Myths About the WTO

By Jim Bailey

Over the past several years volumes of misinformation about free trade and the World Trade Organization (WTO) have been written, announced, and shouted from the hilltops. The distortions in some cases are so extreme that they cannot be considered mere misinformation but should be treated as dis-information: Propaganda which sounds accurate and precise but is knowingly inaccurate. The following is a brief review of some of the most frequently perpetuated myths about the WTO.

Myth: Free Trade is Bad for the Environment

A fundamental misconception about the World Trade Organization is that it is unavoidably bad for the environment. Unraveling this misconception requires explaining the theoretical foundations of the organization. The truth is that the WTO is based on a theory which, if properly implemented, would be beneficial to the environment.

The WTO was created to foster "free trade." Free trade is a concept which is based on the economic principle of comparative advantage. Comparative advantage, stated simply, recognizes that each nation has certain inherent advantages in the production of various goods and services. Trade barriers distort this reality by encouraging nations to produce goods which would be more efficiently produced in other countries. This occurs because trade barriers protect domestic industries in their production of goods for which the protectionist nation has no natural advantage. The principle of comparative advantage recognizes the reality of such inefficiencies and the increased systemic costs which result.

A simple example can help explain how comparative advantage works. Suppose that the United States decided to become the world's largest supplier of bananas by growing them in the vast open spaces of Minnesota and North Dakota. The United States certainly possesses the technological know-how to accomplish this. However, the technology and effort required to build climate-controlled environments for large-scale production of bananas would be grossly inefficient and the bananas would end up costing about $500 per pound. Guatemala, on the other hand, can easily produce bananas at a much lower cost because it possesses certain inherent characteristics—most notably, favorable weather—which allow for the efficient low-cost production of bananas. As a result, Guatemala has a comparative advantage over the United States in the production of bananas even though the United States could produce a much larger crop.

If used properly, the WTO will work toward the elimination of trade barriers and thereby foster the efficient and wise use of natural resources.

Myth: Free Trade Exploits Foreign Workers

One of the inherent trade advantages a country may possess is a cheap labor force. This will induce foreign companies to build production facilities there in order to lower their production costs and be able to undersell the competition. This is not an exploitation of workers; it is a relocation of a production facility which has effects both desirable and undesirable for the local economy.

For example, the relocation of the plant may bring with it an improved local road system so that the goods may be transported to market. The relocation may bring with it improved medical facilities so that the work force is reliable and absenteeism is low. The relocation may bring with it additional capital to the benefit of the local population. The degree to which these possibilities come to fruition has nothing to do with the concept of free trade but is a by-product of the plant relocation which is a result of free trade.

Free trade provides the potential for improved living conditions. Were it not for free trade, the cheap labor force would have no access at all to those potential benefits.

Myth: WTO Threatens U.S. Sovereignty

Analysis of this issue begins and ends with recognition of a basic fact: the WTO Agreement itself states that any member may withdraw from the organization and the related agreements at any time upon giving six months notice of its intent to do so. Moreover, U.S. law requires Congress to consider withdrawal from the WTO if it consistently and frequently decides trade disputes against the United States. Thus, both U.S. law and the WTO Agreement anticipate and allow for U.S. withdrawal from the WTO. Obviously, an organization cannot threaten our national sovereignty if we are at liberty to withdraw from it.

The more interesting question is whether the United States would ever seriously consider withdrawing from the WTO. The answer is, certainly not. That is because no nation ever signed a treaty that it did not think was in its best interest. Even when a nation was forced to sign a treaty to end or prevent a war, it did so because the alternative was worse. At the very least, that was the situation when the United States decided to sign the WTO Agreement.

In fact, the WTO Agreement contains a series of trade agreements that are almost exactly everything the United States wanted with regard to the rules of international trade. In only a few minor instances did the final text not embody the desires of the United States. The WTO is a very U.S.-friendly organization, created according to the specifications supplied by and insisted upon by the United States. The WTO does not threaten U.S. sovereignty, and the U.S. is never going to consider withdrawing from the organization it built.

Myth: Free Trade Is Incompatible With Quality of Life Rules

According to its critics, the WTO has weakened national regulation in such areas as workers' rights, health and safety, and

environmental protection. Furthermore, the critics claim, this weakening will precipitate an erosion of rights around the world, either because regulations in these areas will be eliminated as trade barriers or because companies will relocate their operations to countries that do not have such regulations, which are mostly found in developed countries. However, rather than a "race to the bottom", the development of free trade is more accurately portrayed as "two steps forward, one step back", but progress nonetheless.

Undoubtedly, companies relocate operations where they are less expensive to conduct. No doubt the absence of regulations lowers the cost of operations. The question is whether relocations for such reasons is actually a bad thing. The economic history of the United States provides a useful analogy.

