

**Deadlock in the Doha Round:
The Long Slow Decline of Trade Multilateralism**

DRAFT

By Daniel Drache and Marc D. Froese

May 2007

Please send constructive criticism to drache@yorku.ca and mfroese@yorku.ca

Deadlock in the Doha Round: The Long Slow Decline of Trade Multilateralism

By Daniel Drache and Marc D. Froese¹

Abstract

This paper argues that deadlock in the Doha Round of trade negotiations is due to the increasing complexity of economic globalization. It represents a transformative shift on the part of Member nations away from the current model of trade multilateralism and towards smaller negotiating platforms. We examine two main reasons for this changing pattern in international economic relations. First, with the rise of new global trading powers such as India, China and Brazil, the geopolitical playing field is in flux and the steady accumulation of political and market power in the global South has sapped the WTO's forward momentum. The second factor in the decline of trade multilateralism is a cocktail of rigid rules, non-tariff protectionism, and a crisis of representation that throws sand in the institutional gears of multilateral trade. The paper concludes with a discussion of trade multilateralism in historical context. This is not the first time the world has been faced with systemic changes in international economic relations. In the 19th and the early 20th centuries, global trade broke down – first with the end of the British free trade system, and shortly thereafter with the catastrophic collapse of the interwar trading order. Nevertheless, this qualitative shift in the negotiating strategies of states need not be seen as a return to protectionism. The explosion of preferential trade agreements represents a compelling political and economic logic of mutual advantage, and may be a more effective way of addressing the social and political dimensions of economic integration.

Recrimination, Bluffs and Brinksmanship

A little more than a decade has passed since the launch of the World Trade Organization, the first fully-realized institution of international trade governance. When the WTO took its place in the pantheon of international financial institutions, trade

¹ Special thanks to Sylvia Ostry whose provocative and insightful scholarship has set a high standard for Canadian trade studies. Portions of this paper were presented at the Canadian Political Science Association annual meeting in Toronto in 2006, at the Fudan University in Shanghai in 2006 and at the International Studies Association annual meeting in Chicago in 2007. For more WTO analysis and other research reports see www.yorku.ca/drache and www.robarts.yorku.ca.

analysts and Member countries believed that the multilateral system for the management of the global economy was largely complete.² Today, that initial optimism has evaporated.³ Calls for ‘open regionalism,’ where likeminded countries agree on deep liberalization strategies are becoming more pronounced.⁴ For big business and governments alike, trade rounds that last the better part of a decade are becoming irrelevant in a world where money and business move faster than ever. Furthermore, the WTO is enmeshed in a dangerous cycle of recrimination, bluffs and brinksmanship. Even Pascal Lamy, formerly European Trade Commissioner and now the current Director General, is unsure whether the WTO will pull out of its long, slow descent.⁵

The organization is caught between powerful competing interests and factions, and many experts have tried to explain its institutional paralysis.⁶ This paper argues that the primary causes of the WTO’s troubled state are twofold. First, with the rise of new global trading powers such as India, China and Brazil, the geopolitical playing field is in flux and the steady accumulation of political and market power in the global South has sapped the WTO’s forward momentum.⁷ The conventional wisdom holds that the single-undertaking, wherein membership requires that states sign all existing multilateral trade agreements, one of the WTO’s foundational innovations, is sufficient to discipline Members and lock in progressive liberalization. But the reality contradicts this

² Douglas A. Irwin. "The GATT in Historical Perspective." *The American Economic Review* 85, no. 2 (1995): 323-28.

³ Stephen Woolcock. "Making Multi-Level Rules Work: Trade and Investment Rules in Regional and Bilateral Agreements." United Nations University, 2005.

⁴ Krishna Guha. "US Experts Call for an End to Global Trade Rounds." *Financial Times*, April 21 2007.

⁵ Steve Charnovitz. "An Analysis of Pascal Lamy's Proposal on Collective Preferences." *Journal of International Economic Law* 8, no. 2 (2005): 449-72.

⁶ John Barton, Judith Goldstein, Tim Josling, and Richard Steinberg. *The Evolution of the Trade Regime: Politics, Law, and the Economics of the GATT and the WTO*. Princeton: Princeton University Press, 2006.

⁷ Daniel Drache. *Trade, Development and the Doha Round: A Sure Bet or a Train Wreck?* [PDF file]. Robarts Centre for Canadian Studies, York University, 2005. Available from www.cigionline.org/publications/docs/Trade_Dev_Drache.pdf.

assumption. Members from both the North and the South have proven to be adept at exploiting the legal loopholes of the system and at blocking consensus in contentious areas. Judith Goldstein blames the devolution of multilateralism toward regional and bilateral platforms on the drive by the US in the Uruguay Round for judiciable legal norms and enforceable dispute settlement rules that have created an organizational rigidity in the WTO.⁸

Three-quarters of the WTO's membership are developing countries and this fact goes a long way towards explaining the current changes underway in the liberalization dynamic. The new southern geographies of power agree with the United States on one thing – a bad deal is worse than no deal at all. Susan Schwab, the US Trade Representative hit the nail on the head when she said that “if you do one of these once every generation, and your objective is to liberalize trade, why would you settle for something that doesn't do a whole lot to liberalize trade?”⁹ So far the prospect of even an insubstantial but face-saving ‘Doha-lite’ conclusion to the negotiations seems uncertain.

The second factor in the decline of trade multilateralism is a cocktail of rigid rules, non-tariff protectionism, and a crisis of representation that throws sand in the institutional gears of multilateral trade. As a general rule, trade agreements do not eliminate protectionist sentiments or the ability of governments to vigorously defend production and employment interests.¹⁰ Rather, they keep these at politically acceptable levels. Even the current liberal order has failed to fully embed a liberalized framework

⁸ Barton et al, 2006. See also B. Peter Rosendorff. "Stability and Rigidity: Politics and Design of the WTO's Dispute Settlement Procedure." *American Political Science Review* 99, no. 3 (2005): 389-400.

⁹ Edward Alden and Alan Beattie. "Schwab to 'Think Big' on Market Access." *Financial Times*, June 12, 2006.

¹⁰ Joseph E. Stiglitz. "Social Justice and Global Trade." *Far Eastern Economic Review* 169, no. 2 (2006): 18-23.

for competition in its otherwise comprehensive regulatory system.¹¹ The WTO's subsidy and antidumping agreements were supposed to be a significant step beyond the arrangement of exemptions and waivers that typified GATT trade governance, but more than three thousand antidumping notifications suggest otherwise. Yet competition policy is not even on the WTO's radar for this round because agricultural liberalization issues are more pressing. For most members, agricultural market access symbolizes for most members the massive trade imbalance between north and south.¹²

Dispute settlement is the most significant deliverable of WTO governance and embodies all that is both problematic and progressive about the trade institution.¹³ This paper attempts to clarify some of the most important challenges to the legal rules that govern international economic behaviour. We analyze a number of important and unforeseen institutional consequences of the shift from an informal GATT mechanism to the mandatory norms and processes of WTO litigation.¹⁴ The tougher rules and higher standards contribute disproportionately to the current negotiating deadlock.¹⁵ WTO negotiations have entered an extended pause as Members step back to regroup and reconsider their trading needs.

¹¹ Jeffrey M. Drope and Wendy L. Hansen. "Antidumping's Happy Birthday?" *The World Economy* 28, no. 3 (2006).

¹² Jennifer Clapp. "Developing Countries and the WTO Negotiations." In *CIGI Working Papers - Global Institutional Reform*. Waterloo, ON: The Centre for International Governance Innovation, 2006.

¹³ Jacques H. J. Bourgeois. "Some Reflections on the Wto Dispute Settlement System from a Practitioner's Perspective." *Journal of International Economic Law* (2001): 145-54.

¹⁴ Keisuke Iida. "Is WTO Dispute Settlement Effective?" *Global Governance* 10, no. 2 (2004): 207-25.

¹⁵ Nancy Birdsall, Dani Rodrik, and Arvind Subramanian. *If Rich Governments Really Cared About Development* [PDF file]. International Centre for Trade and Sustainable Development, 2005 [cited April 23rd 2006]. Available from www.ictsd.org/dlogue/2005-07-01/Docs/RODRIK-BRIDSALL_SUBRAMANIAN_what-rich-can-do_April2005.pdf; See also Sylvia Ostry. "Who Rules the Future? The Crisis of Governance and Prospects for Global Civil Society." Paper presented at the New Geographies of Dissent: Global Counter-Publics and Spheres of Power, Robarts Centre for Canadian Studies, York University, January 27-28 2006; Gerald K. Helleiner "Markets, Politics and Globalization: Can the Global Economy Be Civilized?" Geneva: United Nations Conference on Trade and Development, 2000.

The paper concludes by hypothesizing that we are at the end of the golden era of postwar multilateralism and entering an era of aggressive regionalization.¹⁶ The devolution of the principles and aims of multilateralism to the regional level represents a major shift in the world trading system.¹⁷ This is not the first time the world has been faced with systemic changes in the international economy. In the 19th and the early 20th centuries, global trade broke down – first with the end of the British free trade system, and shortly thereafter with the catastrophic collapse of the interwar trading order. But this qualitative shift in the negotiating strategies of states need not be seen as a return to interwar protectionism.

In a different context, historian Tony Judt has argued that the institutionalization of the European Union was in part an attempt to erase the remembered horrors of the 1930s and 1940s.¹⁸ The same can be said of the GATT/WTO, which has operated under the shadow of protectionism and collapse for the past sixty years, and is haunted by the spectre of the interwar system each time negotiations bog down. However, we argue that the explosion of preferential trade agreements represents a compelling political and economic logic of mutual advantage. Some are little more than a bilateral retrenchment of current disciplines, setting a higher standard of protection for investment and intellectual property. But there is no single template. Scholars note that the tradeoffs are the same whether a nation enters into a regional or multilateral agreement. However, in recent years the perception has grown that the WTO's 'single undertaking' mode of

¹⁶ Jo-Ann Crawford and Roberto V. Fiorentino. "The Changing Landscape of Regional Trade Agreements." In *WTO Discussion Papers*. Geneva: World Trade Organization, 2005.

¹⁷ John Whalley. "Recent Regional Agreements: Why So Many, So Fast, So Different and Where Are They Headed?" In *CIGI Working Paper #9*. Waterloo, ON: Centre for International Governance Innovation, 2006.

