-enforce the idea of reciprocity that is fundamental to the retaliation process.<sup>17</sup> Since they represent independent agreements, in principle, countries made concessions *in a particular club* to obtain the adherence of other members to that club's rules. Thus suspension would entail restoring the status quo ante the agreement until compliance is obtained. Members would not feel that by joining a club they could lose benefits they currently enjoy from the core agreements and trade retaliation in particular would not proliferate if the number of clubs expanded. This provision could also help deal with the disquiet felt by many countries, particular the LDCs that difficulties with adherence to particular rules (such as labor or environment) could be used as an excuse for protectionist retaliation

An additional option, particularly in response to frequent violations, could be the temporary suspension of membership until compliance was achieved. Suppose for example, there was a separate agreement on labor standards in which parties agreed not to weaken their labor laws to gain an advantage in trade. Assume a developing country was found to have done this recurrently. It could then lose the right to claim membership of the club. This might result in consumer disapproval.

As part of the overall WTO agreement a set of common provisions should be required of all clubs. In addition to the rules already mentioned, these could include provisions for:

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<sup>17</sup> See Robert Z Lawrence Crimes and Punishments? Retaliation Under the WTO. Institute for International Economics Washington DC 2003.

**Capacity-Building.** Clubs should be required to explore possibilities of providing special and differential treatment and to make provisions for capacity building. One approach would be to unilateral provision of benefits ala GSP in which members could provide non-members from developing countries with benefits and rights but not require reciprocity. A second could entail a basic set of commitments for the least developed members and more extensive obligations by full members. In addition, clubs should be required to offer non-members with technical assistance and capacity building opportunities to allow them to become fully-fledged members.

**Binding Obligations** A central purpose of the WTO is to establish the rule of law in the trading system. This is not going to be achieved if agreements are not mandatory. Thus in all cases, adherence to club rules should be binding on all members, and all clubs should be required to use the enforcement provisions described above. In addition, clubs should be open to all WTO members that are willing accept their rules. Clubs should have discretion over whether to admit non-WTO members.

**Pluses and Minuses.**

The Club of Clubs approach has much to recommend it. It could facilitate the expansion of trade-related issues that the WTO could cover yet also accommodate countries that felt their interests were not served by a particular set of rules. Those members that wish to pursue deeper international integration through a multilateral route could do so within the framework and under the aegis of the WTO while others who viewed such obligations as ill-suited to their needs or capabilities would not be obliged to join. In some cases, non-members would automatically benefit if countries make their domestic markets more contestable, or improve their environments or raise their labor standards.

The club of clubs could help ensure a better alignment between mission and means since it would reduce implementation burdens that might otherwise arise. It is far better to exercise caution in extending obligations to countries that are both ill-equipped to assume them and ill-equipped to refuse than to have countries resent being forced to accept obligations they believe to be burdensome. Increased differentiation among members is surely compatible with the notion of special and differential treatment. Indeed the club of clubs approach embodies differential treatment.

All of these features could bolster the institution's legitimacy. No country could be forced to join a club it did not feel served its interest but at the same time, the WTO would provide a framework in which those interested in implementing an agenda of deeper international integration would be able to do so. Simultaneously the Club of Club would address the concerns of those who believe the organization should do more to promote such integration and those who believe that countries should not all be subject to the same rules and obligations.

Having the clubs as part of the WTO would provide advantages. It could allow all members to participate in drafting the club rules and thus increase the likelihood that provisions commanding universal support would be adopted. This would also reduce the danger that a group of members would try to set the bar so high that others would be precluded from joining. Although clearly to a lesser degree than would be the case with a single undertaking, having the clubs formed during WTO rounds would also facilitate cross-club concessions. Members not yet ready to join, could also be assured that once they became ready they could not be excluded from membership.

In sum, as the experience of the European Union illustrates, it is highly problematic to apply a one size fits all approach to deeper economic integration. The diverse nature of WTO membership makes it highly unlikely that members will all be willing and able to sign on to the full range of agreements that many members might find desirable. The club of clubs approach seems to offer an avenue for compromise in which diversity can co-exist with a more extensive set of commitments.

This club of clubs approach could however give rise to some concerns. One is that it might create a WTO with two classes of citizens, the first class nations that are members of the clubs, and the second class nations that are not. However, one of the great strengths of the WTO is that there are already distinctions among the obligations assumed by members. These range from different tariff rates, different proportions of bindings, special and differential treatment and different speeds with which agreements have to be phased in. Moreover the upside of a two-tier system is that it will be more difficult to compel countries to accept obligations.

