

Abstract

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To be effective an international organization must (a) be given an appropriate mission; (b) be given the means to accomplish its mission; and (c) be viewed as legitimate when carrying out the mission. This paper explores the problems in achieving these prerequisites for success first in a general discussion and then in an application to the WTO. Ensuring these conditions are met is not easy because there is an inherent tendency for many international institutions to experience 'mission creep' particularly when accountability for burden sharing is weak. This leads to the central dilemma facing many international organizations. If missions are expanded, and organizations given insufficient means, they are likely to fail (or fall short of optimal behavior) and be criticized for ineffectiveness. However, the more extensive the means they are given, the more likely that their legitimacy will be questioned. The paper argues that best way for the WTO to deal with these tensions would be to adopt an approach built on a more variable geometry in which countries would not all be required to participate in a single undertaking.

International Organisations: The Challenge of Aligning Mission, Means and Legitimacy

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1. INTRODOCTION

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

At the Cancun Ministerial Meeting these conflicts came to a head when the meeting ended in an impasse over efforts to launch negotiations on the so-called Singapore Issues (Investment, Competition, Transparency in Government Procurement and Trade Facilitation) and that failure was preceded by other unsuccessful efforts such as the negotiations for a Multilateral Agreement on Investment at the OECD, and the US efforts to introduce labour standards into the WTO at the ministerial meetings held at Marrakech in 1994 and Seattle in 1999.

In this paper, I will argue that these recent controversies at the WTO are not an accident; they are the predictable result of the fundamental governance problems

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faced by many international organisations. In the paper I will describe, in general terms the nature of these problems and illustrate how they apply in the case of the WTO and then provide an approach that might help deal with these problems. My argument is straight forward: to be effective, an international organization must obviously have the means to accomplish its mission. In addition, however, it must only be charged with those missions and means that are compatible with a high degree of legitimacy. Ensuring these conditions are met is not easy because there is an inherent tendency for many international institutions to experience 'mission creep' particularly when accountability for burden sharing is weak. This in turn leads to failures of one of two types: either having inadequate means to carry out the mission or problems of legitimacy. In my view, the best way for the WTO to deal with its problems would be to adopt an approach built on a more variable geometry.

2. THE DILEMMA OF INTERNATIONAL ORGANISATIONS

There is a large unmet demand for international public goods. Economic growth and technological developments in communications and transportation have dramatically increased global interdependence and created huge pressures for international cooperation. As part of the response, international organisations have been created to tackle problems in areas such as economic underdevelopment and poverty, protectionism, financial instability, environmental degradation, disease, war, insecurity and violations of human rights.

a. Mission Creep

1 Given the immensity of the problems they face, international organisations are subject to strong pressures to expand their missions. One relates to the weak links between costs and benefits that are often associated with joint action. If a country can have an international organisation devote resources to a goal, it may have to spend less of its own resources on achieving it. For example, people eating out together may order more expensive items from the menu when they have agreed to split the bill equally than if the bill is split according to the charge for each item.

The argument here is well captured in game theory by the classic game of chicken. In one version of this game, two players can each choose to provide a good from which both of them will benefit. While both would benefit from providing the good in a joint fashion, there is an incentive for each to hold back and capture the benefits when the other provides it. Similarly, there is an incentive for participants in international organisations to try to get others to pay for worthy missions, and thus a strong tendency to propose these. When mechanisms

to ensure and monitor compliance are relatively weak, there are incentives for countries to make commitments that they cannot be compelled to meet.

When large groups act together, it is difficult to assign responsibility for success or failure and the behaviour of international organisations often exemplify this problem. To be sure, domestic governments are also subject to continuous pressures to accept new obligations but the knowledge that their failures could be punished by the voters provides at least some discipline on their willingness to assume obligations they cannot adequately fulfill. Likewise, the knowledge they might have to find the resources also disciplines the acceptance of new commitments. However, performance in providing international public goods is hard to monitor, partly because of difficulties associated with measuring output and partly because of ensuring compliance. When governments undertake new missions collectively, therefore, they are aware that they can always blame others for failures. Under these circumstances, it will generally be easier to accept a mission and then perform poorly in carrying it out rather than reject new assignments when the capacity to carry them out is lacking.

