THE SUTHERLAND REPORT: THE WTO AND ITS CRITICS

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The World Trade Organization is at the cusp of a significant stage in its institutional development. Established out of the GATT with that institution’s ill-functioning dispute settlement procedures, but durable trade negotiating forum, the WTO emerged, in 1995, with a broad-ranging and controversial mandate to provide rules-based, stable and effective system for the conduct of international trade. The new institution initially was applauded as the star attraction for liberal trade by its proponents, and later derided as the whipping post for anti-globalization by its critics. By the turn of the century the WTO had cemented its place in the international institutional order. Moreover, it bears the burden of this slightly schizophrenic characterization, at the same time as growing uncertainty has emerged about international legal institutions and norms generally. At once subject to intense criticism, and even rejection (Kyoto), the language and justifications of international law are, at the same time, invoked more frequently than ever before (Iraq).

In the face of this public ambivalence towards international law and the WTO, and with the current WTO negotiating agenda at Doha under stress, it was timely for the WTO Director General, Dr. Supachai Panitchpakdi, to have called for a study to ‘clarify the institutional challenges the [international trade] system faced, and to consider how the WTO could be reinforced and equipped to meet them’ (2). A Consultative Board (CB) was established under the stewardship of former GATT and WTO Director General, Peter Sutherland, consisting of high level thinkers whose brief biographical details at the beginning of the Report read like a resume of the experience of every leading international and economic institution of the past half century. These distinguished WTO observers are (with only their current roles described here) Jagdish Bhagwati, Columbia University Professor; Kwesi Botchwey, Executive Officer of the African Development Ownership Policy Initiative; Niall Fitzgerald, Chairman of Reuters; Kochi Hamada, Professor of Economics at Yale University; John Jackson, Georgetown University Law Professor; Celso Lafer, University of

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In his opening remarks to the Report, Chair Sutherland notes that the Board conceived of their task in terms of ‘two tracks’. The first was to consider institutional improvements, and the second, was to ‘revisit […] fundamental principles […] underlying the international trade system] that have been misrepresented or misunderstood’ (5). This latter, intriguing description of how the Board saw its brief is the starting point for the Report’s analysis, and, indeed, sets the tone overall. The key claim here is that trade liberalization specifically, and globalization more generally, has been ‘misunderstood’. The Report opens with a chapter called ‘Globalization and the WTO: the case for liberalizing Trade’ and includes sections entitled: ‘Is open trade a threat to human rights?’; ‘Is freer trade driven by corporate interest only?’; ‘Are the benefits of open trade exaggerated?’; ‘So, does trade damage the interests of the poor in developed countries?’; ‘What about the race to the bottom?’; ‘Outsourcing – a new focus for protectionism?’ and ‘Can trade and environmental protection co-exist?’ Seeking to address the major critiques of the WTO the Report front-ends some of the most difficult questions facing the international trade system.

ONE ECONOMIC THEORY OR MANY?

The authors are to be congratulated for confronting these criticisms of the WTO at the outset, for if they cannot be answered then the very foundations of the institution will be weak. The weighty voice of distinguished development economist Jagdish Bhagwati as an author of the Report is also significant. The Report begins, therefore, by flatly attempting to debunk all criticisms of the WTO and of globalization. Trade liberalization, open trade,¹ and corporate activity are good for international society generally as they enhance democracy and human welfare and are conducive to human rights (10). Trade has been wrongly blamed for the negative effects of globalization; instead phenomena such as increased movements in capital and people, technological change and transport innovations (10) are primarily responsible for any decline in living standards sometimes associated with the WTO. The benefits of trade are not exaggerated (11). In an echo of comments made by the head of the British

¹ The Report eschews the more controversial descriptor “free” for the relatively neutral term “open”, presumably in an attempt to avoid the criticisms made of arguments in favour of free trade.