¹⁸ Tony Judt. *Postwar: A History of Europe since 1945*. New York: Penguin Books, 2005. See Chapter 1 "The Legacy of War."

liberalization is more a straightjacket than it is an aggregation of collective interests. For many regions of the world, including North America, Europe, Asia and Latin America, the devolution of multilateralism is seen as a step forward, enabling diverse regional economies to broaden and deepen market access and to balance trade liberalization with other social goals.¹⁹

Deadlocked Agriculture Negotiations and the New Geography of Power

The creation of the WTO brought together under one umbrella the many disparate agreements that comprise the international network of trade treaties. But in an era of economic shift and political flux, the deadlock in agriculture negotiations exemplifies the minefield of complexity currently paralyzing the WTO. Agriculture negotiations are grouped around three important issues – the elimination of agricultural export subsidies permitted by developed countries, the reduction of domestic farm support (especially in the United States, Canada, Europe and Japan), and the lowering of high agricultural tariffs designed to keep low priced food products from developing countries out of northern markets.²⁰

Over the past fifty years agricultural subsidies have increased steadily in developed nations, even as industrial tariffs have fallen.²¹ The reason for this is simple. All countries operate under a mercantilist trade model in which international market

¹⁹ Daniel Drache. "The Imperative of the Social Bond: After the Triumph of Markets." In *New Socialisms: Futures Beyond Globalization*, edited by Robert Albritton, Shannon Bell, John R. Bell and Richard Westra. London: Routledge, 2004.

²⁰ Mark Turner. "Rich World's Subsidies Hitting African Growth." *Financial Times*, July 31 2003.

²¹ Michael J. Trebilcock and Robert Howse. *The Regulation of International Trade*. 2nd ed. London: Routledge, 1999.

openness is purchased with trade concessions.²² A smart buyer will not give up market access in sectors that are not able to compete favourably on world markets. Agriculture is not symbolic of the dysfunctional trading system so much as it is the one sector where the veil of economic theory slips and reveals the politics of global trade as they really are.

In the WTO's bargaining process, negotiators assume that the benefits of trade flow from concessions made by other members. Of course this perspective is a mirror image of the theoretical model of trade liberalization, in which the countries making the most concessions receive the greatest gains from trade.²³ In this case the standard assumption of trade negotiators represents reality and the theory is notably flawed, a fact underscored by the heavy concessions made by developing countries in the Uruguay Round and their uneven gains from trade over the past decade. Members who made the heaviest concessions in the early 1990s are still fighting for agricultural market access in the global north.²⁴

In a typical negotiating session, negotiators table a request for concessions and then make offers in response to other members' requests. The job of the negotiation chair is to help find a zone of agreement among the members. Working with the Director General and the Secretariat, a final package is compiled to meet the minimum requirements of each participating member. Once a package is in place, negotiators review it and ask their governments whether the package on offer is better than the status

²² Douglas A. Irwin. *Against the Tide: An Intellectual History of Free Trade*. Princeton, NJ: Princeton University Press, 1996.

²³ Gunnar Myrdal. *Economic Theory and Underdeveloped Regions*. London: University Paperbacks, 1957.

²⁴ Graham Dunkley. *The Free Trade Adventure: The WTO, the Uruguay Round and Globalism--a Critique*. London: Zed Books, 1997.

quo.²⁵ In agriculture, negotiating positions remain far apart, and after five years there has been no agreement reached on a package deal.

The process remains deadlocked because the developed countries have a huge political incentive to protect their rural producers. Farmers' votes are disproportionately heavy in many northern countries because the political system has not evolved with the changing demographics of the wealthy urban northern hemisphere. For example, 80% of Canada's population now lives in cities, whereas fewer than 60% lived in cities 50 years ago.²⁶ The family farm has all but disappeared. It exists today in the popular imagination of those living in advanced capitalist economies, but for the rural populations of Africa, Asia and Latin America, it is the defining reality. Furthermore, large-scale agriculture plays into the global north's view of progress with its labour saving technology and rationalized production methods. There is a large market for agricultural protection in the United States, Canada, Japan and Europe and no indication that politicians will roll back farm support to any great extent in the near future. In fact in the United States, subsidies for shrimp, corn, cotton and rice have increased.²⁷

Large industrializing countries, China and India in particular, also have an incentive to slow the agriculture negotiations. Trade liberalization is linked to structural adjustment and greater market efficiencies. China, for one, does not want a more efficient domestic agricultural sector just yet because this would swamp Chinese cities with

²⁵ Kyle Bagwell and Robert W. Staiger. "What Do Trade Negotiators Negotiate About? Empirical Evidence from the World Trade Organization." In *National Bureau of Economic Research Working Papers*. Cambridge: National Bureau of Economic Research, 2006.

²⁶ *Population and Dwelling Counts: A Portrait of the Canadian Population* Statistics Canada, 2007 [cited April 18, 2007]. Available from http://www12.statcan.ca/english/census06/release/release_popdwell.cfm. See also *Historical Statistics of Canada* Statistics Canada, [cited April 18, 2007]. Available from <http://www.statcan.ca/english/freepub/11-516-XIE/sectiona/toc.htm>.

²⁷ To see market information for American agricultural commodities, consult the US Department of Agriculture Economics, Statistics and Market Information Service at <http://www.ers.usda.gov/Publications>.

peasants looking for work – a migratory process that China is attempting to manage and control.²⁸ For India, the problem is more severe. There are 600 million Indian peasants eking out a living on small plots, and they constitute the vast majority of India's poor. Prime Minister Manmohan Singh has said repeatedly that there can be no deal unless India preserves the right to protect its rural poor from the tidal wave of globalization. Of course, India is now a net food importer and productivity is declining.²⁹

The Indian agricultural sector is due for major reforms, but until government has a hard strategy to overcome the obstacles to structural adjustment, there can be no deal on agriculture. At the other end of the emerging economy spectrum is Brazil, with its highly efficient, industrialized agricultural sector. Government in Brazil has effectively managed the transition from family farms to modern agribusiness. The public sector provided a number of support mechanisms to manage structural adjustment in the agriculture sector. Brazil's principal problem is American protectionism. Florida citrus growers have waged a successful political campaign to keep low priced Brazilian citrus products out of the American market, bringing to bear the full power of protectionist competition legislation.³⁰

Walking Away from a Bad Deal

The developing world understands that economic integration faces large political hurdles in becoming an engine for poverty reduction. Nevertheless, the West African

²⁸ *Putting China's Capital to Work: The Value of Financial System Reform* [PDF file]. McKinsey&Company, 2006 [cited June 7, 2006]. Available from www.mckinsey.com/mgi.

²⁹ Robert E. Evenson, Carl E. Pray, and Mark W. Rosegrant. *Agricultural Research and Productivity Growth in India* [PDF]. International Food Policy Research Institute, 1999 [cited May 2 2007]. Available from www.ifpri.org/pubs/abstract/abstr109.htm.

³⁰ Brink Lindsey. *U.S. Protectionism Imperils Free Trade Talks with Latins* [HTML file]. Cato Institute, 2002 [cited May 2 2007]. Available from <http://www.freetrade.org/node/254>.

cotton sector did the impossible, reorganizing production in order to effectively compete in global markets for cotton. Thousands of producers were forced out of the industry, subsidies were cut and incomes fell dramatically for those who remained. Today, West African cotton sells for 22 cents a pound. In contrast, American cotton costs about 88 cents per pound to produce. According to economic logic, West African cotton should have a comparative advantage in the United States, but it is not allowed into the country.

According to economists, doing away with these market distorting measures in agricultural and textile sectors would add more than \$300 billion to the value of global trade in agricultural products.³¹ The reality is likely to be more complex. Ultimately, nobody wants to see full agricultural liberalization, everybody wants to manage the process, purchasing the benefits of trade at fire sale prices if possible, or simply passing on a deal if the price is not right. This willingness to take a pass on a bad deal has fundamentally shifted negotiating momentum away from the Uruguay Round ‘quad,’ and towards emergent coalitions of developing countries such as the G-20 and a plethora of alphabet organizations organized by sector, industry and region.³²

It comes as no surprise that after five years of negotiation there is no grand bargain on agriculture at the WTO. This does not mean there has not been progress in some areas. After the Cancun ministerial in 2003 members agreed to eliminate export subsidies, including politically popular export credits for farmers, which will be

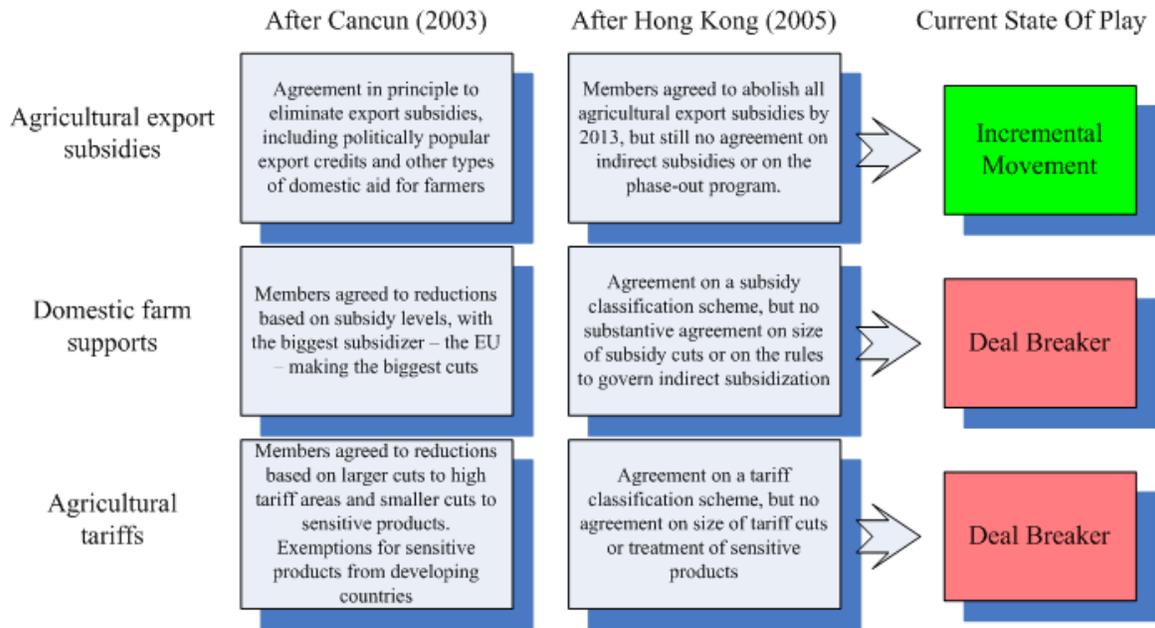
³¹ Kym Anderson and Will Martin, “Agricultural Trade Reform and the Doha Development Agenda” *The World Economy*, Volume 28, Number 9, September 2005, pp. 1301-1327.

