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Commentary

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I am pleased to discuss this paper, an excellent one to finish the conference. Dave Richardson's paper, potentially quite important, is a conceptual exercise aimed squarely at answering perhaps the biggest question facing the World Trade Organization (WTO). How can the global trading system accommodate pressures for revision along less commercial, and more social, lines in a sensible way that would not destroy its effectiveness? It is a question that trade economists have been ignoring in the vain hope that it will go away.

The question will not disappear because the pressures involved are real and powerful. They come from several sources and it is worth mentioning the primary ones. First, there are environmental concerns that range from legitimate issues involving cross-border externalities to very localized questions regarding the sovereignty of community-level environmental regulations. People are concerned and confused about the WTO in this context. This is evident from the fact that no amount of explaining local regulations would escape the WTO's purview (not to mention interest) by virtue of *de mimimus* exceptions seems to be convincing. Richardson excludes environmental concerns from his list of potential WTO extensions, evidently because he considers environmental regulations not to be market-supportive in the sense he defines. I am sympathetic with this view, but it does not do much to mollify the WTO's opponents.

A second set of concerns involves labor rights, sometimes labeled human rights. These complaints are broad-based and aimed at forcing developing countries to educate their children, eliminate discrimination, end coerced labor, and permit free association and collective bargaining. It is difficult to see a legitimate and effective role for the WTO here because the issues are largely not trade-related and raise clear questions of national sovereignty. Nonetheless, Dave has found one case–seemingly a small one, but it is not–in which the WTO could be extended. It is consistent with liberalization in services under the General Agreement on Trade in Services (GATS) accord to allow free trade in labor representation services.

A third area stems from the apparent difficulties that countries have in managing the costs of technological change and economic globalization. It is now conventional wisdom among non-economists that trade liberalization worsens income inequality in both developed and developing economies. Whatever the truth of such claims, they raise interest in supporting labor incomes through trade restrictions, particularly in the wealthy nations. Globalization is blamed further for raising the risks of consumption, especially of goods produced using new technology. Biotechnology raises public health concerns and worries about the safety of foods and the potential for unforeseen environmental responses. It is a curious feature of modern life in developed economies that as they have become richer and the inherent risks in living have fallen dramatically, people place inordinate weight on the avoidance of even small risks. In such an environment, where many people also fail to understand the basics of probability and risk, it becomes easy to imagine damages emanating from the opaque processes of globalization.

With this background, Richardson essentially makes three major points underlying his policy propositions. First, he argues that public support for the WTO system is waning and must be restored by a bit of consorting with those who would inject social regulations. While trade purists find this idea an anathema, it bears thinking through because the potential benefits in terms of saving the trading system could be worth the costs. Moreover, it is possible to put this erosion on something of a logical basis. After all, social standards in the environmental and labor areas clearly are goods or inputs with highly elastic income demands. The United States and the European Union have such high relative incomes that they can afford to be bothered by weak foreign standards. Further, there is a growing recognition that there are missing markets and other failures that may (or may not) be exacerbated by international trade and investment.

Among these missing markets are:

- Chronic under-representation of future generations;

- Information asymmetries and risks at the international level that cannot be managed by private insurance markets;

- Weak incentives for recognizing the value of investments in information goods (intellectual property);

- Political and economic failures, especially in developing nations, that prevent the establishment of sound and pro-competitive market regulation.

Recognizing this problem leads to Richardson's second main thesis, which is that economists do not pay sufficient attention to the importance of regulating markets. After all, consider the principles textbooks in economics, which pay virtually no attention to regulatory provisions supporting the efficient functioning of markets. In practice, regulations are widespread at both the national and sub-national levels. In principle, then, they should extend to the international level. The WTO already is a system of international regulation and really the only effective one because it has a dispute-settlement mechanism. The issue is how, and how comprehensively, this system should be extended. Trade economists tend to take one of three views in pondering this question.

First, the purists believe that if an issue is not directly trade-related and damages may not be assessed in a straightforward manner, it should remain outside the WTO. Anything else would make the system dirty and be subject to political capture. Certainly there is precedent for this view in the form of the atrociously protectionist antidumping laws advanced by the United States and Europe and now in widespread use around the globe.

Second, the abstract view would identify the principles on which one would support a WTO approach to social regulation. The main principles are:

- Is the issue directly trade-related?

- Are there cross-border externalities involved?

- Do countries have incentives to engage in a race to the bottom in standards without coordinated intervention?

- Do standards help support the development of markets?

- Is dispute resolution meaningful?

- Does the issue fit systemically with the WTO mission and competence?

In my view, a rigorous application of these principles would show that environmental standards and labor rights do not belong in the WTO, but should be handled in alternative policy designs. As Richardson points out, however, it is misleading to lump all aspects of such standards together. There may be components of environmental protection or labor rights that meet enough of these criteria to be included.

