Institutionalizing global neo-liberalism: The structural transformation of the WTO and its inherent contradictions[1]

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Abstract

This article examines the impact of the World Trade Organization (WTO) on domestic trade policies and practices. I show that protectionist measures, including those practiced by the United States, have been effectively challenged, and consequently restricted, due to the WTO strengthened dispute settlement procedures. I show that the new procedures affected the substantive policy outcomes by changing the political influence of competing actors. Specifically, I identify four transformations affecting the political influence of participants: the re-scaling of political authority, the judicialization of inter-state relations, the institutionalization of the international organization, and the structural internationalization of the state. Based on this case, the article offers a view of globalization as a political project of establishing new institutional arrangements. This view emphasizes the political dimension of the process of globalization and provides an account of the content of the political project, that of "global neo-liberalism"; it suggests that this project was facilitated by transforming the institutional arrangements in place; and it identifies the contradictions inherent in such an institutional project.

"To analyze world politics in the 1990s, is to discuss international institutions: the rules that govern elements of world politics and the organizations that help implement those rules"

– Robert Keohane (1998:82)

1. Introduction

On April 15, 1994, after eight years of bitter negotiations and constant crises, representatives of 108 countries met in Marrakesh, Morocco, and signed the Uruguay Round agreements. Of the many legal changes introduced in the agreements, one issue in particular captured the imagination of both supporters and opponents of a liberal trade agenda: the establishment of the World Trade Organization (WTO). The agreement to create the WTO was not a mere symbolic gesture of providing the General Agreement on Tariffs and Trade (GATT) an actual institutional framework for future negotiations. In addition to granting a name, and promising more personnel and funds, the contracting parties signed a Dispute Settlement Understanding (DSU), which introduced new institutional arrangements for conducting trade disputes. In the empirical part of this paper I investigate what impact the new dispute settlement mechanism had on the ability of member-states to maintain their protectionist measures. In the analytical part, I use the example of the WTO to analyze the role international organizations take in the current process of globalization.

The contribution of the WTO to the process of trade liberalization suggests the *active* role of political bodies in providing the conditions under which globalization is possible. Consequently, I offer a view of globalization as an institutional project, that is, as a political project of establishing new institutional arrangements. Through such an analysis, three distinct aspects of the process of globalization are captured: the analysis

emphasizes the political dimension of the process of globalization and provides an account of the content of the political project, that of "global neo-liberalism"; it suggests that this project was facilitated by transforming the institutional arrangements in place; and it identifies the contradictions inherent in such an institutional project.

This conceptualization of globalization as an institutional project builds upon the insights of studies that criticize the declarations of the "weakening" of the state while identifying and analyzing particular organizational transformations (Cox 1987, Jessop 1997, Cerny 1997, Shaw 1997, McMichael 1996). But it goes beyond these assertions regarding "the structural transformation of the state" by, first, providing a theoretical framework for explaining the causal efficacy, and hence substantive implications, of institutional transformations (also at the international level) and, second, by identifying the contradictions inherent in these structural transformations that threaten US hegemony as well as the globalization project itself.

2. Globalization as an Institutional Project

While the WTO is one of the most legalized international organizations, similar trends can be viewed throughout the international sphere. There is a proliferation and strengthening of international organizations: according to one account, the number of intergovernmental organizations rose from 61 in 1940 to 232 by 2002,[2] and international organizations in existence for decades have expanded their roles substantially, acquiring broader powers and responsibilities.[3] This development is combined with a "move to

[2] Cupitt, Whitlock and Whitlock 1997; Union of International Organizations 2002-2003.
[3] On the recent strengthening of international organizations see Camillery and Falk 1992:94-7; O'Brien *et al*. 2000; Barnett 2002.

law" where international institutions are becoming increasingly legalized (Goldstein *et al*. 2000: 385-6, Friedman 2001, Shapiro 1993, Trubek *et al.* 1994).

In spite of these developments, the institutional dimension of the current process of globalization has been ignored or under-played by the literature. Instead, I suggest a view of globalization as a political project of advancing "neo-liberal globalism" by establishing new institutional arrangements, both at the national and international levels. In this section I describe the components of such a conceptualization.

Globalization as a political project. In attempting to capture the elusive notion of "globalization," scholars have most often referred to processes of international economic integration.[4] Referring to globalization as a *political* process brings to the fore parallel non-economic aspects of the same process, thus incorporating into the analysis the fact that economic and political manifestations of any social phenomena are always closely related and necessarily intertwined.[5] The process of globalization has not been an exception, as several trivial examples illustrate: the increased volume of international trade and the disaggregation of production and consumption across national boundaries have required states to reduce tariffs and non-tariff barriers; the spread and integration of financial markets would not have been possible without the de-regulation of those markets; and changing patterns of labor migration have required new labor and migration laws. These political and legal dimensions are not merely a reflection of pre-existing economic activity. Rather, political transformations, at times, precede and enable the

[4] For economic definitions of globalization see Mittleman 1996, Rodrik 1997, Rhodes 1996. Empirical analyses and evaluations of the scope of globalization are offered by Held *et al.* 1999, Dicken 1998, Hirst and Thompson 1999.

[5] On the necessity of political intervention in the internationalization of economic activity see Murray 1971, Panitch 1994. On the active participation of the state in the process of globalization see Helleiner 1994, Kapstein 1994.

economic trends. Globalization should therefore be viewed as a political process as much as an economic one.

The political *content* characterizing globalization includes the "disembeddedness" of international economic policy (the growing inability or reluctance of governments to live up to their part of the domestic social compact) (Ruggie 1982, 1994); the rise of the "competition state" (the pursuit of increased marketization in order to make national economic activities internationally competitive) (Cerny 1990, 1997); and the launching of the "globalization project" (the favoring of market-based rather than state-managed development strategies) (McMichael 2000). These related elements can be generalized under the concept of "neo-liberal globalism," in which domestic constituencies are subjected to rules that are not only based on free-market ideology, and neo-liberal economic theory more generally, but that also conceive the global market as the only legitimate unit of operation, while at the same time domestic policies protecting them from negative consequences are abandoned.[6]

Globalization as an institutional project. By referring to globalization as a project of institutional change this paper identifies one fundamental strategy used by supporters of neo-liberal globalism (i.e., the carriers of the globalization project) to bring about favorable policy outcomes that would create and stabilize global economic integration: transforming the institutional arrangements in place, both at the national and international levels.

This argument stands in contrast to the common assertion that under globalization political authorities no longer play an active role in the market. A direct, unmediated,

[6] I refer to "neo-liberal globalism" and not merely to "globalization" to emphasize the distinction between the scalar (globalization) and political-economic (neo-liberal) dimensions of the process and hence to suggest the possibility of alternative global processes.

causal link between global economic pressures and the formation of new policies is usually offered.[7] Even those attentive to the continuous relevance of state action and/or political struggles have regularly ignored the constitutive role of state *institutions* in mediating between global transformations and domestic policy outcomes.[8]

State institutions have been introduced to the analysis in two ways. In one, the significance of institutional arrangements is highlighted in order to explain the differential effects of globalization on various countries and proclaim the ability of states to resist global economic forces. Criticizing the convergence argument, which suggests that transnational markets have so narrowly constrained policy options that states are being forced to adopt similar policy regimes, Weiss (1998) showed that institutional variation in domestic characteristics brought about significant variation in states' reactions to such constraints. Similarly, the contributors to the edited volume *Internationalization and Domestic Politics* (Keohane and Milner 1996) suggested that a nation's response to external economic pressures depended upon the "strength" of domestic political institutions. Such studies offer an important contribution to our understanding of states' resistance to external pressures of global flows. Yet, by treating state institutional arrangements as exogenous to the analysis and by regarding them as constant over time these studies overlook the possibility that state institutional arrangements have themselves been transformed as part of the process of globalization.