³² These groups include the G110 which is an umbrella grouping of nine Global South single issue groups: the G20, the ACP, the LDCs, the African Group, the SVEs, NAMA 11, Cotton 4 and CARICON. Add to this the G90, the least developed countries and the G33. Non-reciprocity in market access for agriculture products as well as so-called ‘smart coalitions’ have also gained presence. India and Brazil have been invited to become part of a small group of countries called the Five Interested Parties. Bloc coalitions as well as issue based alliances have given the global south capacity to hold out against pressures to make a deal as they have in the past.

abolished by 2013. European and North American farmers also enjoy an unprecedented level of domestic support under the pretext of protecting domestic food supplies and rural jobs. Domestic farm support has been targeted for significant reductions as it is one of the leading causes of overproduction, waste and agricultural dumping, in which northern food products are dumped on third world markets. In 2005 there was agreement on a subsidy classification scheme, but no substantive agreement on the size of the cuts or on the rules with which to govern indirect subsidies has been reached.

Agricultural tariffs are the most prominent and politically contentious form of protection. Developing countries can seldom afford expensive subsidization and export credit programs for farmers, but most developing nations use tariffs to protect their own agricultural industries. After Cancun members agreed on a system of reductions based on larger cuts to high tariff areas and smaller cuts for sensitive products. Sensitive products from developing countries would be exempt from any cuts. By 2005 there was full agreement on a tariff classification scheme, but no agreement on the size of the tariff cuts or on how to categorize sensitive products. Like the movement on domestic farm support, tariff negotiations grind along with some agreement in principle on a common approach to classifying what needs to be liberalized, but no agreement on the liberalization process or the overall depth of cuts.

**Table 1: Agricultural Trade Liberalization in the Doha Round:
Progress at a Snail's Pace**



Northern Intransigence or Southern Blocking?

It is easy to blame northern intransigence or southern blocking strategies for the current gridlock in agriculture and cotton. Yet the biggest reason for an inability to conclude a deal in the Doha Round is the comparative weaknesses of a single undertaking model of deal-making in relation to other forms of multilateralism. The consensus among scholars is that the growth of the multilateral trade system, from the 23 Members that participated in the first round of GATT negotiations at Geneva in 1947, to the 123 members that completed the Uruguay Round in 1994, to the 150 Members of the WTO today, has strained the institution's multilateral negotiating model considerably.³³

³³ Peter Drahos. "When the Weak Bargain with the Strong: Negotiations in the World Trade Organization." *International Negotiation* 8 (2003): 79-109.

Up to the Uruguay Round, a mercantilist approach to trade multilateralism was instrumental to driving down tariff walls. The logic of gaining market access through strategic concession allowed governments to sell market liberalization to domestic publics as a series of ‘win/win compromises’ - one of the most overused clichés of trade politics. Publics, however, are increasingly sophisticated and demand that their governments get the best deal possible. The two-level game of international diplomacy has finally overturned the rarefied world of the GATT.³⁴ Developing countries led by

India and Brazil have developed highly successful blocking strategies. Ruggie reminds us that the goal of trade liberalization have never been literally free trade, but developing rules and norms to smooth international transactions.³⁵ With so many members and so little substantive agreement, the green room, where trade ministers and lead

**Preamble to the Marrakesh Agreement
Establishing the World Trade
Organization**

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to **raising standards of living**, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, 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. [emphasis added]

Source: WTO legal texts at www.wto.org

negotiators from the developed countries strong-armed reluctant participants, is no longer an effective mechanism for consensus-building.

Trade Protectionism after the Uruguay Round

³⁴ Robert D. Putnam. "Diplomacy and Domestic Politics: The Logic of Two-Level Games." *International Organization* 42, no. 3 (1988).

³⁵ John Gerard Ruggie. "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order." *International Organization* 36, no. 2 (1982): 379-415.

Hudec likens the rise of non-tariff barriers to the uncovering of submerged stumps when draining a swamp.³⁶ As tariff barriers fall, other forms of trade protectionism rise in importance. WTO jurisprudence is not far advanced and cannot give clear guidance in the areas of public policy dealing with predatory subsidies, dumping, and international competition policy.³⁷ It is one of the institutional oddities of the WTO that at the heart of the organization there remains a well-advanced and member-sanctioned system of legalized non-tariff protectionism. In fact, WTO membership may even provide a built-in incentive for states to develop antidumping legislation in order to fully utilize all legal competition strategies available.³⁸

Dumping is the practice of exporting a product for less than the cost of producing it, or for less than the 'normal value' of the product on the firm's home market.³⁹ In domestic markets, producers sometimes sell their goods below cost in an effort to clear inventory or break into a market dominated by rival producers. On the whole, this practice benefits consumers. However, in international trade, selling goods for less than the cost of production is considered to be an unfair form of competition. Antidumping is a global bad because it is frequently used by the global north against southern producers whose primary comparative advantage is cheap labour. Global north countries use it

³⁶ Robert Hudec. *Essays on the Nature of International Trade Law*. London: Cameron May, 1999.

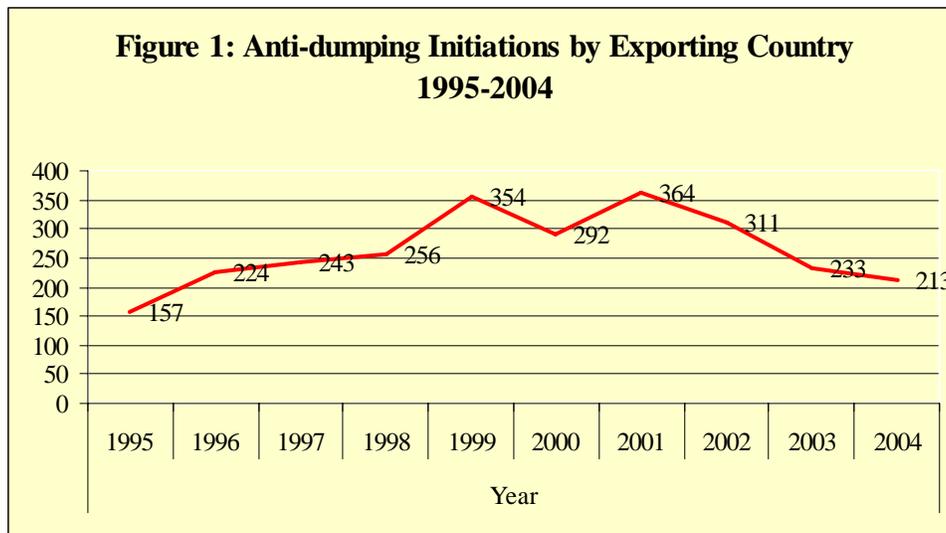
³⁷ John O. McGinnis and Mark L. Movsesian. "The World Trade Constitution." *Harvard Law Review* 114, no. 2 (2000): 511-605.

³⁸ As of 2006, 68 members are on record at the WTO as having antidumping legislation. Twenty-eight members have notified the WTO that they have no such legislation, and the rest of the membership have not contacted the Committee on Antidumping Practices to report the status of their legislation. "Report (2006) of the Committee on Anti-Dumping Practices." Geneva: World Trade Organization, 2006.

³⁹ Department of Finance. *Antidumping Information Paper* [HTML document]. Department of Finance, Canada, November 17, 2004, 2003 [cited October 21, 2005]. Available from http://www.fin.gc.ca/activity/pubs/antidmp01_e.html.

against each other to protect market share for domestic industries – needless to say, antidumping measures are frequently subject to abuse.⁴⁰

A mind-boggling 2637 instances of antidumping were reported to the WTO in the ten years from 1995 to the beginning of 2005 (see Figure 1 below). Only about 5% of these went to the panel process, yet antidumping triggers a cycle of relentless trade politics that benefits the most powerful traders – a fact the WTO has been quick to recognize and slow to rectify. This bare-knuckle reliance on antidumping as a trade strategy has four steps: push hard for concessions from trading partners during negotiations, concede less in return, exploit the legal loopholes found in WTO governance, craft a deal and then withdraw the complaint. This explains why so many antidumping actions are little more than bargaining chips to be used in the ongoing negotiating game of trade-roulette.



Source: WTO online antidumping databases

⁴⁰ Linda, M. Young and John Wainio. "The Antidumping Negotiations: Proposals, Positions, and Antidumping Profiles." *The Estey Centre Journal of International Law and Trade Policy* 6, no. 1 (2005): 23-46. Brink Lindsey and Dan Ikenson. "Coming Home to Roost: Proliferating Antidumping Laws and the Growing Threat to U.S. Exporters." Cato Institute for Trade Policy Studies, 2001.

Bourgeois and Messerlin examined European antidumping cases at the GATT between 1980 and 1997. They found an inverse relationship between the height of the tariff wall protecting domestic firms and the frequency of their involvement in antidumping cases.⁴¹ As tariffs fell, countries engaged more frequently in antidumping trade remedy actions. In this legal culture, the losers are small developing economies such as the African, Caribbean and Pacific (ACP) nations. As Bown, Hoekman and Ozden have shown, poor countries are most frequently the target of antidumping actions; they are less likely to settle cases and more likely to face high dumping duties. They are also less likely to bring their cases to the WTO.⁴²

The case of China exemplifies the present policy quagmire surrounding antidumping. China has been the single biggest target of antidumping remedies in recent years because according to the WTO, it is a non-market economy (NME), a generalized category left over from cold-war trade politics.⁴³ In the past decade, China has lessened government controls, strengthened private property rights and met the standards for WTO accession. Ironically Russia, yet to qualify for WTO membership, has actually moved backwards on economic reform but has already been recognized by the US and EU as a market economy.⁴⁴

⁴¹ Jacques H. J. Bourgeois and Patrick A. Messerlin. "The European Community's Experience." In *Brookings Trade Forum 1998*, edited by Robert Lawrence. Washington D.C.: Brookings Institution Press, 1998.