Secondly, in many cases large bureaucracies generally develop independent interests of their own that are tied to the expansion of the organisation. International bureaucracies are particularly prone to such behaviour because these organisations often have greater scope for independent action. They are less subject to external scrutiny than their domestic counterparts. In addition, they develop traditions in which national origin rather than competence plays a key role in appointment and advancement. Under these circumstances, national governments may find it difficult to complain about the performance of or obtain the dismissal of the nationals of other countries thereby weakening accountability.

A third reason, particularly for organisations that are initially successful in what they do, is a variant of the Peter Principle which states that 'in a hierarchy people are likely to be rise to their level of incompetence'. The logic is simple. Success at any particular task leads to advancement and people will be promoted until they are placed in a job they do poorly. Once this happens they will no longer be promoted. In the long run, therefore, most people will be found in the jobs they cannot do well. If bureaucrats are interested in expanding the size and scope of the organisation, they will be more successful in attracting new assignments. Thus the more successful is an international organisation in its missions; the more complicated the missions it is likely to be asked to perform. Eventually organizations will be tasked with missions they are unable to carry out.¹

¹ 'In the UN with programs becoming increasingly fragmented among different subsidiary bodies and agencies, it has become almost impossible to monitor many activities, let alone to coordinate them. At one point in the second half of the 1980s, more than 150 committees, commissions, subcommissions and working groups were operating in the economic and social fields on more than 1,000 issue areas' (Simai op cit., p. 323).

b. Inadequate Means

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

By their nature, the key feature of public goods (or bads) is that benefits (or costs) are not limited to single consumers (nations) or groups of consumers. (nations). As Samuelson (1954) pointed out, the efficient provision of public goods requires that the marginal cost of their production should equal the sum of the marginal benefits to *all* those that consume them.² While in principle, the shares in the costs of providing a public good should reflect individual demands for them, there are problems in having consumers actually reveal (and pay for) their true demands.³ If exclusion is difficult or impossible, consumers will have an incentive to understate their needs in order to free-ride. In a domestic context, these problems are tackled in democratic societies by having voters choose representatives whose tax and spending preferences match their own. Since the state has the ability to enforce its decisions, consumers have an incentive to reveal their preferences more accurately. But in an international setting, when such enforcement is not possible, efficient provision is particularly problematic. International organisations (and collective action in many domestic institutions) will therefore be prone to ‘common pool’ problems. To be sure, as the existence of international organisations and agreements attests, these problems do not mean that cooperation will be absent – there are a variety of mechanisms states may use to induce others to comply such as tit for tat strategies – but it does imply that cooperation and resources for public goods are likely to be less than an omniscient planner might chose.

Indeed, this is a more general problem entailed by collective action. As Mancur Olson argued in his classic study:

Even in the smallest groups, the members will not provide as much of the good as it would be in their common interest to provide. This tendency toward suboptimality is due to the fact that a collective good is, by definition, such that other individuals in the group cannot be kept from consuming it once any individual in the group has provided it for himself. Since an individual member thus gets only part of the benefit of any expenditure he makes to obtain more

² Samuelson (1954).

³ See Musgrave and Musgrave (2003).

of the collective good, he will discontinue his purchase of the collective good before the optimal amount for the group as a whole has been obtained. In addition, the amounts of the collective good that a member of the group receives free from other members will further reduce his incentive to provide more of the good at his own expense.⁴

In particular, institutions making decisions on the basis of one country one vote will be particularly prone to free riding behaviour. With majority voting, the preferences of the median voter nation will prevail, and there will be systematic pressures for these voters to try to obtain the goods from which they benefit while at the same time, having others pay more of the costs. This was the experience at the United Nations. As noted by Simai:

The history of the financial crisis of the United Nations illustrates the political roots of the financial problems that beset almost all Inter-Governmental Organizations. During the 1970s, especially the latter half of that decade, the developing countries mustered their collective voting power to initiate a number of resolutions designed to reshape the international economic order. Debates, even on technical matters, became increasingly politicized, and the developed countries and the Soviet bloc sought to curb the huge bureaucratic growth that the new programs threatened.⁵

Institutions making decisions based on unanimity can reduce the problem of cost shifting by free riders by giving all members veto rights.⁶ However, this may make the organisation particularly susceptible to foot-dragging. The problem here is that institutions might not adequately provide public goods. One way to deal with the problem is to construct packages of agreements so that all can agree, but this may not always be possible.⁷ Under these circumstances, of course international organisations will be heavily criticised for inaction.

c. Legitimacy

Granting organisations more power and resources obviously makes it more likely that they will be able to carry out its mission. Indeed, as was noted above, nation states can in principle use voting and the ability to raise resources through taxation to supply national public goods in appropriate amounts. But the closer international organisations come to acting like nation states, the more likely that their legitimacy will be questioned.