The second manner in which state institutions have been analyzed has been through identifying the structural transformation of the state as a critical way by which

[7] See Reich 1992, Ohmae 1990, 1995, Falk 1997, Camilleri and Falk 1992, Strange 1996, Greider 1997, Albrow 1996, *Daedolus* 1995.

[8] This refers to scholars analyzing the ability of states to resist global pressures (e.g. Garrett 1995) as well as to scholars analyzing the role of the state in actively promoting globalization (Kapstein 1994, Helleiner 1994).

global economic structures have been translated into state policies. Robert Cox (1987, 1992) describes how state structures were adjusted to allow compatibility between domestic policies and an internationally-established consensus of policy priorities regarding the needs or requirements of the world economy as formulated by the elites that populate transnational institutions and forums. This adjustment entailed a restructuring of the hierarchy of state apparatuses, specifically, a shift in power away from those agencies most closely tied to domestic social forces and towards those which were in closest touch with the transnational process of consensus formation. It is in this way, Cox suggests, that the state has been converted into an agency for adjusting national economic practices and policies to the perceived exigencies of the global economy.

Bob Jessop (1997, 2002) identifies organizational transformations of the state as one of the outcomes of the growing disjunction between the hypermobility of capital's spatio-temporal horizons and those horizons of most contemporary states, which limited the state's ability to react according to its own routines and modes of calculation and limited its ability to contain economic, political and social processes within its borders. The repercussions on the state organization has involved shifts in the relative power of the executive, legislature and judiciary, and in the relative power of agencies in each branch, as well as the reordering of relations among different political tiers and the rebordering of political systems (Jessop 2002:194). In particular, Jessop describes the denationalization of the state, the destatization of the political system, and the internationalization of policy regimes (1997, 2002:195-200).

Philip McMichael (1996) describes how as part of the "globalization project," the budgetary constraints on the state led to cuts in ministries such as education, agriculture,

health, and social services and at the same time privileged the financial and trade ministries that survived. This has meant that state agencies that support and regulate economic and social sectors affecting the lives of the poorer classes have lost resources to agencies more concerned with the sectors that connect with global enterprise.

In this article I advance this institutionalist argument further by describing how the structural transformation of the WTO brought about substantive outcomes of intensified neo-liberal globalism. This exercise is not trivial. While implicitly suggesting that the content of policies depend on the new hierarchical distribution of authority, the literature on the structural transformation of the state provides no analysis of this assumed link between state structures and the emerging policy outcomes. The assumption that "institutions matter" hence needs to be elaborated upon and defended, especially if it is to be applied to the international level. I provide such a theoretical framework in the next section.

My study advances the institutionalist argument also by granting structural transformations a more "active" role in bringing about globalization. The literature on the structural transformation of the state views such transformations as an outcome of economic or political processes already in place, occurring previous to, and independently of, the identified organizational changes. Yet organizational and/or policy changes at home that come from "above" need not be the outcome of structural economic processes or consensus-formation but may be, instead, the outcome of structural transformations at the international level. The case of the GATT/WTO shows that economic processes (here, open trade) would not have been made possible without such

structural transformations in the first place. Institutional changes, hence, are not a mere outcome of globalization but one facilitator of it (Panitch 1994).

Institutions and state power. I employ the analysis of the structural transformation of international organizations and states to engage in the debate regarding "state power." A number of competing claims have been made concerning the status of the state in the contemporary global economic era, ranging from declarations of the "death of the state" to assertions of the ability of states to fight back, resist, or even actively shape global structures.[9] While the main debate has revolved around the relations between states and global capital, a parallel debate has concentrated on the altered position of the state in relation to competing political authorities, in particular international organizations. Most scholars have maintained a skeptical view, relying on the realist contention that international organizations do not and cannot impinge upon state sovereignty (Weiss 1999:70-71, Moravscik 1993). Others, however, suggest that the growth of supranational bodies has diminished the decision-making abilities of member states (Slaughter 1997, Pierson and Leibfried 1995, Ross 1995, Martin 1993, Held *et al.* 1998).

An institutionalist analysis of global politics suggests a more complicated view of the impact of such political transition on state power. I argue below that state power at the international level depends on the institutional arrangements in place, and show that the institutionalization of the WTO largely reshaped the political influence of member-states, in two contradictory directions. While the unequal distribution of resources among states has become less relevant to substantive outcomes, so that the *relative* influence of member-states has been equalized; the *actual* influence of member-states over the

[9] For 'globalist' arguments see Reich 1992, Ohmae 1990, 1995, *Daedolus* 1995. For 'skeptic' reactions see Hirst and Thompson 1999, Zysman 1996, Rodrik 2000, Sassen 1998:195, Hoogvelt 1997, Weiss 1998, Garret 1995.

institutions has weakened, so that decisions now reflect the internal logic of the WTO more than the resources of the disputing members.

Inherent contradictions. While strengthening the project of "neo-liberal globalism," structural transformations at the international level also introduce new types of vulnerability. On the one hand, the institutionalization (especially, legalization) of international organizations provided enforcement mechanisms and legitimacy to the globalized neo-liberal project by, *inter alia*, limiting the measures available to "resourceful" member-states to defy the neo-liberal framework. On the other hand, by making it more difficult to disguise attempts not to play according to the neo-liberal rules, legalization turned US's hegemonic position more vulnerable to criticism and, by extension, heightened the vulnerability of the globalization project itself.

In the next section I develop a theoretical framework for the argument that institutional arrangements at the international level can affect domestic policy outcomes. I then turn to the case of the WTO and show how the new institutional arrangements had a constitutive role in bringing about neo-liberal practices. I then use the case of the WTO to identify the internal contradictions in such institutional projects.

3. An institutionalist analysis of the international regime

The empirical observation that the new institutional arrangements introduced with the establishment of the WTO brought about policy outcomes favoring further trade neo-liberalization challenges mainstream theories of international relations (IR), which maintain a concept of state power that provides little room for institutions to alter inter-state relations or influence substantive outcomes. For neo-realists, state power is

determined by the unequal distribution of economic and military resources, and international political outcomes are shaped by the constraints and opportunities created by the international structure and the position of nation-states within it (Waltz 1979). Hence, state power is reviewed as exogenous to the institutional environment in which this power is exercised and is not affected by it. While neo-liberal institutionalists have criticized the neo-realists' disregard to shared social purpose (Krasner 1983), and social constructivists criticized the institutionalists' notion of fixed interests (Wendt 1999, Ruggie 1998), both schools maintain a conception of state power similar to the one offered by neo-realism (Clark 1999).

But states do not enter interactions—such as international negotiations, bargaining, legal disputes or even wars—with a given amount of "power" that they then exercise over others. An unequal distribution of military resources, for example, would matter more in an actual war than in diplomatic negotiations even if these military resources do affect the outcome of the negotiations. Similarly, as I show below, an unequal distribution of economic resources would matter more in diplomatic negotiations than in judicial proceedings. As suggested by institutionalist analyses, the extent to which the unequal distribution of resources among competing actors (here, states) influences outcomes would depend on, and can be altered by, the institutional arrangements in place.

Partly as a response to the proliferation and strengthening of international organizations, IR scholars have recently paid renewed attention to institutions (Keohane 1998:82). While correctly criticizing the view that multilateral institutions cannot compel states to act in ways that are contrary to states' selfish interests, recent studies on international organizations err in the other direction by granting international

organizations autonomy and purpose, as well as capacity, independent of the states that comprise them (Barnett and Finnemore 1999:707-710, Barnett 2002, Duina and Blithe 1999, see also Shaw 2000).

Instead, I suggest that by applying the institutionalist analysis of the state to the international realm,[10] we can see that institutional arrangements can shape policy outcomes not because international organizations are autonomous, but by affecting the political influence of interested actors, including the influence of the international organization itself.[11] I develop this argument by first presenting the state-institutionalist approach and then apply it to the international realm.