⁴² Chad P. Bown, Bernard Hoekman, and Caglar Ozden. "The Pattern of US Antidumping: The Path from Initial Filing to WTO Dispute Settlement." *World Trade Review* 2, no. 3 (2003): 349-71.

⁴³ Guy de Jonquieres. "Chinese Market Economy Puzzle." *Financial Times of London*, May 1 2006.

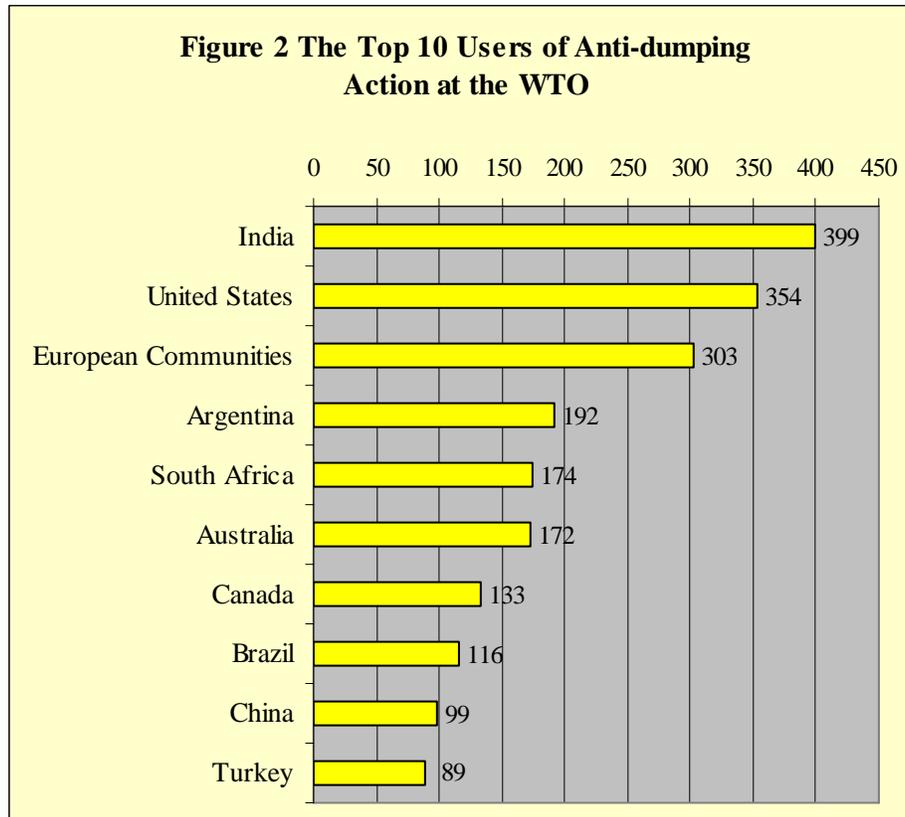
⁴⁴ NME status is a magnet for antidumping violations. Imagine that a Chinese firm produces handbags and sells them at home for \$10 apiece and in foreign markets for the same price. Handbag manufacturers in the US, who sell their product for \$25 apiece, complain to the Department of Commerce that Chinese manufacturers are dumping handbags on the American market. Article 2.1 of the Antidumping Agreement states that "a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country."

The real issue behind the use of these trade measures is the changing geography of power driven by a global redistribution of labour, not unfair trade practices *per se*.⁴⁵ China has been slapped with 338 antidumping measures since its accession five years ago.⁴⁶ The most frequent complainants have been the EU, US and India, who applied measures against Chinese chemicals, base metals and electronics. China, however, has learned the value of antidumping measures for protecting domestic producers as well. As one of the most active users of antidumping measures, China has imposed dozens of measures on chemicals from the EU, steel from Japan, and paper from the United States and Korea, as the list of the top ten antidumping remedy initiators shows below (see Figure 2 below).

The usual test of dumping is a comparison of handbag prices on the domestic market and their price in foreign markets. But China is a non-market economy according to the WTO, which means that its industries are assumed to be heavily subsidized and this would drive down the price of handbags in the domestic market. So the WTO allows complainants to use a proxy market to test domestic prices. If the Department of Commerce examines the price of handbags on the Indian market, and finds that they are sold for \$15 apiece, antidumping duties may be levied against Chinese handbags. NME status means that even if Chinese handbags are produced according to free market rules, manufacturers may still face steep duties when selling in the US.

⁴⁵ Antidumping measures are a blunt instrument wielded against China because northern manufacturing has been hard hit by China's rise. The export surges, in textiles for example, are unlike anything seen before. Between January and June 2005, Chinese positions in European textile markets grew by up to 500%. Europe negotiated quantitative restrictions, reverting to managed trade in this sensitive sector where Chinese competition puts close to a half million jobs at risk. See *EU Textile Imports from China: Some Important Points* [HTML file]. European Union Trade Commission, 2005 [cited May 25, 2006]. Available from http://ec.europa.eu/comm/trade/issues/sectoral/industry/textile/memo120905_en.htm.

⁴⁶ Antidumping statistics are available from the WTO at www.wto.org/english/tratop_e/adp_e/adp_e.htm.



Source: WTO online antidumping databases

The Evolution of Antidumping in the GATT/WTO System

The regulation of non-tariff protectionism is now an important part of any modern trade regime because liberal antidumping laws at the transnational level often act as a stand-in for an international competition policy.⁴⁷ Competition policy is off the table in the Doha Round ensuring that antidumping remains an issue for the foreseeable future. Why is this? A supranational competition policy is contentious and would require the global North to implement many of the structural adjustment policies that have been foisted on the developing world by international financial institutions.⁴⁸ In theory

⁴⁷ N. Gregory Mankiw and Philip L. Swagel. "Antidumping: The Third Rail of Trade Policy." *Foreign Affairs* 84, no. 4 (2005): 107-19.

⁴⁸ Greg Anderson. "The Compromise of Embedded Liberalism, American Trade Remedy Law, and Canadian Softwood Lumber: Can't We All Just Get Along?" *Canadian Foreign Policy* 10, no. 2 (2003): 87-108.

competition policy allows countries the flexibility to reform Fordist mass-production industries faced with cheap foreign imports.⁴⁹

In a liberalized international environment, there are significant political and economic implications for small members and WTO legitimacy.⁵⁰ For one, small members cannot afford the cost of subsidies, or for that matter, expensive antidumping remedies. Poor southern countries also lack the ability to enforce compliance in the event that they win against a larger developed country.⁵¹ For another, the WTO's free trade ideal takes a hit when its biggest proponents preach free trade while simultaneously maintaining lucrative stop-gap measures for influential business insiders – as much true in Europe and Asia as it is in the United States.

Export credit agencies are but one of the latest and most innovative uses of proactive industrial support to sweep the European Union and Japan. They support domestic exporters who are trying to crack markets in Turkey, Mexico, Iran and China. These agencies protect the investment of domestic exporters, significantly lowering the risk of emerging markets for medium-sized industry leaders.⁵² In 2004, EU governments

⁴⁹ The Byrd Amendment is the most recent example of the way that anti-dumping is used to protect mature industries that employ a large number of workers and carry on well-organized lobbying efforts and exert significant political influence domestically. American softwood lumber producers have pocketed more than \$5 billion in punitive levies since 2001. Canada and the US have just crafted a compromise deal that imposes quantitative restrictions on Canadian softwood for the third time in the past twenty years. The deal allows US producers to keep \$1 billion of the illegal duties collected. A significant reason for American success with trade remedy action is that the US Congress has a high degree of autonomy that has no equivalent elsewhere – a power that domestic business interests exploit very effectively. See www.dfait-maeci.gc.ca/eicb/softwood for a full account of the dispute. See also Bruce Odessey, *House Panel Approves Repeal of Byrd Amendment after WTO Ruling* [HTML File]. Washington File, 2005 [cited May 10th 2006]. Available from www.usinfo.state.gov.

⁵⁰ Anderson 2003

⁵¹ Benjamin L. Brimeyer. "Bananas, Beef and Compliance in the World Trade Organization: The Inability of the WTO Dispute Settlement Process to Achieve Compliance from Superpower Nations." *Minnesota Journal of Global Trade* 10, no. 1 (2001): 133-68.

⁵² Martin Wolf. "What India Must Do to Catch up with and Possibly Outpace China." *The Financial Times*, February 15th 2006.

spent \$73 billion on state aid for industry.⁵³ Many forms of subsidization are illegal under EU law, but thanks to the many loopholes, the EU commission is powerless to stop states from supporting their corporate sectors.

Making the Link Between Antidumping and Subsidies

Antidumping trade remedies are almost always linked to the charge of unfair subsidization. American producers have relied on antidumping remedies as their preferred form of protectionism since the Smoot Hawley Tariff Act was signed into law on June 17, 1930.⁵⁴ To wit, the US practice of subsidising and providing anti-dumping relief to their steel industry has already generated complaints on 13 separate issues around US trade in steel products. Canada has also been targeted by the US and New Zealand for the subsidy/anti-dumping protectionism of its dairy industry,⁵⁵ its civilian aircraft by Brazil⁵⁶ and its automotive sector by Japan and the European Union.⁵⁷ India took the European Union to the WTO regarding its anti-dumping protection of Europe's textile industries.⁵⁸

In each of these leading cases, the WTO failed to impose its brand of regulatory convergence, despite a show of compliance on the part of defendants. When states are ordered to stop subsidizing domestic industry, they simply switch tracks or tweak policies to remain in bounds according to the Agreement on Subsidies and Countervailing

⁵³ Keith Marsden. *Reforming WTO Subsidy Rules: A Better Deal for Taxpayers* The TaxPayers' Alliance, 2005. Available from www.taxpayersalliance.com.

⁵⁴ I. M. Destler. *American Trade Politics*. 4th ed. Washington, DC: Institute for International Economics, 2005.

⁵⁵ *Canada - Measures Affecting the Importation of Milk and Exportation of Dairy Products*, WT/DS103 (1999).

⁵⁶ *Canada — Measures Affecting the Export of Civilian Aircraft*, WT/DS70 (1997).

⁵⁷ *Canada — Certain Measures Affecting the Automotive Industry*, WT/DS139, WT/DS142 (1998).

⁵⁸ *European Communities — Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141 (1998).

