NEW LOGO: THE SUTHERLAND REPORT AND THE RE-BRANDING OF THE WTO

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I. INTRODUCTION

Tucked away in paragraph 278, somewhere in the middle of other ruminations and in a rather casual manner, the main intellectual inspiration for the Sutherland report on the future of the WTO can be found: business and consumers continue to be the key stakeholders in the world trading system. And, lest there be any misgivings about where the authors of the report stand, they add the word “rightly”.

The entire report is indeed best understood as an attempt at pacifying the consumers of the WTO. Since the WTO has come under attack from those that are not too keen on globalization per se as well as those who are not too worried about globalization as such but worry about its distributive effects, the Consultative Board established by the WTO’s Director-General has seen it as its main task to try and sell the WTO: and indeed, what else could be more fitting in a consumerist world? As a result, the report’s subtitle should not be taken too seriously: true, there are some institutional proposals (mostly of fairly minor import), but the bulk of the report is geared towards defending the WTO against its critics.

That is done mostly through denial. If the anti-globalists charge that the WTO undermines sovereignty, the report happily writes that such a charge is based on a misconception of sovereignty,1 and that, in fact, what looks like a vice is really a virtue, as the WTO allows national policy-makers more control over trading patterns than would be the case without the WTO: “Matters can be improved if states accept certain, probably minimal, constraints so as to

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1 As para. 122 puts it with some aplomb, “[w]e take the view … that the concepts associated with “sovereignty” must be analyzed in a much more careful way than has often been the case.”
avoid the dangers of separate action.”2 Note how this contains both a word of warning, placing nightmares of US unilateralism at the forefront of the reader’s mind, and a downplaying of what will happen: those imposed constraints are “probably minimal”.

Where people complain about the lack of transparency and accountability in the WTO, the Consultative Board helpfully concedes the point, only to continue by blaming the member states: the governments must be accountable at home for their actions in Geneva; the WTO merely operates within “limited bounds”.3

And where others argue that the WTO should, really, take environmental interests into account, or take core labour standards seriously, the Consultative Board responds by a resounding silence. Environmental protection, far from being elevated to a central place on the political agenda, “is an area that the jurisprudence will need to develop further.”4

There are, as was to be expected perhaps, two broadly visible tensions throughout the report. The first is the tension between politics and expert-knowledge; the second that between the WTO as a separate entity, and the WTO as the creature of its member states, left to the whims of those member states and unable to take distance.5 Sections II and III of this brief comment will discuss these two tensions; section IV contains a discussion of some of the outstanding political issues, whereas section V concentrates on proposals for institutional change – or the absence thereof. The reader will observe a generous use of quotations; there is no better way to capture the gist of the report than by having it speak for itself.

II. EXPERTISE v. POLITICS

There is a tendency, understandable perhaps, to leave matters of governance to bodies of experts. This rationalist enlightenment heritage, helpfully character-

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2 Para. 129. More explicit still: “…governments are returning to themselves a degree of “sovereignty” lost through the process of globalization. If governments are losing the capacity to regulate meaningfully at the domestic level, they are reclaiming some control of their economic destinies at the multilateral level.” Para. 140.

3 Para. 205.

4 Para. 236.

5 Elsewhere I have argued that in particular this latter tension informs much of the law of international organizations. See Jan Klabbers, An Introduction to International Institutional Law (Cambridge, Cambridge University Press, 2002).