Historical institutionalism and the strategic-relational approach. Behind every policy formation and change are political forces that attempt to advance their interests by bringing about favorable policies. The ability to do so depends on the relative influence of the competing forces. A key feature of institutionalist arguments is that the relative influence of those competing forces is not determined independently of the institutional environment within which the political struggle takes place (cf. Skocpol 1992:41).

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[10] Sociologists of the state have commonly looked merely at domestic constraints and actors and have rarely incorporated into their analyses factors outside the territorial boundaries of the state. In those exceptional cases in which the international realm was considered (Tilly 1975, 1990, Skocpol 1979, Mann 1986, 1993, Ertman 1997), scholars regularly adopted a neo-realist view of inter-state relations (Hobden 1998), ignored international organizations, and hence missed the opportunity to apply their institutional framework to transnational political bodies.

[11] It is important to note the difference between this conception and that of liberal-institutionalist theory. Drawing heavily on rationalist approaches, liberal-institutionalist theory argues that international institutions can facilitate a process of *cooperation* among states. While the theory does suggest ways in which international organizations and regimes can act as independent intervening variables in world politics by affecting the strategies and decisions adopted by states, the reliance on rationalist approaches has the outcome of under-emphasizing power relations, conflicts and struggles, and the bias inscribed in the institutions in place. Because neo-institutionalists concentrate on the efficacy of institutional arrangements in maximizing the interests of participating nation-states, they underplay the role of power in the constitution of these norms and the distribution of benefits (Keohane 1984, 2002, Keohane, Nye and Hoffman 1993, Axelrod and Keohane 1985, Baldwin 1993).

Neo-Weberian historical institutionalism has helpfully analyzed how state institutional arrangements shape the character and the final outcome of political battles by affecting the (relative) political influence of competing interest groups and interested actors (Thelen and Steinmo 1992:2-3, Hall and Taylor 1996:948, Ikenberry 1988:222-23, Immergut 1998, Steinmo 1993). Institutional arrangements affect political influence in three ways. First, by allocating resources in a way that gives some groups or interests disproportionate access to the decision-making process (Hall and Taylor 1996:941, Steinmo 1993, Weir 1992a). Second, by structuring the incentives, options, and constraints faced by political participants (Pierson and Skocpol 2002:705, Hansen 1991), and thus shaping their strategies, alliances, and coalition possibilities (Hall 1986, Weir 1992b, Immergut 1992:83). And, finally, by altering the interests themselves (Orren and Skowronek 2002:739, Pierson and Skocpol 2002:700).

Although historical institutionalists agree that institutions originate from political struggles (Steinmo *et al*. 1992), they usually underplay the social interests bringing about the formation of the institutions in the first place and argue, instead, that institutions mature and transform in a way that could not be predicted in the moment of their creation (Pierson 2000, Pierson and Skocpol 2002). As a result, the underlying logic of the institutional influence over outcomes, if there's a systemic logic at all, does not depend upon, and cannot be traced back to, the political struggles that brought about those institutions. Hence, while historical institutionalists agree that there is a bias inscribed in the state, in the sense that some interests have better chances to prevail than others, they have little to say about the possibility of a *systemic* bias (whether originated from an internal logic of the institutions or from the balance of social forces).

The strategic relational approach, as developed by Bob Jessop (1990), more helpfully suggests the presence of a systemic bias—by emphasizing the ability of social forces to establish, take advantage of, reproduce, or challenge state institutional arrangements—with implications regarding the effect of state institutional arrangements on the *content* of the final policy outcomes. The state here is a "form-determined condensation of the balance of social forces" (Jessop 1990: 149) and state power "reflects the prevailing balance of forces as this is institutionally mediated through the state apparatus with its structurally inscribed strategic selectivity" (Jessop 2002:40). This formulation owes much to Poulantzas and Offe, while at the same time consciously avoids the structuralist determination these analyses offer, by replacing Offe's "structural selectivity" with the notion of "strategic selectivity," in which Jessop combines structural *and* strategic dimensions (Brenner 2000/1). According to Offe (1974), the system of political institutions contains *selective* mechanisms that, through an institutionalized sorting process, ensure that the state will only select and consider policies corresponding to the interests of the accumulation of capital. Jessop, while agreeing with Offe that the state is endowed with selectivity so that it can never be neutral among all social forces and political projects, contends that this selectivity is best understood as an object and outcome of ongoing (and not necessarily class-based) strategies and struggles rather than as a structurally inscribed feature of the state system as such (Jessop 1990:27, 353). "Strategic selectivity" hence results not only from the structural dependence on private capital but also from a relational interplay between existing state structures and emergent strategies to transform and/or mobilize state power by competing social forces (Jessop 1990, Brenner 2000/1).

While avoiding structural determination, the strategic relational approach can still concede that the effect of state institutions on policy outcomes is *systemically, constantly and consistently* in favor of some interests and at the expense of others, based on the balance of social forces at the time of institutional formation and on subsequent struggles (Jessop 2002:40). This provides theoretical tools to move beyond the unspecific assertion that institutions "matter" towards an exploration of the *systemic* bias of the state and, hence, towards an institutional explanation of the actual content of state policies.

From the national to the international. The case of the WTO shows that international organizations, much like the state, are strategically selective, having a differential and systematic impact on the ability of various political forces to pursue particular interests and strategies through their access to and/or control over the international organization. The case also shows that among the most important strategically selective features affecting the biased content of policy outcomes are, 1) The hierarchical distribution of authority among the political agencies participating in the process of decision-making; 2) The "relative" access of social forces to these agencies (that is, the access competing actors have to the agencies relative to each other), and the "actual" access to the agencies (that is, the extent to which access even exists or, in other words, the degree of isolation of the agencies). The less actual access granted to competing forces, the greater ability of the officials to make decisions independently of external pressures, that is, to make decisions that do not reflect current political struggles but logic *already inscribed* in the agency itself; and 3) the bureaucratic character and the structural constraints on the agency that determine the logic inscribed in the agency. The bureaucratic character is the outcome of the formally assigned and informally inherited

rules: a cluster of responsibilities, procedures, expectations, and objectives that together create the ideological and pragmatic orientations imposed on, or internalized by, the individual officials.

The strategic relational approach, when applied to the international sphere, provides a different interpretation to the Realist contention that international policy outcomes, even when mediated by international regimes or organizations, reflect the inequality of resources among states. Indeed, the institutional arrangements of international organizations often effectively reproduce the original inequality of resources among states by giving privileged access to those with more economic or military resources, and by providing little influence to the organization itself, so that the institutional environment has no real "mediating" role between interests and outcomes. Yet, this does not mean that these institutional arrangements are transparent (so that inequality of resources is directly reflected in the *outcomes*) but biased (so that inequality of resources is directly reflected in the selective *institutions*, which allows resourceful states to convert non-political resources into political influence). Moreover, there is nothing inherent in the international realm that necessitates this kind of bias. At least potentially, institutional arrangements of international organizations could have the effect of altering the relative influence of the competing forces.

The analysis of the transition from GATT to the WTO provides a more detailed understanding of how institutional arrangements of international organizations affect the political influence of participants in political struggles, including states (considered here as actors, without ignoring their fragmented nature), non-state actors, and the international organization itself. First, institutional arrangements affect the relative

influence of states (that is, relative to each other). Second, they affect the actual influence of member-states (that is, the influence of member-states over the international organization) or, in other words, the ability of the organization's officials to make decisions that do not reflect political struggles but the logic *already inscribed* in the organization itself.[12] Third, institutional arrangements also have an important role in determining the relative "weight," or significance, of the different political scales. In contrast to other, usually static, attempts to analyze the interplay between domestic and international factors,[13] an institutionalist approach suggests that the relative weight of the domestic and the international scales is historically specific and would depend, among other conditions, on the institutional arrangements in place: some arrangements would provide more influence for domestic forces while others to international ones. Finally, the institutional arrangements of international organization may also affect the organization of the state and, by extension, the political influence at the domestic level. In short, institutional arrangements influence the relative and actual effectiveness of domestic social forces (including state agencies and non-state actors), influence the relative and actual effectiveness of states (in the international scale), and influence the relative significance of political scales (that is, the relative weight of the first and second factors).

