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The WTO Millennium Round

Environment

Ray Evans

We first have to address the question "Why does "environment" appear on the agenda for this conference?" A typical answer would be:- *because the WTO's Trade and Environment C'ttee has failed to resolve the clash between the legal regime governing international trade, built up by the GATT/WTO since the War, and the new regime of international law that has been established by the Environmentalist Movement since the late 1970s, manifested for our purposes today in CITES, the Montreal Protocol, the Basel Convention, and most recently in the mother of all environmental treaties, the Kyoto Protocol.*

The WWF articulated this position in a press statement released in Gland, Switzerland, and dated Sept 8 last.

WTO members must modify WTO rules to take account of environmental concerns if they are serious about establishing a sustainable world economy, WWF, the conservation organisation, said here today.

It is vital to ensure that WTO rules and decisions do not undermine the multilateral environmental agreements (MEAs) and national policies designed to protect the environment. "Unless a number of changes are made the world will not have the rules based multilateral trading system needed for a sustainable global economy," said Mr Charles Arden-Clarke, Head of WWF's Trade and Investment Unit.

The WWF went on to list its demands, with particular reference to the UNFCCC (the Kyoto Protocol) and then concluded with the threat language now routinely found in such documents.

Only a balanced negotiating agenda, combined with an effective re-linking of trade policy-making to parliaments and the needs of people and the environment, can rescue the next round of WTO negotiations from widespread public criticism, and stem the continuing erosion of public and parliamentary confidence in the WTO.

Ignoring the threat language for the moment, it has to be said the standard complaint about the GATT rules, as exemplified in the WWF statement, does not help to move anyone forward.

That answer is commonplace but at the same time unhelpful. We need to dig a little deeper. Why did we get the GATT as part of the post-war settlement, and why has it been so successful? Why does the "environmental community" get so hot under the collar over the GATT rules? Why did we get CITES, Montreal, Basel and all the other environmental treaties? Those three are distinguished from the very large number of environmental treaties because they specifically seek to use trade sanctions as a police power for the purposes of treaty implementation? And the most important question of all relates to the institutions of the global political order, and the future of the nation-state within that order.

The GATT was founded after the Nazi attack on Western Christendom had been beaten back, in the mid 1940s, and much of Germany and Central Europe were destroyed in the process. The GATT fathers were well aware of the political dislocation which accompanied the economic distress of the 1930s and of the part which competitive (beggar-thy-neighbour) protectionism, such as Smoot-Hawley, had played in causing that distress. What they wanted was the ITO, but because US opinion became increasingly hostile to the ITO, they had to be content with the GATT. And in due course, as we know, the ugly duckling of the GATT became the glorious swan of the international constellation that we now know as the WTO.

Alan Greenspan recently testified to the contribution which the GATT has made in a speech given in Dallas in April last.

"One of the most impressive and persistent trends of the last half century is the expansion of international trade. Adjusted for price change, trade across national borders has increased fourteenfold - far faster than the fivefold increase in world GDP.

"The evidence is overwhelmingly persuasive that the massive increase in world competition - a consequence of broadening trade flows - has fostered markedly higher standards of living for almost all countries who have participated in cross-border trade. I include most especially the United States".

The GATT was an agreement reached by the Western Allies (essentially the US and the UK) immediately after the War¹. The basic principles were simple, they had been talked about for some time, and the greatest difficulty which separated the two major players, the US and the UK, was imperial preference. These basic principles were, first the MFN principle (Art I), and second the equal treatment principle (Art III). Trade barriers were to be "tarrified" (Art IX) and the exceptions to these rules were set out in Art XX and Art XIV (imperial preference).

¹ See for example *The Bretton Woods - GATT System, Retrospect and Prospect after Fifty Years*" edited Orin Kirshner, 1996, M E Sharpe, New York. On the issue of imperial preference the following passage from a speech in the House of Commons is cited:- "If the Government tries to eliminate Empire Preference a number of us will conduct such a nationwide campaign in this country as will light the very beacons on the hills. We will attack them in the marketplace, in the towns, and the cities, we will rouse this country against them in such a crusade as will overcome this Government, because we will not have it."

The value of the GATT, from a geo-political rather than an economic point of view, is best understood by asking the question "What benefit would a country with a long-term, firm and consistent free-trade policy obtain from GATT (or WTO) membership?"