Measures. One example of this commercial practice is Brazil's subsidization of Embraer and Canada's financing deals with Bombardier. These firms remain global rivals and both countries continue to pursue national interests in the lucrative market for regional jets.⁵⁹ Embraer and Bombardier hold a special status and continue to enjoy preferential treatment from their respective governments. To ignore the large role of subsidies in development is to overlook Krugman's argument that trade competitiveness and hard-won market access are inevitably the outcome of a high-powered and focused industrial strategy, not the abstract principles of comparative advantage.⁶⁰

Of course, not every country's industrial policies will be forward-looking and innovative. But what is indisputable is the fact that the state continues to have a large role to play in shaping the trade advantages enjoyed by domestic industry.⁶¹

Globalization has not hollowed out state authority to anywhere near the degree many believe. Pundits keep repeating this mantra, but the rise of China shows how misleading this idea is. State controlled companies remain surprisingly resilient actors in a post-Washington Consensus era. Despite market liberalization measures, state-owned enterprises still account for 80% of China's economic output. Unsurprising for a quasi-communist authoritarian state, but what of Europe? For Finland, they account for just under 80% of economic activity. In the Netherlands, one of the most market-friendly jurisdictions, state enterprises control about 50% of all corporate assets. For Sweden, Italy and France, the number is closer to 30%.⁶²

⁵⁹ Jaqueline D. Krikorian. "Planes, Trains, and Automobiles: The Impact of the WTO 'Court' on Canada in Its First Ten Years." *Journal of International Economic Law* 8, no. 4 (2005): 921-75.

⁶⁰ Paul Krugman. *Rethinking International Trade*. Cambridge, MA: MIT Press, 1990.

⁶¹ Paul Krugman. "Competitiveness - a Dangerous Obsession." *Foreign Affairs* 73, no. 2 (1994).

⁶² "Numbers in the News: Stately Enterprises." *Financial Times*, March 10th 2006.

The Representation Crisis

Global civil society activists have been right to emphasize the vast inequality of institutional trade outcomes for rich and poor countries. At first, income inequality among the membership did not seem to affect the performance of the WTO.⁶³ But over time, the power imbalance has been shown to have significant institutional side effects that lower the morale of the membership and nurture an environment of distrust and recrimination. After almost a decade, it is disappointing to learn that southern countries still do not use the Dispute Settlement Mechanism (DSM) as frequently as developed countries.⁶⁴

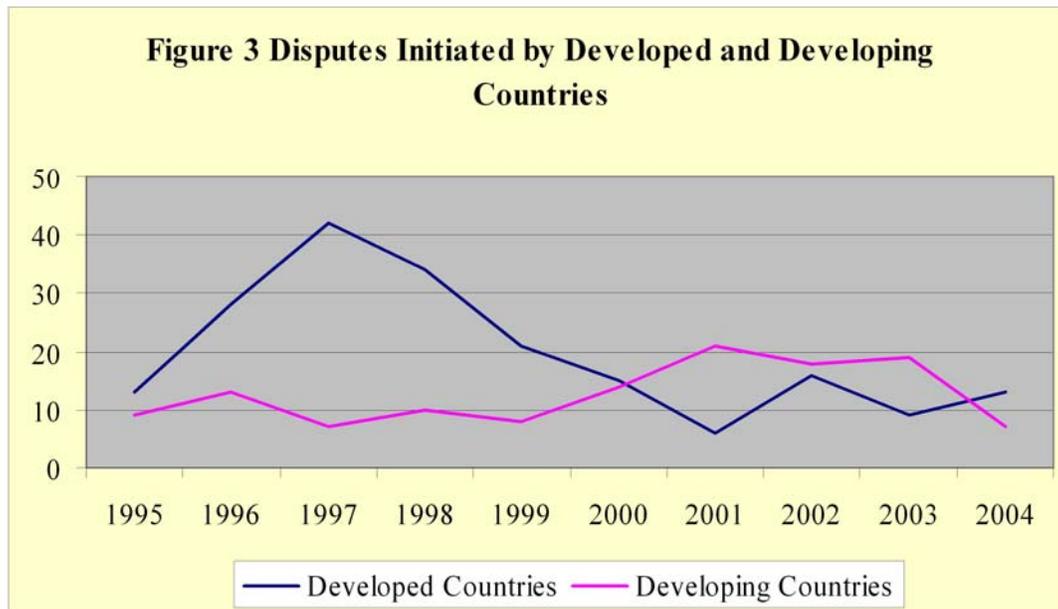
The greatest inequality between the global North and South at the Dispute Settlement Mechanism was experienced in 1997, when developed countries brought more than forty cases and developing countries fewer than ten. However, by 2004 only twenty cases were brought to the WTO, with developing countries initiating seven, or 35% of total cases. This was down from 2003, when 28 cases were initiated and developing countries accounted for 19 of them, or 68% of all cases (see Figure 3 below). When four-fifths of the membership is classified as developing, this is a significant commentary on the current institutional arrangement.⁶⁵ Of the 148 members, 81 have never used the DSM. Further, 278 of 329 cases taken to the DSM to date involve developed countries as complainants or respondents. Dispute settlement has not been democratized in the least,

⁶³ Abram Chayes and Antonia Handler Chayes. *The New Sovereignty: Compliance with International Regulatory Agreements*. Cambridge, MA: Harvard University Press, 1995.

⁶⁴ Walden Bello and Aileen Kwa. "The Stalemate in the WTO." Focus on the Global South, 2003.

⁶⁵ Drache 2005

and the wealthiest traders ought to be alarmed by the failure to get the rules right for the poorest members.



Retaliatory Dynamics

Global trade politics has developed its own institutional forms and challenges.⁶⁶ Many of the disputes brought by the developed north to the DSM have roots in previous cases. Sometimes, as in the Bananas Case, they are the result of long-running bilateral disputes that the WTO is unable to resolve. Other times, as in the Boeing/Airbus disputes between the US and EU, they are the result of retaliatory litigation. This retaliatory dynamic is the result of clashing norms and standards.⁶⁷ One area where this dynamic is most in evidence is the area of food safety because the EU has imposed extensive restrictions on genetically modified organisms. It touches a raw nerve for civil society

⁶⁶ In almost fifty years, the GATT heard more than 400 cases. The WTO had logged 329 cases in a single decade. See John Braithwaite and Peter Drahos. *Global Business Regulation*. Cambridge: Cambridge University Press, 2000.

⁶⁷ Oxfam International. "Rigged Rules and Double Standards: Trade, Globalization and the Fight against Poverty." London: Oxfam International, 2002.

activists who believe the WTO is unfit to decide “what we should eat, and what farmers should grow,”⁶⁸ as well as for heavily subsidized American agricultural producers who view European markets as the next logical frontier of market expansion. It is a top priority of the WTO to eliminate this rift. In fact, Lamy has staked his leadership of the WTO on getting the Doha back on track by making substantial gains for the global South while placating civil society with talk of ‘humanizing globalization.’⁶⁹ He has given new legitimacy to the fact that states bear the final responsibility for articulating collective preferences and accommodating democratic choice.⁷⁰

It is telling that North-North disputes are much more frequent (127 cases by the beginning of 2005) than are south-south disputes (51 cases). In fact, north-north disputes by far surpass both the number of north-south and south-north disputes. A developed country is nearly twice as likely to initiate a dispute against another developed country as against a developing country. Moreover, a northern country was sued only 40% of the time by a southern country. In the future, with India and others becoming more active, this could change.

Out of the 329 cases taken to the DSM between 1995 and 2005, 203 cases, or 62%, have been launched against developed countries. When we look at the number of cases in which developed members are involved as co-complainants or co-respondents, the number rises significantly; 278 of 329 cases involve developed countries as complainants or respondents. In percentage terms, this means that 85% of WTO disputes involve at least one developed country. Only 15% of disputes (51 of 329 cases) involve

⁶⁸ Alan Beattie. "Food Ruling Will Keep WTO in Activists' Sights." *The Financial Times*, February 8, 2006.

⁶⁹ Pascal Lamy. *Humanising Globalization*. World Trade Organization, 2006 [cited January 31, 2006]. Available from www.wto.org/english/news_e/sppl_e/sppl16_e.htm.

⁷⁰ Charnovitz 2005.

only southern interests. If the WTO is to survive future rounds, southern countries will need to buy into the DSM in a way they have not in the past ten years.

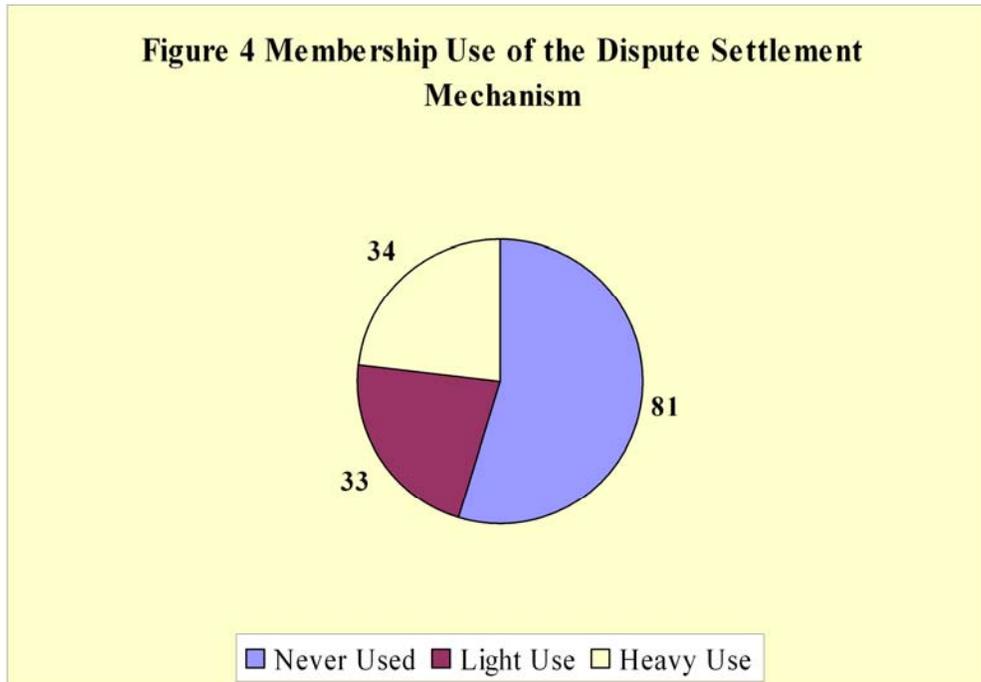
So far, there is little optimism for a sea-change in DSM usage. Only 67 members are on record as having participated in at least one dispute, and 33 of these have been involved in three or fewer cases (see Figure 4 below). Canada, the US, the European Union and Japan file the largest number of complaints and responses – unsurprisingly they account for around 60% of the world’s merchandise exports. The US is far and away the biggest user of the consultations system, filing at least 30% more complaints than the EU, and almost twice as many responses.