[12] This, to emphasize again, does not mean that international organizations are autonomous: IO officials have interests that do not reflect the interests of competing actors, but these interests would prevail only under certain arrangements.

[13] Realizing that "domestic politics and international relations are inextricably interrelated" (Milner 1997:3), IR scholars have analyzed the interplay between the domestic and the international in order to bridge the "Great Divide" (Clark 1999). Early examples include Putnam's two-level game (1989) and Gourevitch's second image reversed (1986). More contemporary examples include Milner's analysis of state institutions (1997) Hobden and Hobson's (2002) historical sociology of international relations, and Palan and Gills's neostructuralist agenda (1994).

To sum, institutional arrangements, also at the international level, matter. They affect policy outcomes by shaping the relative and actual influence of actors (domestic social forces, states, the international organization), both at the national and international levels, in a way that does not necessarily reproduce the unequal distribution of economic and military resources among the participants. The effect on the relative influence of competing interests is systemic because of the strategic selective mechanisms (of relative and actual access, bureaucratic character, and distribution of authority) in place.

This discussion about the role of institutions at the international (and national) levels in affecting policy outcomes in a biased way provides the necessary background to the central argument presented here: that globalization is an *institutional* project, and that globalization as an institutional project is characterized by the structural transformation of both international organizations and states in a way that is biased in favor of those supporting neo-liberal globalism. The next section describes how the new institutional arrangements of the WTO indeed led to globalization-friendly substantive outcomes.

4. The case of the World Trade Organization

The transition from GATT to the WTO illustrates how structural transformations at the international level contributed to the advancement of neo-liberal globalism. Since the establishment of GATT, in 1948, barriers to the free-flow of trade were gradually dismantled. However, under GATT, developed countries could quite easily impose liberal trade rules on others while at the same time violating or bypassing international obligations they found undesired. This meant that developed countries, particularly the United States, were not effectively constrained by international rules and could attend to

protectionist sentiments at home. I show how after the establishment of the WTO, in 1995, developed countries continued to successfully challenge protectionist measures of others but they could no longer effectively maintain their own protectionist policies. This, in turn, brought about the process of world-wide trade neo-liberalization. I call the recent trends "trade *neo*-liberalization", in contrast to trade liberalization, to emphasize the difference between past practices, which promoted liberal trade while taking into consideration the constraints imposed by the need of states to promote economic growth and protect declining practices, and present practices, which ignore such domestic needs (Ruggie 1982, 1994).

I show that the new institutional arrangements introduced with the establishment of the WTO brought such substantive outcomes by altering the political influence of competing interests. The new institutional arrangements, especially the strengthening of the WTO dispute settlement mechanisms, altered the influence of member-states and other interested actors by, first, delegating authority from the domestic to the international scale ("the re-scaling of political authority"); second, at the international scale, altering the relative influence of member-states ("the judicialization of inter-state relations") and shifting authority from these member-states to the international organization itself ("the institutionalization of international organizations"); and, finally, at the domestic scale, shifting authority to internationally-oriented agencies ("the structural internationalization of the state").

Because the new adjudication proceedings can be most effectively studied by looking at their impacts on the protectionist measures of the resourceful states, in my

empirical investigation I concentrate on the fate of protectionist measures in the United States. The study covers the cases conducted under the DSU from 1995 to October 2002.

(1) Institutionalizing GATT: the WTO Dispute Settlement Understanding

The General Agreement on Tariffs and Trade (GATT) had functioned, since 1948, as the legal framework for multilateral trade relations. The institutional arrangements of GATT, specifically its decision-making procedures, gave advantage to those member-states with large markets, hence favoring the United States and Western European countries. Formally, decision-making was entrusted to the collective group of Contracting Parties and decisions could be reached through a voting procedure in which each country had an equal voice (one voice/one vote rule). In practice, GATT agreements were not based on voting as much as on consensus-reached agreements, so that diplomatic negotiations were at the center of the decision-making process. These diplomatic negotiations, in turn, followed a "major interest" norm, which dictated a manifestly bilateral bargaining procedure. Under this system, initial negotiations were between the largest principal supplier of a product and the principal purchaser. The only multilateral element in rule-making was near the close of negotiations: a "last-minute balancing" of "offers" and "concessions" would occur in order to get countries that would benefit secondarily from the nondiscriminatory application of agreed tariff reductions to "pay" for those benefits. This arrangement meant that the same groups of developed industrial countries dominated all trade negotiations, to the exclusion of others (Finlayson and Zacher 1981:591-92, McGillivray 2000, Curzon and Curzon 1973, Steinberg 2002). Market size, combined with effective political pressure, hence enabled the US and European countries to impose mutual tariff reduction on others and to bring

about world-wide trade liberalization.[14] It also enabled them to maintain protectionist practices at home on behalf of declining industries. The US, for example, constantly blocked the inclusion of the textiles sector into the GATT negotiations (Aggarwal 1985) and prevented significant modification of its domestic laws addressing unfair-trade practices such as anti-dumping and countervailing duty laws (see below).

This bias in favor of the US and the EC was also an outcome of the dispute settlement process which throughout the years has become increasingly formalized but disturbingly ineffective.[15] Inter-state disputes were referred to third-party adjudication, where individuals (acting on their own capacity, not as representatives of states) prepared a final report that was submitted to the GATT Council (composed of all member-states) for approval. The principle of consensual decision-making gave defendants the ability to drag their feet at every stage of the process. The most persistent problem of delay had been refusals to agree to create a panel to investigate the complaint. Problems were also arising in the process following formal creation of the panel. There were deadlocks over terms of reference, over choosing panelists, and over defining procedures. Most disturbingly, there were the increasingly common cases of governments blocking the adoption of the report in the Council (Hudec 1995:54). Finally, there was a problem of

[14] Multilateral trade negotiations during the first decade following WWII—in Annecy, France, in 1949; in Torquay, England, in 1950-1951; and again in Geneva in 1956—resulted only in minor tariff reductions. That was due to the US's orientation, as it had been constituted at the *domestic* level. Limits on liberalization were the result of the Department of State's attempts to utilize trade negotiations for foreign policy, rather than international economic, concerns, and of the ability of protectionist industries to make Congress impose general limitations on the negotiating authority granted to the administration. However, tariff reductions emerging from subsequent rounds—the Dillon Round (1960-62) and the Kennedy Round (1963-67)—were quite substantial. In the Kennedy Round, for example, industrial countries made cuts of almost 40 percent on manufactured products (Finlayson and Zacher 1981:571, Jackson 1997:74).

[15] For analyses of the GATT dispute settlement system see Hudec 1975, 1995. See also Hazard 1988, Jackson 2000.

enforcement even when a country did not block the ruling against it: the legal system under GATT relied not upon purposeful economic sanctions but the more vulnerable force of organized normative pressure (Hudec 1975:175).

The United States, while one of the major beneficiaries of the dispute settlement system,[16] also frequently used the weakness of the procedures to its advantage. The US often blocked the creation of panels, blocked the adoption of panel reports (it was the US, in fact, that set the precedent of blocking a panel report in the DISC case, in which a panel ruled against US tax practices), and showed low level of compliance.

