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KENNETH SURIN

THE WORLD TRADE ORGANIZATION:

A Flawed Conception

The 1944 Bretton Woods agreement sought to prevent the recurrence of the economic situation that had prevailed in the Depression-permeated 1930s by laying down the framework for a more adequately regulated international economic order. The agreement originally stipulated that oversight of the world economic system was to be in the hands of three institutions: the International Monetary Fund (which was charged with overseeing exchange rates and the balance of payments), the International Bank for Reconstruction and Development, better known as the World Bank (which was to be responsible for economic development), and the International Trade Organization (whose brief was the supervision of the world trading system, with a particular responsibility for mediating trade disputes, promoting tariff reduction, and eliminating trade wars). However, when the US Congress objected to the formation of the International Trade Organization, the agreement was modified to exclude the ITO provision, and a looser organization, the General Agreement on Tariffs and Trade (GATT) took its place. GATT was basically a forum constituted by agreement among signatory nations, and with a limited administrative machinery to undertake oversight of the world trading system and the trade liberalization arrangements it sponsored, GATT's effectiveness was always going to be circumscribed, and it was superseded in 1995 by the World Trade Organization (WTO).

GATT's regulatory framework was based on four primary principles (Held et al., 164):

non-discrimination: i.e. acceptance of the most favored nation principle, (so that the trade preferences, such as a tariff reduction, granted by one country to its most favored trading partner will be extended to all its other trading partners);

reciprocity: a country's tariff reductions should be matched by its trading partners;

transparency: trade standards and measures should be clear;

fairness: unfair trade practices (dumping of goods at below market prices, etc.) were to be discouraged, and countries were allowed to protect themselves against them.

Some exceptions to these rules were allowed, such as measures taken to safeguard a country's balance of payments. Despite GATT's obvious structural limitations - in particular the lack of a judicial procedure that would enable it to intervene in trade disputes, and the fact that countries could bypass its provisions if they their domestic economic interests were perceived by their governments to warrant such a step - the seven rounds of multilateral tariff reductions sponsored by GATT did succeed in bringing tariff levels down to their lowest levels in centuries. GATT's effectiveness was also reduced by factors that were

beyond its purview, such as the continued use by governments of non-tariff barriers (import quotas, favored treatment of exporters, custom and excise ‘slow-downs’, preferential treatment of domestic producers, etc.), but the overall accomplishment of GATT was a reduction of tariffs and the promotion of trade liberalization in industrial sectors, especially in the advanced industrial countries. Trade liberalization made less headway in developing countries and in service sectors until the 1980s, and one of the aims of GATT’s successor, the WTO, was the extension of trade openness beyond industrial sectors to encompass services, and to eliminate trading barriers in all countries, including the developing nations that had been relatively overlooked by the GATT regime.

Trade openness in the developing nations had of course been underway since the early 1980s, as many of these nations started to switch their development strategies from import substitution (with protection of industries producing for domestic markets as its *sine qua non*) to an export orientation. The World Bank and IMF enshrined the principle of export orientation with its accompanying trade openness in the policy frameworks they prescribed for developing countries, and the WTO’s founding premises were congruent, in this respect at least, with those of its two fellow multilateral institutions. In fact, all three institutions have functioned in accord with the terms of the so-called ‘Washington Consensus’ (see Williamson). This ‘consensus’ stipulates that development optimally involves *laissez-faire* markets, to be achieved by privatization and deregulation where ‘open’ markets do not exist, along with trade and price liberalization (currency convertibility would become an important issue in the mid-90s for those seeking to maintain this ‘consensus’), and it clearly presumes that by pursuing such policies, a country will be in a position to pursue its ‘comparative advantage’, by focusing production on the commodities it is best able to produce, and targeting these for export markets. Since this ‘consensus’ operates in the fundamental interest of the United States, it implies, powerfully, that swimming with the tide of a US-led global economic integration is the only way forward for less-developed countries seeking economic growth. Why did the US, having immediately after WWII spurned the opportunity to create a similar organization with a binding dispute-settlement mechanism, decide in the 1990s to throw its weight behind an institution whose *raison d’être* was the comprehensive liberalization of trade? Michael Byers has provided an answer that is hard to dispute (though we shall return to this question later):

The US, born out of a tax revolt in the same year that *The Wealth of Nations* was published, ... saw an opportunity after 1989 to complete its victory in the Cold War by entrenching free-market principles world-wide.... The US saw an opportunity also to create stronger trade obligations in those areas of particular interest to its own corporations, in services (banking, law, management consultancy etc) and intellectual property (copyrights and patents). The result was a concerted negotiating effort - this time with the advance, ‘fast-track’ approval of Congress - to create a trade regime that would take full advantage of the US’s position as the sole superpower, and entrench its gains in a durable, enforceable treaty. (16)