Most users of the DSM have little experience with the panel process, and many developing nations are only tangentially involved in dispute settlement although they have large interests at stake. For example many developing countries were involved on both sides in the Bananas dispute, which paradoxically was actually a market access battle between the EU and US.⁷¹ The US succeeded in reasserting its long-standing geopolitical interests in Central and South American markets. The irony is that the WTO system was supposed to empower small trading countries and mitigate historic power inequalities. Instead it pitted poor African and Caribbean nations against small economies in Latin America. This case is typical of current dispute settlement dynamics in which developing countries are enlisted proxies for the hard power interests of the global North.⁷²

⁷¹ Josyline Javelosa and Andrew Schmitz. "Costs and Benefits of a WTO Dispute: Philippine Bananas and the Australian Market." *The Estey Centre Journal of International Law and Trade Policy* 7, no. 1 (2006): 58-83.

⁷² A. Clair Cutler. *Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy*. Cambridge: Cambridge University Press, 2003.

Figure 4 Membership Use of the Dispute Settlement Mechanism



Why has southern participation in dispute settlement remained so low, despite the rise of strong traders such as China, India, Brazil, Argentina and Mexico? There are two simple reasons. First, for many developing nations, post-colonial sovereignty was hard-won, and governments do not want to cede policy space to external experts. In this vein, the World Bank and the United Nations also argue that local capacities should be developed by governments, not by multinational corporations that are more concerned with shareholder value than they are with the quality of life of southern citizens.⁷³

Second, the failures of structural adjustment in the 1980s and 90s reinforce the view that supranational trade governance is a risky endeavour with neo-colonial overtones.⁷⁴ Developing countries ceded a lot of ground in the Uruguay Round, trading services and intellectual property liberalization for binding dispute settlement and

⁷³ *Drug Companies Vs. Brazil: The Threat to Public Health* [RTF file]. Oxfam GB, 2001 [cited April 10, 2006]. Available from http://www.oxfam.org.uk/what_we_do/issues/health/drugcomp_brazil.htm.

⁷⁴ Walden Bello. *Why Reform of the WTO Is the Wrong Agenda* [HTML File]. Focus on the Global South, 2003 [cited June 10 2003]. Available from www.portoalegre2003.org.

promises on agricultural market access. Over the past five years there has been little movement on Doha priorities (see Annex 1). And even the Joint Integrated Technical Assistance Program (JITAP), designed to prepare developing countries to access WTO legal processes, has made very little difference in the dispute settlement numbers.⁷⁵

The End of the Golden Era of Trade Multilateralism

The accumulation of political and market power in the global South, the WTO's hyper-legalism, and an all or nothing process of bargaining have taken their toll on the world trading system. Of course the overall decline in the quality and value of trade governance is something that cannot be observed from up close; the WTO is living in its own echo chamber. Yet this is mounting evidence that the WTO is entering a period of what scholars call a regime shift. Helfer has noted that states create regimes to "reduce the transaction costs and information problems that plague uncoordinated state relations."⁷⁶ Once a regime is in place, it is 'sticky;' it generates a number of costs and benefits, and these, accompanied by states' continued investment in it, allows a regime to remain in existence even though the interests of founding members such as the US and EU have begun to diverge.⁷⁷

The predictive value of regime theory is that it shows how when interests change, "states and nonstate actors attempt to reshape a regime's constituent principles, norms and rules," often with unintended outcomes for interstate relations and for global

⁷⁵ JITAP has been widely supported by social democratic nations in Europe and by Canada. The US is much more reluctant to provide funds for technical capacity building. For more research on the difficult issue of technical assistance, consult www.jitap.org.

⁷⁶ Laurence Helfer. "Regime Shifting: The Trips Agreement and New Dynamics of International Intellectual Property Lawmaking." *Yale Journal of International Law* 29, no. 1 (2004). p. 7.

⁷⁷ Peter J. Katzenstein, Robert O. Keohane, and Stephen D. Krasner. "International Organization and the Study of World Politics." *International Organization* 52, no. 4 (1998): 645-85.

governance.⁷⁸ Regime shifting is an attempt to alter the status quo by moving focus and resources out of one regime and into another. In the international trade regime, there has been a steady increase in regional and bilateral deals, even as more countries continue to join the WTO. It is important to note that regime shifting is not a phenomenon of twentieth century globalization. Throughout the modern era, states have relied upon a tactical approach to interstate cooperation.

In his classic analysis of the rise and decline of British free trade, Charles Kindleberger documented how the British believed that the international trading system would dominate the world and last for a century or more.⁷⁹ But Bismarck was the great spoiler, rejecting this Anglo-centric system that was designed in the interests of the British Empire. Germany as a rising industrial power, decided that its strategic interests were best served by high tariff walls. A mercantilist arms race between Britain and Germany was the tipping point prior to World War I.

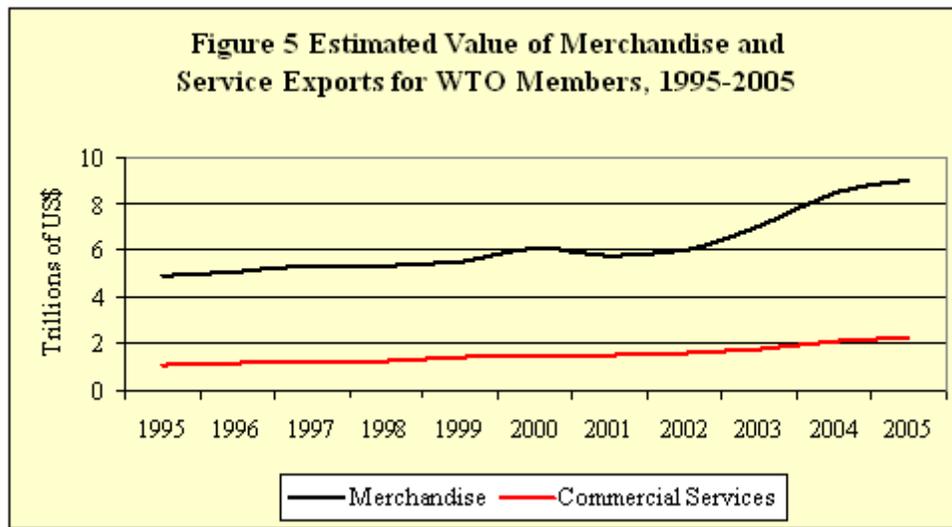
The current trading system bears a striking resemblance to the 19th century British system in that the United States plays the part of ‘benign hegemon,’ guaranteeing the system’s viability even though smaller states and economic actors have become restive under American leadership. Like then, inter-capitalist rivalry is again on the rise and markets no longer look exclusively to the United States for financial leadership. The recent slump in equity prices caused by a stock market run in China emphasizes this point.⁸⁰ Significantly, states are increasingly reluctant to place all their resources and efforts at the service of this particular regime and the interests it represents. Despite any

⁷⁸ Helfer 2004, p. 9.

⁷⁹ Charles Kindleberger. *A Financial History of Western Europe*. New York: Oxford University Press, 1993.

⁸⁰ *Taking Stock in China - the Day After* [PDF file]. TD Bank Financial Group, 2007 [cited April 18, 2007]. Available from http://www.td.com/economics/special/rk0207_china.pdf.

claims to the contrary, the world economy's relationship to the WTO is complex because the trading system has multiple centres. Even as the Doha Round falters, the value of merchandise and service exports continues to grow. In 2005 world merchandise exports were worth approximately \$9 trillion, and the export of services topped \$2 trillion, as Figure 5 shows. Today beggar-thy-neighbour protectionism is not on the horizon. No country wants to roll back the world economy to the 1930s.



Source: World Trade Organization, International Trade Statistics 2006

Compellingly, Boltho argues that the end of the British trading order did not presage an end to interstate trade. The growth of world trade barely slowed after 1880, and in fact GDP growth in OECD countries after 1880 was actually higher (2.6%) than it was between 1850 and 1880 (2.3%).⁸¹ Despite a moderate level of protectionism, growth continued unabated and a relatively open trading system remained a pragmatic reality rather than an ideological conviction. But much was in flux in the international system. Inter-capitalist rivalry was on the rise, and in Germany, it took the form of Prussian militarism. Nevertheless, trade only collapsed entirely when beggar-thy-neighbour

⁸¹ Andrea Boltho. "The Return of Free Trade?" *International Affairs* 72, no. 2 (1996): 247-59.

economic policies destroyed the system in the midst of thirty turbulent years between 1914 and 1945. It took a world war to dismantle the previous trading system and lay the foundation for the postwar compromise between economic liberalism and the welfare state. Inevitably, it takes a system wide crisis to clear the required policy space for new forms of governance to emerge.

In the 'medieval' processes of trade liberalization, the WTO is not hamstrung by special interests, as much as by the realities of global politics which have roughly intruded on the theory of trade liberalization.⁸² Unfettered liberalization unleashes in many countries a large and uncertain structural adjustment process. The expectation is that trade will stimulate economic performance, driving up wages and productivity. But stiff global competition frequently forces firms to shed labour and cut wages. It is the human cost of adjustment that is not factored into the neoliberal trade model, and developing member governments are unwilling to sign a blank cheque for Doha as they did at the Uruguay Round.

We have argued that the current crisis is not a system-wide meltdown. Rather it is an accumulation of institutional rigidity, non-tariff protectionism, a shifting geography of power and a narrow organizational focus on commercial interests in a world increasingly concerned with international inequality and poverty eradication. The need for developed countries to compensate losers in the global economic restructuring process is the newest idea migrating from the margins to the mainstream.⁸³ Economists such as Rodrik and Stiglitz are advocating that rich countries compensate globalization's losers in poor

⁸² Robert Wolfe. "Decision-Making and Transparency in the 'Medieval' WTO: Does the Sutherland Report Have the Right Prescription?" *Journal of International Economic Law* 8, no. 3 (2005): 631-45.