The current close connection between individual states in the United States did not always exist. As originally created, the country was much more a collection of autonomous jurisdictions than the near-seamless republic we have today. Economic protectionism between states was prevalent. It was protectionism, in the form of a Maryland interstate tax, that the Supreme Court invalidated in 1819 when Chief Justice John Marshall wrote "the power to tax is the power to destroy."

Eventually, trade barriers between individual states became more sophisticated, disguised as "resource conservation" laws and highway safety laws. Such environmental, safety, health and agricultural laws passed by individual state legislatures have repeatedly been invalidated by the Supreme Court as unconstitutional attempts at economic protectionism. In effect, the United States is now a nation of individual states which have become so economically integrated that we have free trade between them. Nonetheless, the

An Analysis of the Dispute Resolution Process Under WTO/GATT Rules

The World Trade Organization (WTO) Agreement contains language which describes how international trade disputes will be resolved within the framework of the WTO. The Agreement was formulated in the Uruguay Round of negotiations on the General Agreement on Tariffs and Trade (GATT), which the WTO superceded.

The subordinate body that oversees the process and is ultimately responsible for resolving disputes or authorizing sanctions for trade violations is the Dispute Settlement Board (DSB). The DSB deals with all disputes between WTO members involving complaints that one of them is breaking the rules. The GATT prohibited tariffs. Violations of this rule are so obvious that countries do not uses tariffs anymore, so they are never the subject of DSB complaints. GATT also banned "non-tariff trade barriers" (NTBs)—that is, quotas, bans on imports, or any other barriers to international trade other than tariffs. Such barriers, too, are very obvious and rarely used. However, national laws that have the effect of creating a barrier to trade can be deemed to be NTBs, and thus be subject to challenge before the DSB, even if they appear to be neutral on the question of trade or unrelated to it. It is then up to the DSB to decide whether these national laws are in fact impermissible NTBs.

For example, some nations have complained that the mere existence of 50 different state jurisdictions within the United States, each with slightly different laws, is itself an NTB because the differences are so numerous that many companies decide that it is not worth the effort and expense to figure it all out. No one, however, has challenged the federal structure of the United States as an impermissible NTB under GATT because they would certainly lose! Another example: U.S. law prohibits catching tuna in U.S. territorial waters in a way that also kills too many dolphins. Because Mexico has no such restrictions, its fishermen are able to produce cheaper tuna and undersell U.S. tuna companies.

In order to maintain a level playing field and protect U.S. tuna, our government has imposed a ban on tuna caught in any way that differs from what U.S. law allows. Claiming that it was a trade barrier masquerading as environmental protection, Mexico challenged this ban as an NTB and won. Mexico, however, lost its challenge of a U.S. law requiring imported tuna to be labeled as "not dolphin safe", which it claimed was also an NTB because it increased the expense of processing the tuna.

How the Process Works

The DSB initially attempts to assist member nations in resolving a dispute themselves. If it cannot do so, it may find a nation to be in violation of the WTO rules of international trade contained in GATT and other agreements and authorize action against it.

The Initial Review Panel

If consultation efforts prove unsuccessful, a member nation claiming a violation can request that the dispute be presented to a 3-person panel (unless one of the parties requests a 5-member panel). The panelists are selected by the DSB based on their training and experi-

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ence in international trade and negotiations. A party to the dispute may object to a panel member only for "compelling reasons", though the DSB has final authority to select an ad hoc panel if the parties to the dispute cannot agree on its composition within 20 days. The parties present their positions to the panel at a formal hearing after which the panel issues a report stating whether GATT rules have been breached. The dispute may involve multiple parties who were directly affected as well as third party nations with "substantial interests" in the dispute.

The WTO treaty charges the panel with making "an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and [to] make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements."

The panel conducts a hearing in closed session and keeps all documents submitted by the parties confidential. The parties are free to make public only their own positions.

Upon completion of the hearing, the panel deliberates in secret and submits a single report to the DSB. Individual panelist opinions contained in the report may only be noted anonymously.

Adoption of the Report or Appeal

Prior to DSB action on the panel's report, Article 16 of the Agreement permits parties to the original dispute to appeal the panel's report to the Appellate Body, which has the authority to uphold, modify or reverse the panel's legal findings and conclusions.

Unlike the initial panel, which is formed on an ad hoc basis, the Appellate Body is a standing body within the DSB composed of seven persons appointed for four year terms. Individuals on the Appellate Body are "recognized authorities, [with] demonstrated expertise in law, international trade and the subject matter of the covered agreements." The members of the Appellate Body may not be affiliated with any government and must be broadly representative of the WTO membership.

As is the case with the initial panel process, the parties present their arguments to the appellate panel in confidential proceedings. The Appellate Body then presents its report to the DSB, which adopts the report unless it decides by consensus not to do so. The rules require that the initial panel report and the Appellate Body report include recommendations that will help a party found to be in violation get back in compliance with WTO rules.