A third approach, associated primarily with Dani Rodrik, would be to give some controlled voice to the concerns of citizens in rich countries about standards in poor countries and to permit trade sanctions after some set of public deliberations takes place. I would argue against such a policy because of the near certainty it would fall prey to narrow protectionist interests.

Richardson's third main thesis rounds all of this together. It is that the WTO implicitly is being forced to deal with trade in factors—in addition to trade in goods and services. After all, competition policy aimed at regulating foreign direct investment and mergers could promote external competition. Protection of technological inventions through intellectual property rights could support trade in information. Trade in business services is a form of trade in labor. Why not, then, extend WTO disciplines to labor rights? The most effective solution to weak labor rights would be to permit free labor migration. Labor cannot be traded directly in greater quantities, however, because of migration costs and political opposition. Richardson's solution is ingenious. It is perfectly consistent with market liberalization to permit trade in labor services, where such services represent worker interests. Here is a way for free association and collective bargaining to enter the WTO: If international labor unions were free to enter nations and organize workers there would be both greater efficiency in labor representation and stronger effective worker rights. Note carefully that such a proposal requires, as a prior matter, that countries recognize in their laws the right to free association. Combined with free trade in worker representation, this change could enhance efficiency.

Assembling all of this, Richardson implicitly sets out a criterion for permitting "social" issues into the WTO. Regulations must be market-supportive, in the sense of promoting contestability of some market that is missing or monopolized, and they must be directly trade-related. This simple prescription seems to be broad and subject to considerable abuse; but, I find it to be clean, relatively precise, and demanding. It is demanding because it may be seen that Richardson could only find three areas in which it fits. These are a modest competition policy agenda, unspecified mechanisms for promoting technology diffusion through the global economy on reasonable terms, and free trade in union services. The principle also has the virtue of placing the burden of proof on advocates of extending the WTO into extensive social regulation.

Thus, overall I greatly admire the basic principle and I encourage Richardson to push it forward and test its limits. At present, however, it is worth making some comments and suggestions. First, as intriguing as it is, the analysis is vague at this time. We need theories and models to be sure we are talking about issues that really meet the basic principle. For example, we need models of the political economy of regulation to explain why regulations are so weak and what forms of resistance might be expected. It would help to analyze the determinants of missing markets and the optimal interventions that would address them. In Richardson's conception, for instance, we would apply two instruments—social regulation and trade sanctions—to fix international market failures. We would like to know circumstances under which this truly makes sense. It is not clear to me that such models would support Richardson's WTO approach in some cases of technology trade. On the other hand, modeling could determine other areas in which his conception is sensible. Finally, we need analysis of the effectiveness of international regulations supported by trade sanctions. How would this affect compliance? Would fines be better?

Furthermore, we need to have the details of proposed policies spelled out. Richardson should put considerably more meat on his skeleton. His proposal is fundamentally about the architecture of the trading system. The author argues that market-supporting regulation must be a foundation of the structure. Fair enough, but we must develop detailed blueprints. Permit me to provide some final commentary on the kinds of policies that might make sense in this context.

First, the competition policy framework should be written more broadly and placed more quickly into the WTO than is argued by Richardson. Competition policy will be important for developing countries as they address issues in intellectual property licensing and foreign direct investment. Without some agreement on what may be invoked here I fear numerous disputes emerging without much probative value. Second, while I agree with Richardson's suggestions for a pro-diffusion treatment of technology trade, this must be done by balancing the existing Trade Related Intellectual Property (TRIPs) Agreement more toward technology transfer and learning. It would be useful to clarify a number of issues here, such as the allowable scope for fair use and reverse engineering, the implementation of commitments by developed countries to enhance technology transfer, consideration of guidelines on anti-competitive licensing practices, and the need to keep the internet free of trade barriers as well as subsidizing its extension to developing countries. It would be important also to implement measures to promote research and development in treatments for diseases endemic to poor countries and to share those treatments on reasonable terms. Finally, competition measures should be put into place to avoid monopolization of global seed technologies.

For its part, Richardson's proposal for free trade in labor services is ingenious and deserves thorough airing. It would stand a better chance of acceptance if he would spell out exactly what is envisioned and what competition among labor service providers would entail. Would there also be competition regulation aimed at monopoly labor unions? Would, say, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) really think this proposal would sufficiently advance its interests that it would then be willing to support further trade liberalization?

In that context, I have three final questions for the author to consider. First, are his proposals enough? Would they really generate enough gainers to channel all of the rest of the anti-trade sentiment into other directions? Keep in mind that there would be losers as well. Second, if these proposals are not enough, are we skating on ice that is too thin by inviting numerous other, less worthy ideas? Third, to what extent would these new procedures usher in abusive use of trade power? Imagine an American labor union that fails in its efforts to organize workers in Brazil, not because of a closed labor market but because it simply loses the contract. Would not American authorities then be under pressure to set market-share quotas in labor representation?