The WTO, whose remit is set out in the 26,000 page treaty that was ratified on April 15, 1994, at a ministerial conference in Marrakesh, has a secretariat of 500, and the centerpiece of its operations is the binding procedure for resolving trade disputes in such areas as agriculture, intellectual property, services, government procurement, subsidies, import licensing, and textile manufacturing (Byers, 16). (The WTO’s Millennium Round at Seattle in December 1999, which concluded in a hugely publicized fiasco, was to have seen attempts by the European nations to add investment, competition policy, environment, and public contracts to the WTO’s original remit, which had since 1995 included a rubric for further consideration of trade and commerce in health, education, and ‘environmental and cultural services’. On this see George, 8.) An essential continuity was also preserved between the Uruguay Round of GATT and the WTO when the articles and agreements created by the former were incorporated into the remit of the latter.

The WTO's judicial process, conducted by a panel of arbitrators, had resolved twenty-six disputes by January 2000, with an even greater number having been settled before the process began or during the course of its proceedings. More than a hundred disputes - mostly involving bananas, beef produced with growth hormones, cars, genetically modified crops, and extraterritorial business legislation - are currently being resolved. In addition, the 135 member countries have to undergo a periodic review, and 45 of these have been conducted so far. The main problem with this judicial process, as Susan George points out, is that there are gaps in the way it accords with the acknowledged principles of international law: human rights, multilateral agreements on the environment, and the conventions of the International Labour Organization (ILO) are not enshrined in the WTO's protocols (George, 8). Also problematic is the WTO's refusal to take into consideration processes and methods of production when conducting its judicial proceedings: commodities produced by child-labor or those indentured to the point of servitude are treated no differently from those made by workers enjoying adequate legal safeguards (George, 8). The WTO also has no use for the precautionary principle, and will not err on the side of caution when it comes to approving potentially dangerous and still relatively untested biotechnological processes, such as the feeding of growth hormones to cattle.

The WTO operates through a series of agreements from which 'rules of conduct' are derived, and the framework for future rounds of negotiations put in place. These agreements include the General Agreement on Trade and Services (GATS) which seeks to further the liberalization of trade in services; the agreement on trade in intellectual property rights (TRIPS); and the agreement on trade-related investment measures (TRIMS). GATS has promoted the interests of the multinational corporations (MNCs) in the service sector, and TRIPS (which was adopted in 1994) has given the MNCs a tighter grip in the global domain of patents and trademarks, while TRIMS has reduced the scope of governments to regulate the MNCs. Other WTO agreements include one to liberalize international trade in telecommunications services (ratified on February 6, 1998), and the agreement in late 1997 that committed WTO members to opening their domestic banking, insurance, and securities enterprises to foreign competition in 1999.

The TRIPs regime, set up as an agreement between the WTO and the World Intellectual Property Organization (WIPO), is perhaps the most controversial of these agreements. It concerns the following areas of intellectual property: copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations); trademarks including service marks; geographical indications including appellations of origin; industrial designs; patents including the protection of new varieties of plants; the layout-designs of integrated circuits; and undisclosed information including trade secrets and test data (WTO 2000). Especially controversial is Article 27.3(b) of the Agreement, concerned with the patentability of biotechnological innovations (WIPO 1997, 31):

3. Members may exclude from patentability: [...] (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants and animals other than non-biological and micro-biological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system, or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the entry into force of the WTO Agreement.

Despite the exclusionary clause at its head, this article makes explicit provision for the patenting of living organisms. The force and scope of the exclusionary clause has been the source of much debate, especially regarding the notion of a 'effective *sui generis* system' and what that could possibly entail for societies not accustomed to formalizing their intellectual practices into the kind of systematic knowledge familiar to citizens of the advanced industrial nations. For, the same time as it provides the exclusionary clause, Article 29.1 of the TRIPs agreement stipulates that it is a condition of patent application 'that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be

carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application'. This article therefore enshrines a tenet of modern Western patent law, to wit, that an idea is deserving of legal protection if and only if it is disclosed fully and publicly to those deemed competent to assess its intellectual merits. A patented idea will thus be one that has passed muster with a tribunal of the suitably well-informed (or at any rate those who are presumed to be so). Innovators who live in societies without a formal governmental structure and a tradition of keeping written records, and whose intellectual practices resist formal codification and/or which cannot be located in a fully-fledged property regime (e.g. systems of non-codified traditional medicine common in some parts of Africa and Asia) will therefore be at a relative disadvantage unless an 'effective sui generis system' is devised to protect their knowledges and innovations. Only then will these innovators be able fully to benefit from the TRIPs provisions relating to the rights of owners of intellectual property. The TRIPs agreement, not surprisingly, is vague in its specification of the content of an 'effective sui generis system' of patent protection, and this does not discourage the thought that the WTO's judicial tribunals will find any such system acceptable only if it happens to accord with the patentability-regimes already sanctioned by the wealthy industrial nations. Legitimacy in this case will be determined by affinity with what has already been legitimized by the wealthy and powerful and not much else.