Compensation Versus Compliance

If the DSB finds a member nation to be in violation, prompt action to end the non-compliance is deemed "essential." If the offending nation cannot correct the violation within a reasonable time, it may offer compensation or the DSB may authorize "the suspension of concessions or other obligations." Both of these measures are intended to be temporary and are considered inferior substitutes to full compliance with the relevant trade regulations.

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United States has volumes and volumes of laws and regulations which protect the environment, workers, children, food production and myriad areas.

The point is that the WTO is the beginning of serious international economic cooperation. The WTO is neither the harbinger of a new Eden nor the of apocalypse. With economic benefits come increased standards of living. With increased standards of living come demands by people that government serve their needs and desires through regulations that safeguard their health, their workplace, and their environment.

Myth: The United States Should Be Allowed To Ban Imports Because of Workplace Rules

Another aspect of trade barriers must be mentioned in the context of health and safety concerns for people in less developed nations, regulations which restrict imports produced under conditions objectionable to the importing nation. Supposedly, the absence of regulations in the foreign country depletes the environment and creates unfair competition for U.S. workers. The myth is that the United States is powerless to pass laws which prevent the import of such unfairly produced and environmentally unfriendly products.

The myth arises because the United States has laws which mandate safe working conditions in a variety of workplaces. We have such laws because the people insist on them, despite the fact that they increase the cost of production. Products made in countries without such regulations can be sold for less than the

domestic products. Should the United States be allowed to ban imports made in countries which do not impose similar workplace protections? The GATT rules say "no."

Why? Because foreigners do not get to vote in U.S. elections. A U.S. import restriction which attempts to "level the playing field" in such situations has the effect of regulating workplace conditions or production methods in a foreign nation. It is the essence of democracy that those to whom laws apply are represented when those laws are made. The United States has no more right to regulate production methods in another country than Massachusetts does to tell Oregon how to run its school system. The day we allow foreigners to vote in U.S. elections we will have the right to pass laws which regulate activities in other nations.

Yet, the WTO does allow member nations to pass laws which mandate sellers to inform consumers about the conditions under which products were made. For example, the United States can require labels on tuna fish cans describing the product as "dolphin-safe tuna." Such labeling laws do not violate GATT rules because they regulate the product itself, not the process by which it was made.

As a result, the power to influence foreign manufacturing and workplace conditions ultimately rests with U.S. consumers: if they care about working conditions in foreign nations, they will spend more to buy "worker-safe" shoes and "dolphin-safe" tuna—and if they really care about U.S. workers, they will "buy American." Free trade is clearly not the villain in this particular drama.

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Penalizing Non-Compliance

If the non-complying nation is unable to change the "offending measure" and comply with the trade agreements, the parties commence negotiations over appropriate compensation. If compensation negotiations are unproductive, then the complaining nation may request authorization from the DSB to suspend its trade agreement obligations toward the non-complying nation. However, the level of the suspension of concessions or other obligations authorized by the DSB must be equivalent to the level of the infraction, officially known as the "nullification or impairment."

When the DSB authorizes the suspension of "concessions" and obligations, the non-complying nation may request arbitration. The arbitrator then reports his findings to the DSB which "shall upon request" grant authorization to the complainant to suspend concessions or other obligations when to do so is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.

Although only the party claiming injury as a result of the non-compliance may be authorized to withdraw WTO concessions and obligations, not all disputes are limited to two parties. For example, the disputes between the United States and the European Union have involved the entire EU membership. Further, there is no limit to the number of parties that can bring a dispute before the WTO. As a result, it is quite possible that a nation found in violation of a WTO trade agreements would be facing the withdrawal of concessions and obligations from a large portion of the WTO membership.

Duration of the Dispute Resolution Process

Unless the parties agree otherwise, a DSB decision must be issued within nine months of the establishment of the initial panel if there is no appeal and within 12 months if the panel report is appealed. Arbitration and the imposition of interim measures may extend this time period, but typically extensions are the result of negotiations between the parties. The goal of the dispute resolution time table is to avoid time frames for compliance so short that parties are unlikely to be able to meet them—or so long that they would turn the dispute resolution process itself into a trade barrier.

Conclusion

The dispute resolution process anticipates and encourages on-going negotiations and seeks to prevent unacceptable economic dislocation for either party. Rather than imposing a rigid system with ruthless deadlines and harsh penalties, the WTO system recognizes that international rules ultimately rest on cooperation and voluntary adherence by the members of the world community.

Jim Bailey

Myth: Fast Track Authority is Reckless

Often the U.S. law allowing the President to engage in "fast track" trade negotiations is characterized as a legal end-run that prevents debate and foists trade agreements on an unsuspecting U.S. public.