⁴ Olsen (1977).

⁵ Simai (1994, p. 325). In response to these problems, the United Nations altered the one country-one vote procedure with regard to budgetary issues requiring a consensus of the members of the responsible committee (Simai op cit., p. 320).

⁶ The virtues of the unanimity rule are explored and emphasised by Buchanan and Tullock (1974).

⁷ The United Nations is based on the principle of one country one vote because of the sovereign equality of states. In budgetary issues, however, in the 1980s, the system was modified to require consensus. In the Bretton Woods institutions, countries voting power reflects their financial contributions and allows for veto power for the largest contributors. UN resolutions are not binding however, whereas those approved by the security council are.

Legitimacy, the acknowledged right of governors to govern, can be obtained through a variety of mechanisms. One source in today's era is through democracy – the rule by the people. But the right could also be secured on grounds of competence (technocracy), impartiality, adherence to rules and procedures and/or charismatic leadership.

All international organisations are inherently vulnerable to concerns that they are insufficiently democratic, particularly when held to the standards of the nation state. As Dani Rodrik has emphasised, there are basically two simple approaches to providing mass democratic decision-making: the Nation state or global federalism.⁸ Acting alone, however, increasingly nation states find they cannot provide the international public goods required to meet the needs and provide the full benefits from a global economy. Acting alone they cannot meet the functional or political requirements asked of global governance. Full global federalism permits eliminating the nation state and thus combining mass democratic politics and the ability to tax and enforce with an integrated global economy but it comes precisely at the expense of the nation state and few seem ready for this outcome.

So if the nation state is inadequate, and global federalism is not wanted, then intermediate approaches that reflect some compromises will have to be crafted. Inevitably these will be imperfect and vulnerable to criticism and thus the more powerful international organisations become the more opposition they will generate.

International organisations are vulnerable to charges that they lack legitimacy because the standards for legitimate governance are generally set by those of the nation state. Global governance is inevitably likely to be less democratic and thus less 'legitimate' than the nation state. In particular, international organisations derive their legitimacy in part from the notion that their members, national governments, accurately reflect the interests of their constituents. But this notion can be questioned either when there are other international non-governmental actors with claims to represent certain interests or when national governments are seen as insufficiently representative, or insufficiently informed and competent. In addition, international organisations are often set up to focus on a single purpose such as health, or trade or finance. This focus is particularly vulnerable to accusations that other factors are not being given sufficient weight.

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

The problem is also less likely to be exposed as long as the international organisation engages in activities that are generally regarded to be 'win-win'. i.e. provide benefits to all parties. But they are more likely to come to the fore, when issues are widely perceived as having major distributional implications among the members.

⁸ Rodrik (2000).

This then is the basic dilemma facing global organizations:

If missions are expanded, and organizations given insufficient means, they are likely to fail (or fall short of optimal behavior) and be criticized for ineffectiveness. However, the more extensive the means they are given, the more likely that their legitimacy will be questioned.

(i) *GATT to WTO*

The transition from the GATT to the WTO exemplifies some of these propositions. The mission of the GATT was fairly narrow. According to its Preamble it was:

to enter into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce.

After the United States was granted a waiver for agriculture in 1955, the GATT concentrated on reducing border trade barriers for industrial products. The GATT also sought to eliminate discriminatory treatment members through rules requiring Most Favoured Nation (MFN) and national treatment. GATT did not seek to harmonise standards or policies; it simply required that domestic and imported goods be treated in the same way (GATT: Article III). Provided they respected this principle, countries remained free to implement any domestic policies or rules they desired. Policies relating to matters such as regulation, standards, intellectual property and subsidies were not covered by the GATT's disciplines.