Any likelihood of developing an 'effective sui generis system' of the kind envisaged here in poorer countries will depend crucially on the availability of a fairly well developed legal framework to subtend the system's operation. The problem here is not so much the one of devising such a system qua system or implementing it (more or less adequate intellectual property regimes do exist in many traditional societies, though they tend to work informally), but rather the matter of codifying these informal regimes in ways that are acceptable to governmental or legal authorities, who are likely to have internalized the cultural and intellectual norms prevalent in advanced industrial societies, and who therefore expect knowledges to be codified and placed in archives, to meet certain criteria of 'objectivity' and 'reproducibility' (precisely the criteria that create difficulties for knowledges constituted through religious ritual, shamanistic practices, etc.), and so forth. Much of the debate over the TRIPs agreement centers on the politics of codifying and transmitting knowledge, and, underlying this, the putative bias in the TRIPs agreement in favor of standards derived from western epistemologies (with a concomitant 'orientalism' displayed towards 'alternative' epistemologies originating from traditional societies in the less developed nations, and so forth). The TRIPs agreement is being revisited, but the omens for a significant revision of its principles are nor good. Unless it is significantly revised, the main beneficiaries of the TRIPs agreement will be private firms in the developed countries, who view patenting as a way to secure, among other things, monopolistic advantages in a whole swathe of industries (pharmaceuticals, media and information technologies, and the biomedical sciences being the most prominent), as well as standardizing and regulating Third World agricultural production to their financial benefit (Bulard, QuŽau, Rivire).

The WTO's judicial and enforcement system is weighted in favor of the United States. A national security exception was included in the WTO agreement, and it has already been used by the US, who threatened to invoke it in 1996 when the EU and Canada argued that the Helms-Burton Act, which penalizes non-American firms who do business with Cuba, constituted an impediment to open trade. The US government's threat worked, and the dispute was kept out of the WTO as the EU and Canada were dragooned into an out-of-court settlement (Byers, 16). Any threat to US privilege can be construed as a threat to US national security, and the WTO's national security exception invoked accordingly. Also highly favorable to the US is the WTO's procedure for punishing those who fail to comply with its provisos. To quote Michael Byers:

Once the judicial process has run its course, the resulting decision is enforced by 'countermeasures' - the suspension of tariff reductions that the winning country would otherwise have been legally required to provide to the loser under WTO rules. These punitive measures can be taken against any of the losing

country's exports, even if they have no connection with the dispute. In this way the US was able to raise its tariffs against Scottish cashmere last year, in retaliation for the EU's restrictions on banana imports. The WTO's reliance on such retaliation means that non-compliance will only be punished effectively in cases where the winning party is at least as powerful as the loser, and no member of the WTO, not even the EU, is as powerful as the US. (16)

If the WTO is basically a forcing-house overseen by the so-called quadrilateral powers (the US, the EU, Canada, and Japan), why then has it had sufficient appeal to induce 135 nations (so far) to join it? Some benefits are certainly to be gained from membership: obtaining 'most favored nation' status ensures equality of access to the markets of other WTO members, and the 'national treatment' proviso ensures that the firms of a foreign country have the right to the same treatment as those of the home country if both are WTO members. The stronger nations patently realize that the WTO is run for their benefit, and their weaker counterparts risk being put at an even bigger disadvantage if they do not join or, having joined, fail to comply with the decisions of the WTO tribunals. The so-called 'fair treatment' clauses adopted by the WTO serve in fact to entrench the pervasive asymmetries that exist between the richer and poorer countries: a Third World country struggling to provide opportunities for indigenous pineapple producers, say, will probably ruin their prospects if it had to treat a MNC like Del Monte in exactly the same way as it treats its indigenous producers, most of whom are likely to be smallholders with no chance of competing with Del Monte on absolutely equal terms. A long time ago Aristotle noted that injustice arises when unequals are treated equally - the WTO has ignored this salutary dictum and erected a monument to injustice in the form of its 'fair treatment' clauses. The US in any case serves as the (unofficial) gatekeeper at the WTO's member's entrance, hence China's need to obtain US approval in advance of its bid for membership (Byers, 16), and hence also the symbolic importance of appointing Bill Gates as co-chair of the Seattle meeting (he never showed up): appointing the head of an American corporation (one having its problems with the US judicial system!) simply served to confirm the US's hegemony in the WTO.