⁸³ The social safety nets of developed countries already absorb some of the costs of structural adjustment. France, the US, Germany and Holland compensate the victims of free trade through job retraining, income replacement and long term unemployment benefits.

countries as well.⁸⁴ Bhagwati has called for greater labour mobility for service providers from the global South.⁸⁵ In the north, the central issues are income replacement and education. Part of this compensation package must be a reform package at the WTO that recognizes the unique importance of equity in development. It is an idea long overdue, and without it, global free trade is without a viable future. It will likely take more than a decade to win this ideological battle for compensation, but the international trade regime of the future will be a very different place. Whether it will be a more equitable system depends upon how the WTO meets two important challenges in the upcoming years.

The first challenge comes from the WTO's inward-looking focus on its own rules and practices – often to the exclusion of other sources of public international law. There has never been a comfortable fit among the dozens of treaties, conventions, diplomatic understandings and legal principles that comprise the body of public international law. Some of the most impressive milestones are the international ban on landmines (1997),⁸⁶ the International Criminal Court (1998)⁸⁷, and the Earth Summit in Rio de Janeiro (2002),⁸⁸ which spawned six international environmental agreements on the issues of biodiversity, climate change (the Kyoto Protocol), desertification, and the sustainability of migratory fish stocks among others.⁸⁹

International treaties were meant to be the high standard of the international system with a capacity to bring global governance to the next level. Compare the faded glory of the most-favoured nation and non-discrimination principles of global trade to

⁸⁴ Birdsall, Rodrik and Subramanian 2005; Stiglitz 2006.

⁸⁵ Jagdish Bhagwati. "Economic Freedom: Prosperity and Social Progress." Paper presented at the Conference on Economic Freedom and Development, Tokyo, Japan, June 17-18 1999.

⁸⁶ See www.icbl.org.

⁸⁷ See www.icc-cpi.int.

⁸⁸ See www.earthsummit2002.org.

⁸⁹ Andrew F. Cooper. *Tests of Global Governance: Canadian Diplomacy and United Nations World Conferences*. New York: United Nations University Press, 2004.

other international milestones like the polluter pays principle (1971) and the principle of cultural pluralism (2001).⁹⁰ One can see how much a laggard the WTO is, and how few and far between are its triumphs. After a decade the WTO is still not pulling its weight. It was intended to be the epicentre of a new international order, but rather than presiding over a bigger and more robust system of international public law, it has become a juridical silo.

The second challenge will be learning to live with diverse forms of regionalism. Doctrinaire trade theorists are alarmed about the growth of regional trade agreements. But it is quickly becoming common knowledge that a single model of integration does not suit the whole world. For example, the model of integration developed by Europe, that emphasizes political integration and common markets would not work in North America. But the North American model of integration that emphasizes negative rights (thou shalt not) over positive rights may enhance economic opportunity, but at the expense of vulnerable social groups. Other regions will develop their own brands of integration, as Russia is currently doing in Central Asia. In the east, China is also crafting a sphere of influence with its own forms of economic integration. Asymmetries in the global trading system are likely to continue to grow. In the future we will likely see a multi-tier trading system in which bilateral, regional and multilateral arrangements exist together in a more systematized way.

Conclusion

⁹⁰ "The Sustainable Development Timeline." Ottawa: International Institute on Sustainable Development, 2006.

Trade multilateralism cannot be sustained by clever legalistic juggling and ambitious bureaucrats trained in the dark arts of public relations.⁹¹ Multilateralism is in for a rough ride as the US, EU and other regional powers look for new frames within which to pursue their strategic interests. The golden era of postwar trade multilateralism is over. A new configuration of collective economic regulation is on the rise. Perhaps the clearest indication of this regime shift is the slow death of the Doha Round.

So far it is unclear what impact, if any, the lack of forward movement in the Doha Round will have on the global economy. Global merchandise trade is growing at 6% annually and services trade at a phenomenal 10% each year.⁹² This is more than twice the average rate of growth in OECD countries. In China, India and Brazil, an emerging middle class is driving domestic growth at rates that challenge the economic superiority of North America and Europe.⁹³ In 2006 the *Economist* reported that half of the world's industrial products are now produced in the global South. According to the newest research, within a decade, twenty percent of Fortune Five Hundred firms will be southern multinationals.⁹⁴ Neither Marxian dependency theory nor neoliberal economic theory foretold such a large-scale transformation.

A new balance of power is emerging in the heart of the World Trade Organization.⁹⁵ Global free trade is now in its third configuration and it again faces major challenges from inter-capitalist rivalry, new trans-national social forces and a

⁹¹ Andrew F. Cooper. *Tests of Global Governance: Canadian Diplomacy and United Nations World Conferences*. New York: United Nations University Press, 2004.

⁹² Statistics represent growth in trade in goods and services for 2005. See the WTO's International Trade Statistics 2006 at http://www.wto.org/english/res_e/statistics_e/its2006_e/its06_overview_e.htm.

⁹³ Branko Milanovic. *Worlds Apart: Measuring International and Global Inequality*. Princeton: Princeton University Press, 2005.

⁹⁴ Antoine van Agtmael. *The Emerging Markets Century: How a New Breed of World-Class Companies Is Overtaking the World*. Chicago: The Free Press, 2007.

⁹⁵ Sylvia Ostry. "The Post Doha Trading System." Paper presented at the Pre-G8 Academic Conference, University of Glasgow, June 29-30, 2005.

plethora of competing ideas about the world trading order and global governance. For scholars concerned with the social impact of trade, the central issue that needs to be addressed is that there are too many losers and not enough winners, both at the negotiating table as well as in the dispute settlement system. There is little common ground in the Doha negotiating agenda with respect to human rights, labour standards and the environment. Nevertheless, future multilateral integration will be contingent upon the successful lowering of the social costs of trade.

There are two predictions for the future of the trading system. Optimists predict a soft landing for the round; after a pause in negotiations, members will finally agree to a comprehensive deal although it might be smaller than what was hoped for in 2001. Pessimists predict a hard landing for the WTO; deadlock at Doha will drive deal making towards a ‘spaghetti bowl’ of many different bilateral and regional arrangements. According to neoliberal economists, this weakens the multilateral system because many small regional arrangements undermine the most-favoured nation principle enshrined in the GATT.⁹⁶ We think that the latter regime shift towards a more regional approach to integration is the more realist outcome because the regionalization process is well underway and has accelerated throughout the past six years of Doha negotiations. This hard landing is not necessarily a bad thing for the world trading system. As we have argued above, open borders and moderate protectionism can coexist. As we look ahead we have to ask ourselves the most significant question – what role will the WTO’s governance model play in the upcoming era of new priorities and evolving alliances? Will it even survive these seismic shifts in power?

⁹⁶ Bhagwati 1999.

Bibliography

Agtmael, Antoine van. *The Emerging Markets Century: How a New Breed of World-Class Companies Is Overtaking the World*. Chicago: The Free Press, 2007.

Alden, Edward, and Alan Beattie. "Schwab to 'Think Big' on Market Access." *Financial Times*, June 12, 2006.

Anderson, Greg. "The Compromise of Embedded Liberalism, American Trade Remedy Law, and Canadian Softwood Lumber: Can't We All Just Get Along?" *Canadian Foreign Policy* 10, no. 2 (2003): 87-108.

Anderson, Kym, and Will Martin, "Agricultural Trade Reform and the Doha Development Agenda" *The World Economy*, Volume 28, Number 9, September 2005, pp. 1301-1327.

Antkiewicz, Agata, and John Whalley. *Bricsam and the Non-Wto* [PDF file]. The Centre for International Governance Innovation, 2005 [cited June 12, 2006]. Available from www.cigionline.org.

Bagwell, Kyle, and Robert W. Staiger. "What Do Trade Negotiators Negotiate About? Empirical Evidence from the World Trade Organization." In *National Bureau of Economic Research Working Papers*. Cambridge: National Bureau of Economic Research, 2006.

Barton, John, Judith Goldstein, Tim Josling, and Richard Steinberg. *The Evolution of the Trade Regime: Politics, Law, and the Economics of the GATT and the WTO*. Princeton: Princeton University Press, 2006.

Beattie, Alan. "Food Ruling Will Keep Wto in Activists' Sights." *The Financial Times*, February 8th 2006.

Bello, Walden. *Why Reform of the WTO Is the Wrong Agenda* [HTML File]. Focus on the Global South, 2003 [cited June 10, 2003]. Available from www.portoalegre2003.org.

Bello, Walden, and Aileen Kwa. "The Stalemate in the WTO." Focus on the Global South, 2003.

Bhagwati, Jagdish. "Economic Freedom: Prosperity and Social Progress." Paper presented at the Conference on Economic Freedom and Development, Tokyo, Japan, June 17-18 1999.

Birdsall, Nancy, Dani Rodrik, and Arvind Subramanian. *If Rich Governments Really Cared About Development* [PDF file]. International Centre for Trade and Sustainable Development, 2005 [cited April 23, 2006]. Available from www.ictsd.org/dlogue/2005-07-01/Docs/RODRIK-BRIDSALL_SUBRAMANIAN_what-rich-can-do_April2005.pdf.

Boltho, Andrea. "The Return of Free Trade?" *International Affairs* 72, no. 2 (1996): 247-59.

Bourgeois, Jacques H. J. "Some Reflections on the WTO Dispute Settlement System from a Practitioner's Perspective." *Journal of International Economic Law* (2001): 145-54.

Bourgeois, Jacques H. J., and Patrick A. Messerlin. "The European Community's Experience." In *Brookings Trade Forum 1998*, edited by Robert Lawrence. Washington D.C.: Brookings Institution Press, 1998.

Bown, Chad P., Bernard Hoekman, and Caglar Ozden. "The Pattern of Us Antidumping: The Path from Initial Filing to WTO Dispute Settlement." *World Trade Review* 2, no. 3 (2003): 349-71.

Braithwaite, John, and Peter Drahos. *Global Business Regulation*. Cambridge: Cambridge University Press, 2000.

Brimeyer, Benjamin L. "Bananas, Beef and Compliance in the World Trade Organization: The Inability of the Wto Dispute Settlement Process to Achieve Compliance from Superpower Nations." *Minnesota Journal of Global Trade* 10, no. 1 (2001): 133-68.

Canada — Certain Measures Affecting the Automotive Industry, WT/DS139, WT/DS142 (1998)

Canada — Measures Affecting the Export of Civilian Aircraft, WT/DS70 (1997).

Canada - Measures Affecting the Importation of Milk and Exportation of Dairy Products, WT/DS103 (1999).