A second concern is that a few developed country club members will establish a template and setting the bar too high and later force others to join. Here the fact that the

Uruguay Round induced many members to accept and implement most of the Tokyo Round Codes is seen by some as a troubling precedent. But if clubs are made an intrinsic part of the WTO architecture, this would be less likely. Indeed, the lesson of Cancun is that many developing countries have learnt from their experiences in the Uruguay Round about the pitfalls of accepting obligations that they would have difficulties in implementing. They are unlikely to repeat the same mistakes again.

Moreover, the rule that permits all members to engage in the negotiations over the club rules should limit the possibilities of agreements which do not command widespread support among the members.

A third worry would be the weakening of the ability to engage in cross-issue trades. Several members have argued for example that the inclusion of agreements on investment and competition were vital to obtain the support necessary for their making meaningful concessions on agriculture. It is an open question whether or not the launching of an investment club or a competition club could serve a similar purpose. Much would surely depend on whether a sufficiently large number of countries was prepared to join the club. Nonetheless, the ability to condition concessions on the acceptance by others of club membership would still exist.

A fourth concern is that the approach might reduce the possibilities of agreements with universal coverage. It is certainly true that if most major countries could be persuaded to accept a particular agreement, in a system based on a single undertaking, it would be likely that all WTO members would agree to join. By contrast, if the agreement was part of a separate club, it would be more likely that some members might decide not to join. But the requirement of a single undertaking also has the effect of making other agreements less likely, whereas the club of clubs could make progress with a pluri-lateral agreement when the single undertaking would fail to obtain any agreement at all.

A fifth concern is that enforcement and thus compliance would be weaker in the clubs if the procedures outlined above were to be followed – in particular confining retaliation to the suspending obligations within the same club. This could imply that compliance with agreements might be weaker. This might well be the case, but it is important not to exaggerate the role that retaliation actually plays in enforcement – the

record of compliance under GATT was good despite the absence of actual retaliation. By and large, it appears that in any case, the role of reputation is far more important than retaliation in obtaining compliance.

A sixth is that the approach could limit the ability of members to obtain agreements that they are particularly interested in. A similar logic applies to legislation that can pass when measures are combined (or log-rolled) into a package when each could not pass if there were individual votes. Each party supports the package because it comes out ahead on balance but many parties would prefer to drop some items from the package. Thus a single undertaking could achieve some results which could not be attained through the club-of-clubs. But this approach will mean that members will accept obligations not because they view them as beneficial but simply because they are willing to trade them for something else. In the long run, however, both the institution and its members will be better off if members subscribe to rules they believe are all in their interest. At the end of the day there may be fewer universal rules, but those that are applied will command more support.

### **Conclusions.**

For all the talk of globalization, the world economy remains highly fragmented as the economic effects of borders inhibit the realization of more global economic integration. The WTO has a key role to play in helping nations reap the full benefits of deeper integration but as its mission and means have expanded it has become embattled in controversy. The organization's legitimacy has been attacked from many quarters and efforts to add new issues to the rules have foundered, as many members have refused to accept new obligations on a variety of grounds that include problems in implementation, fears these could result in trade retaliation, and views that they will constrain the scope for differentiated domestic policies.

Supplementing the core WTO obligations with a club of club approach could help to promote deeper global integration while at the same time alleviate some of the WTO's institutional problems. The club of clubs offers a compromise in which diversity can co-exist with a more extensive set of commitments for willing members. Clubs would be chosen were they could help promote the central missions: lowering barriers to trade; reducing the discriminatory effects of domestic policies and enhancing

economic development through trade. All WTO members would participate in negotiating club rules, but members would be free not to join. Clubs would use the DSU to deal with disputes but suspension of concessions in the event of violations would be confined to the provisions of the same club in which the violation occurred.

The club of clubs approach might reduce the ability of some members to obtain agreements by packaging them in a single undertaking. It could also reduce the power of retaliation as an enforcement mechanism for certain obligations. But the approach could also enhance the legitimacy of the WTO by helping members to avoid undertaking obligations they did not view as in their interest. It would thereby ensure a better alignment between mission, means and legitimacy, the keys to a more effective international organization.