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

Finally, although some disparaged the GATT efficacy and power – it was sometimes labelled the General Agreement to talk and talk and at other times even said to be dead – the GATT's legitimacy was generally accepted.⁹ Essentially,

⁹ One noteworthy exception related to the United States perspective on the GATT's origins. The GATT was negotiated by the United States under the 1945 extension of the trade agreements authority. US negotiators were not given the authority to negotiate an agreement establishing an organisation. See Jackson (1998).

members participated in and adhered to the GATT because they believed to do so was in their interest. Decision-making based on consensus ensured that in principle, every agreement made every party better off. Assuming that nation's accurately represented their interests this practice ensured that every agreement was a Pareto Improvement. Countries were not required to remove all their trade barriers or even to match the reductions of other parties. Instead reciprocity was the guiding principle, but it required each party to agree to a volume of new imports that matched the volume of exports others would grant it. While this notion of reciprocity was never precisely enforced, it did serve as a guiding myth that helped create the perception that agreements were fair.¹⁰ All told most parties agreed that reducing some trade barriers was desirable and conforming to the rules was compatible with a significant space for divergent domestic policies.

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

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

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

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

¹⁰ For a more detailed discussion see Lawrence (2004).

The institution became much more controversial as a result of the Uruguay Round. This was because of a major expansion in the mission, an increase in the means and as a consequence increasing questions about legitimacy.¹¹

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

In addition to this large expansion in the WTO's scope, the Uruguay Round Agreement also enhanced the power of the dispute settlement body (DSB) to enforce trade rules. It required unanimity to prevent proceedings meaning that no one country could block the panel from hearing a dispute. The single undertaking meant that all WTO rules and most agreements were subject to dispute settlement understanding WTO members therefore had the ability for cross-sectoral retaliation. For example, if a country violates the TRIPs agreement's intellectual property rules, it can be subject to the loss of other trade benefits, such as low tariffs on manufactured goods.

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

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

The second driver is political. The most important forces in our societies, business, labour and environmentalists each find themselves competing with their

¹¹ For an excellent discussion of the challenge to WTO legitimacy see Keohane and Nye (2001).

counterparts in other countries and they all claim to seek level playing fields and to have their issues subject to international rules.

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

(ii) WTO under fire

The Uruguay Round Agreement and the establishment of the WTO has therefore generated friction. One set of criticisms has been that the purview of trade agreements has been extended too far. Developing countries complain about the TRIPs which channels rents to developed country inventors. Environmental groups argue that the WTO advantages trade at the expense of other considerations. Yet there are others who argue the WTO does not go far enough. Some have in mind extending the rules to deepen international integration by making international markets more contestable through liberalising investment, increasing disciplines on regulation, making government procurement more transparent and applying competition policies. Others believe that extending social rules relating to labour and environmental standards can help ensure that the benefits of globalisation are more equitably distributed. And many emphasise the need for additional measures such as capacity building to promote development.¹²

Yet questions can be raised about whether the organisation has the means to implement comprehensive agreements on all of these issues. The WTO relies on national implementation of agreements, but many developing countries lack the requisite resources and capacity. The WTO also relies on the dispute settlement system to police enforcement – yet many of the least developed countries have not found it easy to use the system. In addition, it should not be a surprise that

¹² A comparison between the chapeau of the GATT with that of the WTO reveals that whereas the GATT emphasises the importance of efficiently allocating the world's resources, the WTO calls in addition for 'sustainable development' and ensuring that trade leads to development. The WTO chapeau states '... while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development'. Recognising further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development.

since market access negotiations are based on reciprocity, the agreements generally reflect the priorities of the nations with large markets. Since these are mostly developed countries and barriers have remained highest in the labour – intensive manufactures and agriculture.

While the mandate of the WTO has been enlarged considerably as Richard Blackhurst has noted, it has not been given adequate resources to carry out the mandate. The WTO's budget and staff are extremely modest and far smaller than many other international organisations with much more modest mandates.¹³

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

A second concern relates, paradoxically, to the fact that the dispute settlement system has become more effective. WTO agreements require consensus. Inevitably this means they are incomplete and imprecise and reflect the use of 'constructive ambiguity'. This becomes problematic for those called upon to adjudicate. One response could be for the dispute settlement process to fill in the blanks but this raises issues of legitimacy and is expressly prohibited. For this reason, the DSB is enjoined from adding to or subtracting from the obligations contained in the agreement. Despite considerable effort to hew closely to the texts of the agreements, there have been allegations that the DSB has been excessively activist and has undermined the decisions that sovereign governments have embodied in the agreements.¹⁴

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

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

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

¹³ Blackhurst (1998).