The answer is that such membership has provided, and under the WTO is intended to provide more effectively, a high level of protection for the sovereignty of the member state. This result was built into the GATT from the very beginning because, during the thirties, specific trade sanctions had been used as easy alternatives to military force, and these measures later came to be regarded as having been counterproductive.² Further, the existence of effective appeal mechanisms to which aggrieved member states could turn for remedy, was the crucial differentiating element which distinguished the GATT from every other international body. And it was this distinguishing characteristic of the GATT which has aroused the deep and unrelenting hostility of the Environmentalists. For example, Jessica Tuchman Mathews, Vice President of the World Resources Institute, columnist for the Washington Post, Senior Fellow at the Council on Foreign Relations, and close confidante of VP Al Gore wrote

*"Meanwhile, climate change, other environmental trends, and growing economic interdependence are undermining sovereignty in ways we cannot restore. **The United Nations Charter may still condemn outside interference in the domestic affairs of member states, but unequivocally "domestic" concerns are becoming an endangered species.**"*³

Just prior to the WTO Ministerial held in Singapore in Dec 1996, Ms Mathews let fly again with a broadside at the WTO and the Committee on Trade and Environment particularly.⁴ She began with an attack against the GATT decision in the tuna-dolphin case.

The task of untangling the intricate links between trade and environmental protection had just begun when a 1991 GATT ruling on a dispute between the US and Mexico over tuna fishing methods threw the scene into chaos. Nations can use trade measures to protect natural resources - for example, air quality - said the GATT judges, but only within their own borders, not beyond. So what happens when the wind blows?

While perhaps a legally valid interpretation of the 45-year-old GATT agreement, the ruling was obviously preposterous.

She went on

² See for example, Geoffrey Blainey "The Causes of War".

³ Washington Post, 2 Feb 1991

⁴ Washington Post, 14 Oct 1996

With the signing of the Uruguay Round in 1994 came the next opportunity; the creation of an environment committee in the new World Trade Organisation. As will be clear at Singapore, this group, too, has achieved nothing. Even the simplest issue - the legitimisation of multilateral agreements that use trade measures, a step that should have taken no more than a week - proved to be beyond it.

And finally

Five years of backsliding is enough. As the administration begins to establish its second-term priorities, this issue belongs on the list. As for the GATT/WTO, the message is: Get going or get out. If neither institution can meet the need, a new one may have to be created.

Jessica Tuchman Mathews writes with the overwhelming confidence which membership of the US East Coast political elite brings. The key phrase is "the legitimisation of multilateral agreements that use trade measures".

My understanding is that at Seattle, as at Singapore in 1996, the developing nations will again be adamant in their hostility to any renewed push to change Article XX in order to legitimise trade sanctions for environmental or labour market regime purposes. So that whole enterprise, in which so many man-years of argument and exhortation have been expended is, once again, a non-starter.

However, the WTO membership, and the developing countries particularly, now have a real problem with the Appellate Body's decision in shrimp-turtle, since that decision, in the view of a number of GATT-law experts, changes the nature of the WTO from a club of sovereign states, into a supra-national institution. If that interpretation is accurate (and to me the arguments seem overwhelming), and if the AB is not pulled back into line, then the future of the WTO is uncertain. If the AB again successfully reaches out beyond its remit, as it did in shrimp-turtle, and assumes a continuing supra-national authority, then the AB will become a political body, always seeking decisions which will satisfy the most powerful members, but necessarily at the expense of the fundamental principles on which the GATT has built its extraordinary success.

The most important of these principles is respect for the sovereignty of the members, and the concomitant refusal to legitimise the use of trade sanctions as an instrument of extraterritorial policy. If the AB's decision in shrimp-turtle becomes a precedent, then the respect for sovereignty will have been abandoned. The WTO will then become an organisation which does contain within it the capacity for routine extra-territorial coercion, and as such it will become the focus for intense political activity. Every NGO in the developed world will see the WTO as the instrument for achieving globally what they may have achieved locally; or more significantly, achieving globally what they have not been able to achieve locally. The WTO will not be able to carry that kind of political burden.