There is, moreover, a fundamental incompatibility between the respective interests of the stronger and weaker members which fueled the discord visibly present inside the WTO conference hall at Seattle last December. The poorer nations have a crucial stake in policy decisions regarding agriculture and textiles since these are in many cases the only sources of 'comparative advantage' they have vis-à-vis their wealthy counterparts. The developed nations, on the other hand, are for obvious reasons profoundly interested in issues connected with intellectual property, services, and foreign direct investment. This divergence of interests manifested itself at the inception of the WTO, when it inherited the Uruguay Round's unfinished business, including agriculture, environmental protection, and the safeguarding of the interests of the developing nations. In return for cooperation in the area of services and intellectual property-rights, the lower income nations were given the assurance of future negotiations on agriculture and textiles (Byers, 16). But the US and the EU have never been able to come to a *rapprochement* on the question of agricultural subsidies (the US in fact formally complained to the WTO about British and French subsidies for banana production in their former colonies, several of which rely almost entirely on this crop for export revenues), and have made no concessions on textiles for fear of domestic political repercussions. The poorer nations have felt betrayed by this failure of the richer nations to keep up their side of the bargain, and a great deal of this frustration was in evidence at Seattle (Sina•, Byers 16). Meanwhile the US and the EU nations can get away with policies which effectively subsidize the corporations. To mention two examples given by Philippe QuŽau, the Director of UNESCO's Information and Informatics Division:

In 1985 all the data from the American public-funded programme of earth observation by the Landsat satellite was conceded to EOPSat, a subsidiary of General Motors and General Electric. As a result the cost of access to the data increased twentyfold. Universities could no longer afford to buy the information, even though it had been

obtained entirely using public money. It was used mainly for the benefit of the big oil companies, who thus received a public subsidy.

[...]

In France the ORT company exploits the commercial registry databases (company balance sheets and payment difficulties) on Minitel and the internet as a public service under license from the National Institute for Industrial Property. This exclusive license brings an annual turnover of 280m francs (\$46m) and profits of 8m francs. The state, which supplies the data, is one of its biggest customers. On 9 December the Reuters group confirmed it was going to take over ORT. (QuŽau, 10)

The US and France lavish MNCs with de facto subsidies with little or no fear of retaliation, while Jamco, the Jamaican banana-growing company, lost its subsidies as a result of the complaint the Clinton administration lodged with the WTO on behalf of the conglomerate Chiquita (whose head, Carl Lindner, Jr., had made a substantial contribution to Clinton's election campaign fund).

Another disparity between the richer and poorer nations which became very evident at the Seattle WTO meeting has to do with a paucity of administrative and technical resources that undermines the efforts of the poorer countries to engage with their wealthy counterparts on a more equal footing. A cursory 'surf' around the WTO web site, and a casual skimming of any of the official documents containing its protocols, will quickly show the WTO to be a labyrinthine bureaucracy dealing with a formidable range of issues, some dizzying in their complexity and breadth of subject-matter. The richer countries, who bring veritable armies of negotiators, researchers, and lawyers to WTO meetings, therefore enjoy a huge advantage over poorer countries, many of whom can only afford to send small teams of civil servants, with no back-up staffs, and with hardly any technical and legal expertise at their disposal (Sina•). This disparity translates itself into the relative capacities of nations to command the WT bureaucracy. As the many accounts of the WTO proceedings at Seattle indicate, crucial decisions were taken at the so-called Green room meetings convened behind closed doors by the quadrilateral powers, who invited the representatives of the less-developed nations on a selective and piecemeal basis, and who also declined to share information with them, thereby relegating these hapless representatives to the same position as the press and observers from the NGOs (Sina•).

The WTO, like the World Bank and the IMF, lacks democratic accountability: within the organization, a handful of wealthy nations are able to conduct themselves with the condescension of oligarchs in their dealings with other member-nations. In the wider context supplied by international economic relations, the various WTO agreements serve essentially to provide largesse for the MNCs, who of course do not have the interests of the world's poorer peoples even remotely within their purview. As a complement to this, the poorer peoples of the world have little or no way of influencing the WTO, except by taking to the streets in mass mobilizations. Susan George has rightly said that it is now time to 'fix or nix' the WTO. She is right of course, but a bigger question remains, viz., the matter of reforming capitalism itself. If capitalism is fundamentally irreformable, then the failures and derelictions of the WTO are part of a wider, more 'systemic', breakdown. The battle against the WTO is thus a constituent of a more comprehensive struggle currently being waged by the dispossessed of the world and those in solidarity with them. The latter's prospects are uncertain, but the WTO and those aligned with it on the side of the current phase of capitalist expansion are not yet assured of a final victory. The outcome is still in the balance. . . .

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Kenneth Surin, Duke University