Despite the US's ability to exploit the deficiencies of the system, the US negotiators insisted, during the Uruguay Round of multilateral trade negotiations that was launched in 1986, on the need to strengthen these dispute settlement procedures. This was a crucial issue in the negotiations over introducing "new issues"—services, investment, and intellectual property—into the framework of GATT. The Reagan administration expected that such agreements would increase access of American investment and services to other countries and saw it as an important element in resolving trade deficit problems prompted by a strong dollar (Secchi 1997:65). But the introduction of these new issues meant that international laws would penetrate even deeper into the realm of domestic legislation and economic practices. To ensure compliance, a more reliable system of international trading disciplines and procedures was needed (Rosenthal and Vermylen 2000).

[16] The United States initiated 76 cases of the 241 cases filed between 1948 and 1995 (that is, 31.5% of the cases). The EEC initiated 35 cases, and Canada initiated 23 cases. The US was also the most "popular" respondent: of the 241 cases initiated, the US was the respondent in 87 cases, that is, 36% of the cases (and 52.7% of the cases excluding the ones initiated by the US). The EEC was the respondent in 69 cases. These and the following calculations are based on data on GATT dispute settlement from Hudec 1975, and data on the WTO dispute settlement from the WTO website (www.wto.org).

Other countries initially objected to the idea, but eventually saw a greatly strengthened and broadened GATT dispute settlement procedure a necessary means to induce the United States to restrain its unilateral approach, especially after the US Congress had adopted in 1988 an extended version of Section 301 of the Trade Act of 1974, which provided a unilateral alternative to multilateral adjudication dealing with alleged "unfair trading practices" of others (Preeg 1995:77-78, Hudec 1995:230-1).

The Dispute Settlement Understanding (DSU), which is rightly regarded as the most important institutional aspect of the WTO, eliminated the veto power that parties had enjoyed. Instead of requiring a consensus decision of the Council for each step of the process—a consensus that could be blocked by the defendant—all steps were now to be taken automatically, subject only to a consensus decision *not* to do so. Panels could be appointed to hear a complaint without the defendant's consent. Panel rulings would be given legal effect by the Council without the losing party's consent. If a ruling of violation was not complied with, retaliation could be ordered, also without the defendant's consent. New procedural rules also provided a right to appeal and a new series of time deadlines (Hudec 1995:194).

The agreements concluded in the Uruguay Round had to be ratified by the US Congress. The implementing legislation, the Uruguay Round Agreements Act (URAA), was strongly endorsed by the most politically influential business groups—the Business Roundtable, the National Association of Manufacturers (NAM), and the U.S. Chamber of Commerce—which created a coalition called *Alliance for GATT Now* that cooperated closely with the administration (NJ 7/2/1994 1571, Rupert 2000: chapter 3). Even the "old guardians" of protectionism—including the textiles, steel, and semiconductor

industries—reluctantly supported the bill after being coaxed by the administration.[17] Opposition forces to the strengthened dispute resolution included a coalition of labor, environmental, and consumer-protection activists led by Ralph Nader's Public Citizen, and conservatives such as Newt Gingrich, Ross Perot, and Pat Buchanan. Both groups warned that the WTO and the new dispute settlement procedures would undermine US sovereignty and threaten domestic laws. These forces lost the battle, however, and the new DSU was included in the URAA of 1994 practically untouched, although a process of domestic review of WTO rulings was created. It was in the context of these battles that the US administration insisted that the stronger dispute settlement mechanisms would increase the disciplinary measures available against other countries, thus allowing better access of US products and services to foreign markets, but that it would not have the same effect on US's own trade laws and practices. Echoed by supporting think-tanks and business associations,[18] administration officials insisted that the strengthened DSU was not a threat to American sovereignty and that the WTO would have no power to change or affect the enforcement of US law (WSJ 4/29/1994). In spite of such assurances, effects of the DSU on US domestic laws have soon become apparent.

(2) The "trade neo-liberalization" impacts of the DSU

[17] The textiles and apparel industries succeeded in having provisions in the URAA that weakened the international agreement to phase out the protectionist Multilaral Multi-Fiber Agreement and provisions re-defining "country of origin" rules. In order to pacify the steel industry, US negotiators refused radical weakening of the AD and CVD provisions and insisted that the standard-of-review of the WTO panels would not apply to antidumping provisions.

[18] The American Enterprise Institute (AEI) applauded the agreement for bringing "the rule of law" to international trade; the Heritage Foundation circulated a paper according to which the WTO would "expand the sovereignty of American citizens" by reducing trade restrictions on the free choices available to businessmen and consumers (NR 6/13/1994); the Emergency Committee for American Trade (ECAT)—an influential business group supporting free trade—commissioned professor John Jackson, one of America's leading expert on the functioning of GATT, to meet with Newt Gingrich, who strongly opposed the DSU (NJ 5/7/1994 1073).

The new institutional arrangements established by the DSU changed the relative influence of interested actors, providing more influence to those favoring trade neo-liberalization and less to those opposing it, with the result of national policy changes limiting protectionist practices. In the case of the United States, this has been reflected in the declining effectiveness of three types of protectionist measures: unfair-trade laws, Section 301, and social-protectionist laws.

Unfair-trade laws provide remedies for domestic industries against unfair-trade practices, such as dumping and export subsidies, of foreign exporters. Under the US unfair-trade laws, if the Department of Commerce determined that "dumping" had occurred (that is, that imports had been sold at less than the selling price in the home market) or that a foreign exporter had received illegal subsidy from his government, and the US International Trade Commission (USITC) determined that the sales had caused or threatened to cause injury to the US industry, Commerce imposed duties on the imports. Especially after the 1970s, antidumping (AD) and countervailing duty (CVD) laws became the most effective tool for industries, such as steel and semiconductor, against surges of imports from foreign countries. Although GATT rules generally sanctioned domestic unfair-trade laws, countries complained against the discriminatory formulation and implementation of the rules by the US administration.

Section 301 of the Trade Act of 1974, as amended in 1988, gives the President the authority to take unilateral retaliatory actions against foreign countries that either violate trade agreements or otherwise maintain laws or practices that are unjustifiable or restrict US commerce. In contrast to the AD and CVD provisions, Section 301 was not meant to prevent imports from entering the United States but to ensure the access of US exports to

foreign markets. Since the goal of Section 301 was further liberalization, it was not inconsistent with the project of free trade. Other governments, however, complained about the unilateral dimension of this Section.

Finally, *social-protectionist laws* are domestic laws unfavorable to trade liberalization but which "protect our environment, ensure imported foods are safe, defend family farms and protect workers' rights" (advertisement quoted in WP 8/12/1994). It was these laws that the coalition led by Public Citizen had in mind when referred to the threat the WTO imposed to US sovereignty.

These types of protectionist laws have been weakened, I show below, with the new dispute settlement procedures. In what follows I identify the new distribution of influence that emerged with the legalization of the WTO—the re-scaling of political authority, the judicialization of inter-state relations, the institutionalization of the international organization, and the structural internationalization of the state—and analyze how it affected the content of policy outcomes. The selective mechanisms identified above—hierarchical distribution of authority, relative and actual access, and the bureaucratic character of the organization—are used to analyze the significance of the new procedures and to explain the bias of the outcome.

The re-scaling of political authority

The strengthened dispute settlement mechanisms meant that states which attempted to prevent changes in domestic laws or practices by refusing to include certain issues in the multilateral negotiations could be effectively confronted in the more legalized setting of the DSU. Under the DSU, states could not prevent unfavorable rulings by blocking the establishment of panels or by blocking the adoption of negative

rulings. As a consequence, policies and practices that were in the past under the jurisdiction of national-states could now be effectively supervised at the international level. The legalization of the WTO hence led to the "re-scaling of political authority": shifting the relative "weight" of domestic and international factors in influencing the outcome in favor of the latter.[19] (It is yet to be analyzed *what forces* in the international level increased their influence as a result).

