

Why have a World Trade Organization? Focussing on the Welfare Effects of the Law of the World Trade Organization

The WTO grew out of the GATT which grew out of the US Trade Act. That 1934 Act was a response to protection and discrimination. One might generalize the rationale of the 1934 Trade Act in the US and of the GATT in relation to its contracting parties in 3 propositions:

- First, that trade liberalization enhances welfare.
- Second, that left to their ordinary decision making process, governments are likely to choose welfare diminishing trade policies.
- Third, that a treaty establishing a system of reciprocal liberalization can guide governments from welfare diminishing policies to welfare enhancing policies.

Since the GATT came into effect in 1948, the economic theory has moved many steps further and the actual functioning of trade treaties has undergone a revolution. Economists have argued their way through the importance of 2nd best, and of strategic trade theory, the impact of Coase theory on decisions about government intervention, the matching and ranking of policy instruments with policy objectives and the study of government decision-making has evolved from intuition to complex mathematical formulae. Lawyers have expanded the substantive obligations to create detailed regulation of all trade regulations from customs valuation through to quarantine and labelling, have developed a regimented scheme of trade dispute resolution involving rules of adjudication and sanctions, and in other fields of international law have responded to the greater interdependence and interconnectedness of nations and peoples by developing treaties in almost every field of human interaction many of which regulate domestic policies which interact with trade policies. After all that change, how much clarity remains as to the implicit foundation of the World Trade Organization treaties: the revised GATT, the General Agreement on Trade in Services and the Agreement on Trade Related Aspects of Intellectual Property?

What principles inform our choices as to how the WTO legal system should regulate such diverse problems as:

- how to change world agricultural policies to enable low cost producers to gain from their efficiency;
- how to permit and facilitate economic adjustment in difficult circumstances;
- how to balance regulation of sanitary risk with export access;
- whether to encourage harmonization of environmental policy;
- how to deal with differences in approaches to competition policies, etc.

How should we construct the rules so as to enhance welfare?

Have the traditional economic rationales lost their relevance to the new and complex problems that WTO Members now face?

Or have trade negotiators and politicians and their advisers lost sight of the lessons of economics and political economy?

Is the practice of the law giving effect to the principles? (to any principles?)

This symposium is a chance for WTO lawyers and economists to make presentations to each other and to discuss these fundamental questions.

We called for papers with a view to grouping together presentations about economic theory and practical application of the law in segments; sometimes linking economic theory to a particular negotiating issue, other times linking economic theory to particular dispute settlement case studies; generally in each session to move from general to specific, from theory to practice.

We called for papers across a broad range of topics of economics and law relating to the WTO, for example:

Trade Liberalization - or trade liberalization in a specific sector

Public Choice Theory - or analysis of lobby group behaviour in particular disputes or sectors

Dispersion of Rates of Protection and Politically Sensitive Industries

The US Steel Safeguard Dispute - other trade remedies issues

The Article XX Exceptions - The Shrimp Turtle Outcome

Quarantine Measures and the SPS Agreement - Australian Restrictions on Salmon

Analysis of technical regulations: the Asbestos case and the Sardines case

Economics of Dumping, or Price Discrimination - or the 1916 Act or Byrd amendment cases

WTO Disputes on Anti-dumping Law

The Doha Declaration on Public Health and AIDS drugs

Optimal Retaliation in Dispute Settlement - Article 21.5 arbitrations

Subsidies - which to regulate and how to identify and measure them - eg Canadian lumber

We have chosen the following topics:

Accommodating Non-Economic Objectives in WTO Law

The three papers in this session deal with the relationship between policy objectives and policy instruments. In different ways, they consider the way in which WTO should or should not constrain the policy instruments which WTO Members can adopt to meet their chosen Policy Objectives. One paper covers the problem more generally, the second relates specifically to WTO rules on Technical regulations (the TBT Agreement), and the 3rd focuses on the liberalization of agricultural trade.

SPS, Food Safety and GMOs

The three papers in this session all deal with WTO rules relating to managing health risks arising from agricultural trade. The first paper carries on from the first session considering the extent to which SPS rules have in recent cases limited Members' choices. The second and third papers consider trade in GMOs and labelling of GMOs, taking WTO regulation well inside the border - first from an economic and then from a legal perspective.

Implementing Contestability

Having already considered the application of GATT rules to one of the 'hard' areas, the first paper in this session will consider the application of the GATS rules in one of its 'hard' areas: aviation services. As trade liberalization can achieve contestable markets, so can the application of competition law. With the inclusion of competition law on the Doha agenda, we will consider the practical difficulties of trying to bind developing countries to implementing competition law.

Intellectual Property

We associate intellectual property with achieving optimal investment and creativity. The first paper will consider trademarks, where IP has the dual function of informing consumers of the attributes of the product. The next paper will update us on negotiations on Geographical Indications so that we may consider whether GIs enhance investment or the efficiency of consumer markets. The final paper will consider the controversial Doha declaration on public health relating to the manufacture and export of generic pharmaceuticals.

Discussion

We have set the timing of the presentations with the hope that there may be ample time for discussion.

Final Panel:

After moving through a number of specific topics we will end with a panel of comments on the general theme of the role of economic theory in the construction and operation of WTO law.

We will be considering running this symposium again in 2005 and/or 2006 and will be interested to hear your suggestions about topics for next time.

We look forward to having you at the symposium and to hearing your views.

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