¹⁴ See Barfield (2001).

These controversies have placed the WTO in a difficult position. They confirm that more ambitious missions and enhanced power place pressures on perceptions of legitimacy. At the same time, however, there is also considerable evidence that global integration remains seriously incomplete and that there could be substantial additional benefits from deeper integration. Even when tariffs are removed, border effects continue to impede the free flow of goods and services. This was surely the experience of Europeans who concluded in the early 1980s that despite the virtual elimination of internal tariffs their markets remained fragmented. The considerable extent of fragmentation even among developed countries is documented by Bradford and Lawrence as are the large welfare benefits that could be enjoyed from price convergence that would result from the elimination of the obstacles that borders continue to present to increased international integration.¹⁵

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

3. WOULD A CLUB OF CLUBS MAKE THE WTO A MORE EFFECTIVE INSTITUTION?

Several years ago, in the capstone of volume of over twenty studies on Integrating National Economies undertaken by the Brookings Institution, Albert Bressand, Takatoshi Ito and I wrote *A Vision for the World Economy*.¹⁶ In that monograph we argued that there was a need for new global institutions and agreements. However, we emphasised that these institutions needed to be developed with great care. In particular, whatever their purposes they needed to be crafted to achieve a balance between three desirable objectives: openness, diversity and cohesion. We argued that this balance could best be achieved through an

¹⁵ See Bradford and Lawrence (2004).

¹⁶ Lawrence, Bressand and Ito (1996). For an elaboration of how these clubs would operate see Lawrence (2006).

international architecture comprised of three different sorts of arrangements which we called clubs.

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

In this paper, however, I will not be looking at the potential role for the WTO as an overarching organisation coordinating the relationships between organisations or clubs with agendas that are not directly related to trade, nor will I focus on the WTO’s role as an institution that helps attain greater policy coherence between the Bretton Woods Multilateral Institutions. Instead, I will focus on the role that a club of clubs approach could play with respect to agreements that relate specifically to international trade. In what follows I will build on the ideas of the previous section to provide criteria for how issues should be chosen.

The WTO should only host clubs that are (a) related to its mission; (b) enforceable by the means available to the organisation and the members who join the club and (c) compatible with maintaining and enhancing legitimacy.

a. Mission

The Preamble of the WTO Agreement indicates that the WTO is an organisation which seeks to enhance welfare by (a) reducing barriers to trade (such as tariffs); (b) reducing discrimination in trade (e.g. requirements for MFN and national treatment), and (c) enhancing development through trade. Accordingly, the issues that are chosen should be trade related in at least one of these respects and ideally in all of them. In this context, trade should be interpreted broadly to include international exchanges of goods and services and the movement and location of firms and people designed to accomplish such trade. The coverage should relate either to policies which directly affect market access (e.g. border barriers) or to the aspects of other policies which can materially affect such access. The aim is to facilitate trade in both goods and services while at the same time preserving adequate scope for national policy differentiation. While there are many other issues that may be important subjects for international cooperation (e.g. environmental policies and human rights) and many other policies that could contribute to economic development (education, health etc.), trade-relatedness should be the *sine-qua-non* for inclusion. In addition, to the

maximum extent possible, agreements should provide the maximum space for other functional international clubs to implement non-trade related international agreements and for members to have considerable scope for differentiating their domestic policies to match their conditions and requirements. The issues contained in clubs should also not overlap with issues that are already part of the WTO's single undertaking.

b. Means

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

c. Legitimacy

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

4. CONCLUSIONS

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

Supplementing the core WTO obligations with a club of club approach could help to promote deeper global integration while at the same time alleviate some of the WTO's institutional problems. The club of clubs offers a compromise in which diversity can co-exist with a more extensive set of commitments for willing members. Clubs would be chosen where they could help to promote the central missions: lowering barriers to trade; reducing the discriminatory effects of domestic policies and enhancing economic development through trade. All WTO members would participate in negotiating club rules, but members would be free not to join. Clubs would use the DSU to deal with disputes but suspension of concessions in the event of violations would be confined to the provisions of the same club in which the violation occurred.

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

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