This relocation of authority is shown by the dramatic increase in the number of complaints which reflects, in turn, the intensified involvement of the WTO in domestic trade practices. Between 1948 and 1994, a total of 180 cases were filed, an average of fewer than 4 cases per year. Between 1995 and 2002, in contrast, a total of 268 cases were filed, an average of more than 33 cases per year. In addition, the scope of the legitimate issues for dispute has widened. WTO panels now discussed cases regarding issues such as US foreign policy towards Cuba, the complicated administration-business relations in Japan, European public health, and US environmental laws.

The specific case of US antidumping and countervailing duty laws represents well the shift from the domestic to the international: while in the past the US, by refusing to include these issues in the multilateral negotiations, effectively blocked other countries from challenging the enactment and implementation of these laws, after 1995 AD and CVD laws were regularly challenged by referring to the WTO tribunals. In the 47 years

[19] A relocation of authority from the national to the international already occurred with the establishment of GATT in 1947 but, especially in the case of developed countries, it had limited effect on domestic policies incompatible with international rules.

between 1948 and 1994, only 8 complaints were filed against US-imposed AD duties. In the 9 years between 1995 and September 2003, in contrast, 22 complaints were filed.[20]

The judicialization of inter-state relations

At the international level, one consequence of the transition from diplomatic negotiations to judicial proceedings as the site for disputes has been a transformation in the relative political influence of member-states. This transformation of inter-state relations has been affected, first, by a new differentiation of access. In diplomatic negotiations, as mentioned above, negotiations had been controlled by the countries with the largest markets. The restructuring of the dispute settlement processes provided an unprecedented opportunity for less resourceful countries to raise issues of concern to them and to effectively express their voice.[21] At the same time, access to the dispute settlement procedures had its on selectiveness for it limited the types of claims that states were allowed to voice. The only issue of contention that could be brought up was the *violation* of the respondent's international obligations. This meant that only a violation of free trade principles (claims *against* protectionism) could be a cause for debate. Protectionist actors, as a result, were procedurally always on the defensive. Protectionists could never use the legalized system to their advantage: as respondents they could never win—they could only not lose. This selective access, importantly, was not aimed at specific countries, but instead targeted specific interests: the legalization of the process limited access to those interested in defending protectionist actions. The relative

[20] Data on GATT dispute settlement is based on Hudec 1975. Data on the WTO dispute settlement is based on the WTO website: www.wto.org.

[21] While most active in challenging the US were the EC (25 cases), Canada (9 cases), Brazil (7 cases) and Japan (6 cases), other countries were also highly active: India and Korea (5 cases each); Argentina and New Zealand (2 cases each); Colombia, Chile, Australia, Pakistan, China, Switzerland, Norway, Venezuela, Costa Rica, Mexico, and the Philippines (1 case each)(GAO, August 2000).

influence of member-states has been affected, second, by the changed effectiveness of available resources. In diplomatic negotiations, the outcome had largely reflected the unequal distribution of economic and political resources among states. Judicial proceedings, in contrast, made market size and political resources less salient due to third party adjudication, relatively available information and adherence to formal rules.

Legalization thus introduced an equalizing element to the relations among states: less resourceful member-states had greater chances, compared to diplomatic negotiations, to successfully challenge the trade practices of their trading partners and to ensure their adherence to international obligations. Resources, of course, still mattered, and developed countries—having better economic resources and information and greater capacity to suffer retaliation—maintained their advantageous position. And yet, this inequality of resources has not been reflected in the distribution of success. Under the DSU the odds of winning for developed and developing countries were *equally* high. Between 1995 and October 2002, of the 27 completed cases in which the United States was the complainant, the US prevailed in a final WTO dispute settlement ruling in 14 cases, resolved the dispute without a ruling in 11 cases, and lost in only 2 cases.[22] During the same period, of the 18 completed cases in which the United States was the respondent, the US lost in 8, resolved the dispute without a ruling in 9, and prevailed in only 1 case.

The institutionalization of the international organization

The "judicialization of inter-state relations" suggests that less resourceful countries have gained from the process of legalization. This has been possibly counter-balanced by the second transformation at the international level, the shift of influence

[22] WTO (http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm); GAO, June 2000; GAO, August 2000.

from the member-states to the international organization. A transformation from a so-called "member-driven organization," where decisions are reached by consensus, to a legalized process determined by professional panelists with guidance from the WTO Secretariat has resulted in the "institutionalization of the international organization" and hence in an increased reliance on the *logic inscribed* in the WTO.

The content of this inscribed logic, now a major determinant in policy outcomes, reflected the formal rules, inherited culture, and structural constraints imposed on, and internalized by, panelists and the WTO Secretariat. All of these factors directed the WTO towards a rigid free-trade ideology. The objective of the organization, since 1947, was to promote free trade: international trade agreements identified the trade-liberalizing responsibilities of GATT members and treated permitted deviations as exceptions that should be minimized. In the WTO judicial proceedings, the international trade agreements were the sole legal corpus for resolving disputes and no space was provided to national and/or extra-trade considerations (Rosenthal and Vermylen 2000, Dillon 1999: 208-9, Jackson 2000:200).[23] Moreover, panels rely on information and legal analysis provided to them by WTO officials who are committed, due to their institutional position, to free trade ideology. The legal procedures also provided panelists only limited authority to ignore legal obligations or to provide exceptions in "hard" cases. The WTO panelists, on their part, "have been unabashedly expansionist" (Dillon 1999:198), never acknowledging a lack of jurisdiction (that is, never refusing to deal with a case on the grounds that international agreements do not provide an answer to the debate).

[23] According to the DSU standard-of-review, a panel has the authority to determine for itself the facts and the law of the case, and is not required to defer to an administering authority's assessment of the facts or its interpretation of the covered agreements.

As a result, the rulings of WTO panels were consistently oriented towards trade liberalization, almost never embracing arguments that would undermine the logic of free trade. This has been directly reflected in the rate of success (for, as I explained above, challenges were necessarily supporting free trade in their claims) which were, for *both* developed and developing countries, remarkably high. Between 1995 and October 2002, of the 25 cases involving the United States in which a panel provided a ruling, the WTO ruled in favor of the complaining party in 22 cases, and ruled against the complaining party only in 3 cases. In cases in which countries challenged the implementation of exceptions to trade liberalization, such as unfair-trade laws, panels rarely ruled that the respondent's use of those exceptions had been legal.[24] In cases involving a conflict between trade-related and non-trade-related issues, such as environmental laws, states trying to protect domestic legislation consistently lost. The similar rate of success of developed and developing countries suggests that the free-trade bias has been implemented disregarding who were the states participating in the dispute.

The failed attempt of the US to defend its unfair-trade laws demonstrates the increased difficulty in maintaining protectionist practices. Of the 22 AD-related cases against the United States, the US lost in 8 cases and won in 1 case (10 cases are still pending and 3 cases did not reach the stage of panel decision).[25] In two of these cases—

[24] Even in the cases in which the challengers lost, the panels did not discuss the question of legitimate exceptions directly. In a dispute involving computer equipment (DS62), the EC lost to the US when the panel determined that the Uruguay Round Agreement had not explicitly covered the practices. In a case in which the US lost in an attempt to challenge Japanese trade practices (DS45), the ruling relied on lack of evidence, not on permitted exceptions.