It is no accident that the WWF press statement of Sept 8 last singled out the Kyoto Protocol as an MEA which was especially important in the WTO context. Recall that in the run-up to Kyoto, the Australian protagonists for an international protocol of enforced carbon withdrawal warned our Government of two consequences of refusal to accept the European and US demands. The first was that Australia would, if it refused to sign the Protocol, become an international pariah. The second was that trade sanctions would, as the manifestation of international disapproval, be used against us. This latter claim appeared in print a number of times, perhaps twenty times, and I thought at the time that it was an adverse reflection on the Government's handling of the debate that it was never officially rebutted. It was surprising at the time to discover that a number of people, who should know better, readily accepted the argument that trade sanctions could be used against if we did not accept the carbon withdrawal policies demanded by the Environmentalists.

The three GATT-incompatible MEAs, CITES, Montreal and Basel are, economically speaking, minnows compared to Kyoto. Wildavsky's comment is apposite in this context.⁵

"Global Warming is the mother of all environmental scares. In the scope of its consequences for life on planet Earth and the immense size of its remedies, global warming dwarfs all the environmental; and safety scares of our time put together. Warming (and warming alone), through its primary antidote of withdrawing carbon from production and consumption, is capable of realising the environmentalists dream of an egalitarian society based on rejection of economic growth in favour of a smaller population eating lower on the food chain, consuming a lot less, and sharing a much lower level of resources much more equally."

The wealth transfers implicit in Kyoto are historically unprecedented and as that understanding has permeated the minds of government advisers around the world, the enthusiasm for actually bringing Kyoto into effect has correspondingly diminished. In the US, any idea of carbon withdrawal under the Kyoto regime is now totally off the political agenda. In Australia, contrariwise, pressure is building up for introducing unilateral, and economically extremely damaging, instruments of carbon withdrawal. The doctrine that Kyoto is chiselled in concrete, and that Australia is irrevocably locked into a 108% target, is being pedalled by no less a figure than the Minister for the Environment. For example in a recent letter Minister Robert Hill wrote the following:

There is no scope for walking away from firmly-made and firmly held commitments. You raise the prospect, for example, of a possible renegotiation of the Kyoto Protocol. I consider that prospect most unlikely. However, even in the abstract, it is difficult to conceive how any such renegotiation would lead to reduce pressure on Australia to abate its greenhouse gas emissions. If anything the reverse would be true. Therefore I consider it most unproductive

⁵ Aaron Wildavsky, Introduction to Robert Ballings' *"The Heated Debate"*, 1992, Pacific Research Institute

to speculate about such possibilities, let alone to allow them to impact on our willingness to undertake abatement action now.

Rather I would suggest to you that it is in our collective interest to act fully and completely in accord with our Kyoto commitments, even before the Protocol enters into legal force, so that there can be no perceptions that renegotiation is warranted. Second and as your letter suggests, there may be high economic costs imposed upon the Australian economy if we fail to abate greenhouse gas emissions early. There is an economic as well as an environmental, imperative to address the climate change issues.⁶

It is useful to put some numbers down here. Australia's 1990 CO₂ emissions comprised 388 Megatons (Mt). 108% of that is 416Mt. In 1996 our emissions were 419Mt and according to one (in my view very conservative) business-as-usual (BAU) scenario, our emissions in 2010 will be 552Mt. Cessation of land-clearing was put into the ring at Kyoto by Australia as an important factor which would give us an extra 40-or-so-Mt by 2010. Unfortunately it now appears that clearing land actually brings about more carbon sequestration within the soil, than is released by the land clearing process. So stopping land-clearing may be a negative from a keeping carbon out of the atmosphere perspective.

From the WTO perspective, it does not matter in the slightest if Australia unilaterally decides to turn a major source of international comparative advantage (vast resources of very low-cost black and brown coal) into international disadvantage. That is a domestic political decision which is entirely Australia's to make. What would, however, bring the WTO structure crashing down, is the creation of a world divided by a carbon curtain. The Kyoto Protocol envisages a set of industrialised countries implementing a regime of carbon withdrawal, and the much larger class of countries which have made it clear that they will not entertain such economic self-mutilation. The countries in the first category will be high-cost energy countries. The countries in the second will, by comparison, be low-cost energy countries, and ceteris paribus, energy intensive industries will relocate from the former to the latter, causing huge economic dislocation as they do so. Relocation activity will depend on the balance of relocation costs versus the energy cost differential. What is beyond argument is that investment activity in energy intensive industries will virtually cease in high-cost energy countries, and transfer to low-cost energy countries.