Charnovitz, Steve. "An Analysis of Pascal Lamy's Proposal on Collective Preferences." *Journal of International Economic Law* 8, no. 2 (2005): 449-72.

Chayes, Abram, and Antonia Handler Chayes. *The New Sovereignty: Compliance with International Regulatory Agreements*. Cambridge, MA: Harvard University Press, 1995.

Clapp, Jennifer. "Developing Countries and the WTO Negotiations." In *CIGI Working Papers - Global Institutional Reform*. Waterloo, ON: The Centre for International Governance Innovation, 2006.

Coicaud, Jean-Marc. "Reflections on International Organizations and International Legitimacy: Constraints, Pathologies, and Possibilities." *International Social Science Journal* 53, no. 170 (2001).

Cooper, Andrew F. *Tests of Global Governance: Canadian Diplomacy and the United Nations World Conferences*. New York: United Nations University Press, 2004.

Cutler, A. Clair. *Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy*. Cambridge: Cambridge University Press, 2003.

Destler, I. M. *American Trade Politics*. 4th ed. Washington, DC: Institute for International Economics, 2005.

Drache, Daniel. "The Imperative of the Social Bond: After the Triumph of Markets." In *New Socialisms: Futures Beyond Globalization*, edited by Robert Albritton, Shannon Bell, John R. Bell and Richard Westra. London: Routledge, 2004.

Drache, Daniel. *Trade, Development and the Doha Round: A Sure Bet or a Train Wreck?* [PDF file]. Roberts Centre for Canadian Studies, York University, 2005. Available from www.yorku.ca/drache.

Drahos, Peter. "When the Weak Bargain with the Strong: Negotiations in the World Trade Organization." *International Negotiation* 8 (2003): 79-109.

Drope, Jeffrey M., and Wendy L. Hansen. "Antidumping's Happy Birthday?" *The World Economy* 28, no. 3 (2006).

Drug Companies Vs. Brazil: The Threat to Public Health [RTF file]. Oxfam GB, 2001 [cited April 10th 2006]. Available from http://www.oxfam.org.uk/what_we_do/issues/health/drugcomp_brazil.htm.

Dunkley, Graham. *The Free Trade Adventure: The WTO, the Uruguay Round and Globalism--a Critique*. London: Zed Books, 1997.

EU Textile Imports from China: Some Important Points [HTML file]. European Union Trade Commission, 2005 [cited May 25th 2006]. Available from http://ec.europa.eu/comm/trade/issues/sectoral/industry/textile/memo120905_en.htm.

Evenson, Robert E., Carl E. Pray, and Mark W. Rosegrant. *Agricultural Research and Productivity Growth in India* [PDF]. International Food Policy Research Institute, 1999 [cited May 2 2007]. Available from www.ifpri.org/pubs/abstract/abstr109.htm.

Guha, Krishna. "US Experts Call for an End to Global Trade Rounds." *Financial Times*, April 21 2007.

Helfer, Laurence. "Regime Shifting: The TRIPS Agreement and New Dynamics of International Intellectual Property Lawmaking." *Yale Journal of International Law* 29, no. 1 (2004).

Helleiner, Gerald K. "Markets, Politics and Globalization: Can the Global Economy Be Civilized?" Geneva: United Nations Conference on Trade and Development, 2000.

Howse, Robert. "From Politics to Technocracy-and Back Again: The Fate of the Multilateral Trading Regime." *American Journal of International Law* 96, no. 1 (2002): 94-117.

Hudec, Robert. *Essays on the Nature of International Trade Law*. London: Cameron May, 1999.

Iida, Keisuke. "Is WTO Dispute Settlement Effective?" *Global Governance* 10, no. 2 (2004): 207-25.

Irwin, Douglas A. *Against the Tide: An Intellectual History of Free Trade*. Princeton, NJ: Princeton University Press, 1996.

Irwin, Douglas A. "The GATT in Historical Perspective." *The American Economic Review* 85, no. 2 (1995): 323-28.

Javelosa, Josyline, and Andrew Schmitz. "Costs and Benefits of a WTO Dispute: Philippine Bananas and the Australian Market." *The Estey Centre Journal of International Law and Trade Policy* 7, no. 1 (2006): 58-83.

Jonquieres, Guy de. "Chinese Market Economy Puzzle." *Financial Times of London*, May 1 2006.

Judt, Tony. *Postwar: A History of Europe since 1945*. New York: Penguin Books, 2005.

Katzenstein, Peter J., Robert O. Keohane, and Stephen D. Krasner. "International Organization and the Study of World Politics." *International Organization* 52, no. 4 (1998): 645-85.

Kindleberger, Charles. *A Financial History of Western Europe*. New York: Oxford University Press, 1993.

Krikorian, Jaqueline D. "Planes, Trains, and Automobiles: The Impact of the WTO 'Court' on Canada in Its First Ten Years." *Journal of International Economic Law* 8, no. 4 (2005): 921-75.

Krugman, Paul. "Competitiveness - a Dangerous Obsession." *Foreign Affairs* 73, no. 2 (1994).

Krugman, Paul. *Rethinking International Trade*. Cambridge, MA: MIT Press, 1990.

Lamy, Pascal. *Humanising Globalization* World Trade Organization, 2006 [cited January 31, 2006]. Available from www.wto.org/english/news_e/sppl_e/sppl16_e.htm.

Lindsey, Brink. *U.S. Protectionism Imperils Free Trade Talks with Latins* [HTML file]. Cato Institute, 2002 [cited May 2 2007]. Available from <http://www.freetrade.org/node/254>.

Lindsey, Brink, and Dan Ikenson. "Coming Home to Roost: Proliferating Antidumping Laws and the Growing Threat to U.S. Exporters." Cato Institute for Trade Policy Studies, 2001.

Mankiw, N. Gregory, and Philip L. Swagel. "Antidumping: The Third Rail of Trade Policy." *Foreign Affairs* 84, no. 4 (2005): 107-19.

Marsden, Keith. *Reforming WTO Subsidy Rules: A Better Deal for Taxpayers* The TaxPayers' Alliance, 2005. Available from www.taxpayersalliance.com.

McGinnis, John O., and Mark L. Movsesian. "The World Trade Constitution." *Harvard Law Review* 114, no. 2 (2000): 511-605.

Milanovic, Branko. *Worlds Apart: Measuring International and Global Inequality*. Princeton: Princeton University Press, 2005.

Myrdal, Gunnar. *Economic Theory and Underdeveloped Regions*. London: University Paperbacks, 1957.

"Numbers in the News: Stately Enterprises." *Financial Times*, March 10th 2006.

Odessey, Bruce. *House Panel Approves Repeal of Byrd Amendment after WTO Ruling* [HTML File]. Washington File, 2005 [cited May 10th 2006]. Available from www.usinfo.state.gov.

Ostry, Sylvia. "The Future of the World Trading System." Paper presented at the Symposium on the 50th Anniversary of the Institut der Deutschen Wirtschaft Koln, Berlin 2001.

Ostry, Sylvia. "The Multilateral Agenda: Moving Trade Negotiations Forward." In *MCIS Briefings*. Toronto: Munk Centre for International Studies, University of Toronto, 2005.

Ostry, Sylvia. "The Post Doha Trading System." Paper presented at the Pre-G8 Academic Conference, University of Glasgow, June 29-30, 2005.

Ostry, Sylvia. "Who Rules the Future? The Crisis of Governance and Prospects for Global Civil Society." Paper presented at the New Geographies of Dissent: Global Counter-Publics and Spheres of Power, Robarts Centre for Canadian Studies, York University, January 27-28, 2006.

Population and Dwelling Counts: A Portrait of the Canadian Population Statistics Canada, 2007 [cited April 18th 2007]. Available from http://www12.statcan.ca/english/census06/release/release_popdwell.cfm.

Putnam, Robert D. "Diplomacy and Domestic Politics: The Logic of Two-Level Games." *International Organization* 42, no. 3 (1988).

Putting China's Capital to Work: The Value of Financial System Reform [PDF file]. Mckinsey&Company, 2006 [cited June 7th 2006]. Available from www.mckinsey.com/mgi.

International, Oxfam. "Rigged Rules and Double Standards: Trade, Globalization and the Fight against Poverty." London: Oxfam International, 2002.

Rosendorff, B. Peter. "Stability and Rigidity: Politics and Design of the Wto's Dispute Settlement Procedure." *American Political Science Review* 99, no. 3 (2005): 389-400.

Ruggie, John Gerard. "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order." *International Organization* 36, no. 2 (1982): 379-415.

Stiglitz, Joseph E. "Social Justice and Global Trade." *Far Eastern Economic Review* 169, no. 2 (2006): 18-23.

Taking Stock in China - the Day After [PDF file]. TD Bank Financial Group, 2007 [cited April 18th 2007]. Available from http://www.td.com/economics/special/rk0207_china.pdf.

"The Sustainable Development Timeline." Ottawa: International Institute on Sustainable Development, 2006.

Trebilcock, Michael J., and Robert Howse. *The Regulation of International Trade*. 2nd ed. London: Routledge, 1999.

Turner, Mark. "Rich World's Subsidies Hitting African Growth." *Financial Times*, July 31 2003.

Undue Influence: Corporations Gain Ground in Battle over China's New Labor Law Global Labor Strategies, March, 2007. Available from www.laborstrategies.blogs.com.

Whalley, John. *Recent Regional Agreements: Why So Many, So Fast, So Different and Where Are They Headed?* Centre for International Governance Innovation, 2006 [cited April 30 2007]. Available from <http://www.igloo.org/cigi/Publications/workingp/recentre>.

Wolf, Martin. "What India Must Do to Catch up with and Possibly Outpace China." *The Financial Times*, February 15th 2006.

Wolfe, Robert. "Decision-Making and Transparency in the 'Medieval' Wto: Does the Sutherland Report Have the Right Prescription?" *Journal of International Economic Law* 8, no. 3 (2005): 631-45.

Woolcock, Stephen. "Making Multi-Level Rules Work: Trade and Investment Rules in Regional and Bilateral Agreements." United Nations University, 2005.

"WTO Agreements and Public Health: A Joint Study by the WHO and WTO Secretariat." Geneva: World Trade Organization, 2002.

Young, Linda, M., and John Wainio. "The Antidumping Negotiations: Proposals, Positions, and Antidumping Profiles." *The Estey Centre Journal of International Law and Trade Policy* 6, no. 1 (2005): 23-46.