[25] Of the 3 cases resolved prior to a ruling, two were resolved after the Department of Commerce agreed to revoke the AD order (DS63, DS89). The third case was resolved due to a suspension agreement which established a predetermined floor price for the imported Mexican tomatoes under dispute (DS49). Of the 11 CVD-related cases against the United States, the US lost in all 5

one regarding Korean stainless plate and sheets case (DS179) and one regarding Indian steel plate (DS206)—the complaining countries challenged specific US administrative determinations affecting their domestic companies (arguing that the US had not correctly followed WTO procedures in its determinations), and the WTO panel recommended the United States to bring the antidumping duties imposed into compliance with the international agreements. In two other cases—one regarding Korean DRAMS (DS 99) and one regarding Japanese hot-rolled steel products (DS184)—the complaining countries challenged the WTO-legality of the regulations themselves and the WTO panel ruled that the United States needs to change its AD regulations to make them consistent with the WTO Antidumping Agreement. Finally, in four cases (consolidated into two at the appeal), the complaining countries challenged US *legislation* addressing unfair-trade laws and the WTO panel ruled that the legislation was WTO-illegal and should be repealed. In one such case (DS136, DS162), the WTO ruled that the *Unfair Competition Act of 1916*, which allowed US companies to privately sue foreign companies for anti-competitive practices in the US market, was illegal. In the second case (DS217, DS234), the WTO ruled that the *Continued Dumping and Subsidy Offset Act of 2000*, which directed payment of any antidumping and countervailing duties to the companies that pursued the cases rather than to the US Treasury, violated WTO rules by illegally subsidizing US companies.

The debate over Section 301 is another instance in which the United States was successfully challenged by the WTO. In a case from 1998, the EU argued that in applying Section 301 and related sections of the Trade Act of 1974 the US breached the

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cases with a ruling (3 cases are still pending and 3 cases did not reach the stage of panel decision.)

understanding that in exchange for other Uruguay Round participants agreeing to automatic adoption of WTO panels, the US would abandon its policy of taking unilateral action against foreign trade barriers. The WTO panel found that the terms of the disputed Sections, considered alone, gave the US discretion to make certain determinations before the completion of panel proceedings and were therefore inconsistent with the WTO dispute settlement rules. The panel held, however, that this inconsistency had been removed by the Statement of Administrative Action accompanying the URAA and US representations to the panel that the Administration would base any Section 301 determination on a dispute settlement finding. The panel further stated that should these US representations be repudiated, its findings of conformity between the provisions in the sections and US international obligations would no longer hold. Hence, while technically ruling against the EU, the decision required the US to present all future 301 cases before a WTO panel.

Finally, the US also found it difficult to defend its "social protectionist" laws. In the two cases involving the US in which free trade and environmental interests came into conflict, the WTO ruled against the national regulations. In the *Clean Air Act* case (DS2), Venezuela and Brazil challenged EPA regulations that established a baseline for determining acceptable levels of containments in gasoline. The panel, ruling against the US, upheld the claim that the EPA gasoline standard was discriminatory and ordered the US to change its rules on imported gasoline. In the *Shrimp-Turtle* case (DS58), India, Malaysia, Pakistan and Thailand challenged a 1989 amendment to the US *Endangered Species Act* that required countries that export shrimp to the US to use a special device on their shrimp nets that would protect sea turtles from drowning. The appellate panel's

ruling granted a general endorsement of the idea that trade barriers are, in theory, permissible to protect the environment (Jackson 2000, WP 10/13/1998). However, the panel made the standards for determining that a measure was not an unjustifiable discrimination exceedingly difficult to meet, rendering its general assessments empty. The panel ruled that the US measure did not qualify for an exception.

These three contested cases—unfair-trade law, Section 301, and social-protectionist laws—illustrate the different dimensions of the new distribution of influence at the international level by showing how with the re-scaling of political authority to the WTO, the judicialization of inter-state relations provided less resourceful countries the opportunity to effectively challenge US domestic laws and practices. They also illustrate the neo-liberal orientation of the substantive outcomes, and the important fact that they were applied also against the United States. (In this context, it is important to highlight that the WTO accepted challenges to US practices and measures not only in the relatively easy cases of particular determinations but also when regulations, and even laws, were challenged.) Most importantly, the cases illustrates the paradox that at the same time that a judicialization of inter-state relations introduced a potential for equality to the international process, the institutionalization of the WTO turned this potential into an equalized ability to impose trade neo-liberalizing rules on others and an equalized difficulty to maintain protectionist measures at home.

The structural internationalization of the state

The re-scaling of political authority from the domestic to the international also indirectly affected the relative influence of actors at the *national* level. It strengthened those state agencies having substantive and institutional links to the international scale

and lessened the influence of state agencies having links with the domestic constituency. In the case of the United States, the legalization of the WTO strengthened the Office of the US Trade Representative (USTR), which represents the US government and US domestic industries in WTO negotiations and disputes, and weakened the relevance of Congressional actions or decisions made by the Department of Commerce, which could now be challenged in the WTO and hence necessitated the involvement of the Office of USTR. I call this process the "structural internationalization of the state." By "structural internationalization" I agree with the assertion that the state is indeed more attuned to the world economy (McMichael 1996), but suggest that the change has been made possible by institutional means.

As a result of the partial re-scaling of authority from a domestic to an international location and the complementary hierarchical reshuffling at the domestic level, the political influence of domestic social forces has also changed. While maintaining influence over some agencies (e.g., Congress), domestic actors with protectionist agenda found that their political base of support has lost its effectiveness in the process of decision-making by being subordinated both to the international level and to the internationally-linked domestic agencies. The case of those industries relying on AD and CVD laws is revealing. It is often suggested that the decline in protectionist measures catering to the textiles or steel industries is the result of these industries' loss of political influence over Congress (Destler and Odell 1987). In fact, the steel industry maintained its influence in Congress—as many laws enacted on behalf of the industry easily demonstrate.[26] The Department of Commerce and the USITC were also attentive to

[26] For example, the Emergency Steel Loan Guarantee Act of 1999, which provided $1 billion in loan guarantees to American companies in the steel and oil industries, and the Continued

the industries' interests, as suggested by the high rate of positive determinations. The predicament of the steel industry has not been due to its declining access to these agencies, but due to the declining influence of the agencies themselves and the increasing influence of the WTO and the office of the USTR which were less attentive to protectionist interests than to free-trade voices.

Structural internationalization and US compliance to WTO rulings

The new institutional arrangements of the WTO favored claims that promote trade neo-liberalization. But could these decisions affect domestic trade policies? I suggest that compliance too depends on the relative influence of competing forces: the structural internationalization of the state meant that authority (including authority to decide whether to comply with WTO rulings) was often in the hands of internationally-attentive agencies which supported adherence to international obligations. Compliance became less predictable when depending on domestic agencies more accessible to protectionist interests.

In all cases in which a panel ruled against the United States and compliance required an administrative action, the administration consistently complied. In the two AD cases requiring revision of duties (the Korean stainless plate and sheets case, and the Indian steel plate case), the Department of Commerce followed the panel's ruling and amended its final determinations. The Department of Commerce also complied when ordered to change its regulations governing the AD and CVD determinations. In the case of Korean DRAMS, the Department replaced a "not likely" standard with a "necessary"

Dumping and Subsidy Offset Act of 2000, which directed the redistribution of funds from assessed duties recovered from AD and CVD orders to the affected domestic producers to be used by them for various stipulated purposes.

standard, thus making it more difficult to rule against revocation of old determinations.[27] In the case of Japanese hot-rolls, the Department of Commerce changed the dumping margins determined and changed its regulations regarding the treatment of sales to affiliated parties in calculating dumping margins – the so-called "99.5 percent" rule rejected by the Appellate Body. The administration also complied with anti-environmentalist rulings. In the gasoline case, the EPA modified its regulations to bring them into compliance with the WTO decision, revising the requirements for imported conventional gasoline. Responding to the ruling in the shrimp-turtle case, the Department of State issued revised guidelines aimed at implementing the ruling.[28]

The US administration also complied with the negative decisions regarding Section 301 with the result that the Section increasingly lost its unilateral orientation: the Section was transformed from a symbol of "aggressive American unilateralism" (E 5/5/1990, 32) to a mere first stage in a legal process situated in the international realm.[29] In the period from 1975, the first year after the introduction of Section 301 in the Trade Act of 1974, to 1994 only 28% of the Section 301 cases (27 out of 95) initiated resulted in one or another form of negotiation under the auspices of GATT (including consultations, delegation to multilateral negotiations, and 14 cases of dispute panels).