But ceteris is never paribus, and what will happen in the industrialised world is that industries which suddenly find themselves at a price disadvantage, will demand the imposition of carbon tariffs. And this is the point, of course, of the WWF's demand for changing the WTO rules consequent to the Kyoto Protocol. Carbon tariffs which discriminate according to Annexe B and non-Annexe B countries are egregiously GATT-illegal. And so if the Kyoto Protocol is ever to come into effect the WTO rules will have to be changed to allow discriminatory carbon

⁶ Letter to Mr Keith Orchison, Managing Director, Electricity Supply Association of Australia., 6 Sept 1999.

tariffs. That is something which is beyond the WTO to do, and still remain as the highly beneficent organisation it is.

I want to return to the question I posed at the beginning of this paper. Why are we engaged in these issues? Why has the Environmentalist Movement laid siege to the WTO?

The answer, in simple terms, is that the rules of the GATT, built up on the simple principles outlined above, were discovered to be a barrier to the extraterritorial ambitions of the Environmentalist Movement. That movement, being a primarily religious movement,⁷ certainly admitting to no constraints to its reach, and doctrinally committed to placing nature above mankind, presents a difficulty to contemporary politicians which is generally not understood.

In the West politics is usually about compromise, about deal-making, about agreeing to live in peace whilst disagreeing about all sorts of things, often important things. For that sort of politics to be able to succeed it is an essential precondition that everyone accepts the primacy of human welfare. The Greens, however, do not accept this. For them Nature is incommensurable, and human welfare has to give way to Nature's demands. So although the WWF statement of Sept 5 last refers to "*parliaments and the needs of people and the environment*", the "needs of the people" is not seriously meant, at least not in any way which would allow the people to meet their needs, for example, in their use of carbon based energy, outside the environmental constraints imposed by the WWF.

The repeated experience of Australian politicians in seeking to find a lasting accommodation with the Greens (and this has been notoriously true in the bitter debates about the forests industries) is that no such deal can ever be found. Every agreement on, for example, withdrawal of forest acreage from the timber industry, or the incommensurability of "old-growth forests", becomes immediately the starting point for further demands.

The timber and wood product industries find themselves, even more than the mining industry, at the focus of Environmentalist displeasure. Trees have long been central to the battle between Christianity and the paganism which is antecedent to the contemporary Environmentalist movement. St Boniface, the English Benedictine who evangelised much of Germany during the C8, took the issue to the wire with characteristic vigour. A biographer records the following famous event:

"St Boniface . . . made a bold attempt to strike at the root of the pagan superstitions which constituted the chief hindrance to the progress of the Gospel as well as to the stability of recent converts. On a day which had been publicly announced, and in the midst of an awestruck crowd, he attacked with

⁷ For example, see Gro Harlem Brundtland "The Test of Our Civilisation" *New Perspective Quarterly*, Vol 6 No 1 (Spring 1989) where she claimed that the only way in which people could be made to understand that our present lifestyles are unsustainable and must change, would be to persuade them to accept it as "a religious belief".

an axe one of the chief objects of popular veneration, Donar's sacred oak, which stood on the summit of Mount Gudenburg at Geismar, near Fritzlar. Almost as the first blows fell upon it, the huge tree crashed, splitting into four parts, and the people who had expected a judgment to descend upon the perpetrators of such an outrage acknowledged that their gods were powerless to protect their own sanctuaries. From that time the work of evangelisation advanced steadily.⁸

St Boniface had a disciple in Ronald Reagan, who remarked soon after being elected as Governor of California, "*when you've seen one redwood tree, you've seen them all.*"

The same problem which has bewildered Australian politicians with respect to the forests industries, will confront the WTO, if those who seek to find an accommodation, however modest, with the Greens at Seattle, persuade the WTO membership to follow that path. There is a mood now to make the WTO processes more transparent. That is a demand which, in my view, should not be denied. But there should be no illusion that the Environmentalist Movement will be finally satisfied with anything less than control of the WTO.

⁸ From Butler's *Lives of the Saints: St Boniface*. Quoted in *The Cross and the Rain Forest: a Critique of Radical Green Spirituality*; edit Robert Whelan, 1996 Acton Institute, Grand Rapids, Michigan