Non-trade treaty negotiations are conducted as follows, as required by the Constitution: the State Department negotiates the terms of the treaty (for example, salmon-fishing rights between the

United States and Canada), the President signs the treaty, and then the Senate ratifies it by a two-thirds majority. Theoretically, public debate or at least debate within the Senate is part of the process.

Here is how the fast track process works: the President initiates trade discussions with another nation through the office of the U.S. Trade Representative (like the State Department, a cabinet-level office). During those negotiations, the USTR reports to both houses of Congress (something that is not done with other treaties), thus allowing them to flag provisions they find unacceptable. The USTR takes this feedback into account in completing the trade negotiations and eventually presents a final text for approval to both the House and Senate (again, the Constitution only requires treaties to be presented to the Senate for ratification). Another significant difference between the regular treaty ratification process and fast track ratification of a trade agreement is that with Fast Track only a simple majority in both houses is required for passage.

Of course, this raises the question as to why have fast track in the first place. The answer is straightforward: The normal treaty process does not work with trade agreements that are typically long, detailed and affect different parts of the United States differently.

Before fast track, whenever the United States attempted to negotiate trade treaties, the Senate would pick apart the final text because it had never seen it before and the House would refuse to pass domestic legislation necessary to implement its terms. The United States would then attempt to re-negotiate the terms that were unacceptable to Congress with a now highly irritated foreign government, which perceived this as little more than a "good cop/bad cop" negotiating tactic. The situation was not conducive to getting much accomplished and did not improve international relations.

To correct this problem, Congress created fast track negotiating authority. The President agreed to inform both the House and Senate as negotiations unfolded so as to avoid an embarrassing "nay" vote on the final text. In return for participation in the negotiation process, Congress agreed that the final vote would not be preceded by a debate and therefore that no amendments to the agreement would be allowed, but merely a single "yea" or "nay" vote.

Nothing is hidden in the fast track process. Congressional debate based on full information is conducted throughout the negotiations. Fast track is not a bad track, but a necessary, useful means of arriving at trade treaties in the modern world.

Myth: We need to Change the WTO to Protect Against Secret Tribunals

Under the WTO dispute resolution procedures, proceedings in both the initial review panel and the Appellate Body are conducted behind closed doors. Unlike the judicial proceedings of most countries, the arguments, briefs and documents submitted by the parties are secret. The parties are also prohibited from revealing the positions and presentations of the opposing side. Such secrecy creates a potentially serious problem for the peoples of democratic nations: It allows governments to subvert their countries' democratic process!

A brief example illustrates this potential for abuse. Let us say that the United States Congress passes a law which is designed to protect the environment. (Contrary to what some commentators contend, it is possible to protect the environment without violating GATT.) However, the President vetoes that law because he feels that it is unfriendly to business interests. Congress then overrides the President's veto. According to our democratic process, the political battle is over and a bill which was carefully designed to fit within the framework of GATT becomes law.

Suppose, however, that that same law is then challenged by a WTO member nation as a violation of the trade agreements. (You might even further suppose that the President has quietly informed other governments that he does not support the law and has suggested that it should be challenged through the WTO.) The United States is represented at the WTO (and before the Dispute Settlement Board (DSB) by representatives picked by the President. Since the President does not favor the law, one wonders how zealously his representatives would defend it.

Indeed, since the DSB proceedings are entirely secret, it is perfectly possible that the challenging nation would present its case and the official representing the United States could respond, without fear of any public backlash, "We agree, our new environmental law is a violation of the trade agreements."

In effect, the secretive procedures of the WTO dispute resolution process actually give the President a second, secret veto of any Congressional act which is arguably a trade barrier. The secretive element of the WTO procedures is a legitimate threat to democracy, which relies on open procedures and the power of the press to maintain its integrity.

Addressing this concern does not require a change in WTO procedures, however. The troublesome anti-democratic potential of the secretive procedures can be addressed through U.S. legislation requiring that all pleadings and documents presented by the United States within the WTO dispute resolution process be made public.

The Nature of the WTO as an Organization

Popular frustration with the WTO is the most visible example of a conflict which is being experienced by other international organizations as well. All organizations function as directed by their

members. In the case of the WTO, the members of that organization are not individuals, but national governments that, in turn, represent their populations.

This creates an additional layer of bureaucracy between the people and an institution that has the potential to greatly affect their lives. That layer makes the institution far less responsive to popular opinion than a typical democratic government.

This is the fundamental trait of the WTO that deserves attention—not debates over sovereignty and environmentalism. The WTO is, in fact, based on the ecologically sound principle of efficient use of resources and effective distribution of those resources at the lowest market price. It is essential that democratic populations inform their governments as to how effectively they believe the WTO serves basic human needs. It is then up to governments to convey this popular will to the WTO.

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