[27] Using this modified standard, the Commerce Department then reconsidered the case and found that the continued application of the dumping order was *necessary* to offset dumping and, accordingly, did not revoke the antidumping order under dispute. Korea, in reaction, requested the matter to be referred to the original panel. This compliance panel proceeding was terminated when the US finally revoked the antidumping order at issue (WTO 2001, GAO July 2003).

[28] Malaysia argued that the new guidelines had failed to comply with the rulings and requested that the matter be referred to the original panel. The panel concluded that the revised guidelines as applied by the US authorities were legal, *as long as* the ongoing serious good faith efforts to reach a multilateral agreement remained satisfied. The panel noted that should any one of the conditions referred to cease to be met in the future, the recommendations of the DSB may no longer be complied with (WTO 2001, GAO July 2003).

[29] See also Ryan (1995), who reaches a similar conclusion by examining cases in which the US pursued market-opening negotiations with Japan, Korea, and Taiwan.

Between 1995 and August 1999, the US asked for consultations under the WTO in 73% of the cases (16 out of 22 cases pending or resolved). Of the 16 cases, 7 were resolved through consultations and agreements and 9 were ruled by a WTO panel. The 6 remaining cases not referred to the WTO were resolved through bilateral agreements, without the imposition of unilateral retaliatory sanctions.[30] It is important to mention, however, that the WTO did not constrain the ability of the United States to fight against what it viewed as the discriminatory practices of other countries. In all but one of the 301 cases brought by the United States, it won WTO approval. Thus, on the one hand, the new dispute mechanisms constrained unilateral American action. On the other, it provided effectiveness, as well as international legitimacy, to its methods of disciplining foreign countries, and thus provided more effective remedies for those American industries interested in opening foreign markets to their products.

When compliance necessitated Congressional action, the White House consistently urged Congress to comply with the ruling. In a testimony given by USTR Robert B. Zoellick in February 26, 2003, before the House Committee on Ways and Means he stated: "The United States should also live up to its obligations under WTO rules…. We recognize that each matter [in which compliance is required] involves sensitive interests. Yet America should keep its word, just as we insist others must do. As the largest trading nation, the WTO rules serve U.S. interests. We will work closely with the Congress to determine approaches to resolve these issues." Congress, however, has been accessible to those interest groups that would have been harmed by the proposed changes and hence has been much more reluctant in complying with negative rulings.

[30] See http://www.ustr.gov/reports/301report/act301.htm, USTR's "Section 301 Table of Cases."

To comply with the WTO ruling regarding the Act of 1916, Congress had to pass a law that would repeal the Act and terminate ongoing cases before US courts. Three bills to that effect were introduced in the 107th Congress (H.R. 3557, H.R. 4902, S.2224), but they did not get to the stage of being discussed in Congress and became void when Congress adjourned in November 2002. In the 108th Congress, three bills (S. 1080, H.R. 1073, S. 1155) were again introduced to put the United States in compliance with the decision.[31] As of September 2003, the US still did not comply with the ruling.[32]

After the decision regarding the Byrd Amendment was adopted by the WTO Council in January 2003, the office of USTR stated, "The United States has been a leader in supporting rules-based dispute settlement in the WTO. Therefore, in this case as in others, the United States will seek to comply with its WTO obligations."[33] President Bush's budget proposal for fiscal year 2004, which was submitted to Congress on February 3, urged repeal of the law, saying it amounts to a "corporate subsidy" and provides a "double-dip" benefit to industries that already benefit from the increased

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[31] One of the bills, however, would repeal the law but would allow pending cases to proceed through the courts. Senate Finance Committee Chairman Charles Grassley (R-IA) who introduced the non-retroactive bill stated that terminating pending cases would set a "dangerous precedent." To illustrate his point, Grassley noted the ongoing dispute over the foreign sales corporation ("FSC") and stated how the retroactivity of any legislative fix to the FSC dispute would be "ludicrous" (WM 8/4/2000).

[32] On September 22, 2003, the EU decided to seek retaliatory measures (imposing import duties equivalent to three times the amount of the damage suffered by EU companies, on products of US companies found to dump in the EU). The Senate Finance Committee Chairman Charles Grassley reacted by saying he hoped to move legislation repealing the 1916 anti-dumping act "as soon as possible." A spokesman for the USTR's office said the Bush administration was working with Congress to deal with the 1916 anti-dumping act "as expeditiously as possible" (WT 9/23/2003). The Administration is also contemplating attaching such legislation to the pending trade promotion authority ("TPA") bill, which is headed to a House-Senate conference committee. There is, however, resistance in Congress to inserting such legislation into the TPA bill. The Administration may try to include in the legislation another bill that is likely to by easily passed by Congress (Washington Monitor).

[33] http://www.ustr.gov/releases/2003/01/2003-01-16-statement-wto.PDF. USTR Press Release, January 16, 2003.

prices on competing import goods resulting from countervailing tariffs. But Senator Robert C. Byrd and 67 of his colleagues (23 Republicans, 43 Democrats and one independent) sent a letter to Bush calling on him to support the amendment despite the WTO ruling. “In our view,” the letter stated, “the WTO has acted beyond the scope of its mandate by finding violations where none exists and where no obligations were negotiated” (WT 6/14/2003). The US has to comply with the ruling no later then December 27, 2003.

While it is still too early to know the extent to which the obligation to the WTO and the strengthened enforcement mechanisms introduced in the DSU would force Congress into compliance, it seems clear that with the current state of affairs, Congress faces difficulties in attempting to ignore or bypass negative rulings. The different degree of compliance across a variety of state agencies shows us, importantly, that compliance to the WTO depends on the location of authority and on the relations between Congress and the administration (that is, on the institutional arrangements in place), and much less so on the economic implications of the negative rulings as such.

To conclude this section, in the discussion above I illustrated how the new institutional arrangements of the DSU brought about a new distribution of influence: the legalization of the WTO shifted authority from the domestic to the international, equalized the relative influence of member-states, and increased the influence of IO officials over the final outcome. At the domestic level, it transformed the relative influence of domestic actors based on their institutional links with the international organization, hence enabling higher rates of compliance with the WTO rulings. While this process of legalization had an equalizing element among member-states, at the same

time it took away their power and gave it to the international organization. As a result, member-states now have an equalized ability to impose free-trade rules (i.e., neo-liberal globalism) on others while encountering more difficulty in preserving their own protectionist practices.

5. State powers, the US, and the contradictions of institutionalized hegemony

State power depends on the institutional arrangements in place. To repeat the conclusion above, the political influence of member-states has been largely reshaped with the structural transformation of the WTO. On the one hand, the juridification of inter-state relations has equalized the *relative* influence of member-states. On the other hand, the institutionalization of the WTO has weakened the *actual* influence of member-states over the institution. Member-states have lost authority to the organization itself so that decisions now reflect the internal logic of the WTO more than the (equalized) resources of the disputing members. The paradoxical result has been that while states have more equalized ability to take advantage of what the system offers, the system only offers a one-sided capacity: liberal goals can be successfully achieved, but protectionist goals are effectively silenced.

While the institutionalization of the WTO suggests a decline in the actual influence of member-states, it might not apply to the specific case of the United States. For if the WTO is controlled by, and hence reflects the interests of, the US (Gowan 1999:128-9), then better "isolation" of the WTO from member-states in effect *increases* US influence. However, the assumption that the international organization is merely an instrument in the hands of the US should be reconsidered. Indeed, the WTO's formal

adherence to, and internalized orientation of, a pro-liberal model is an outcome of the United States' years-long direct influence over the institution and the content of multilateral agreements. In addition, the WTO has been structurally constrained by its dependence on the cooperation and activity of developed countries, and is hence "over-sensitive" to their demands. And yet, the process of legalization exactly means the loosening of these direct and structural influences. The reliance of formal legal rules provides less room for political considerations and hence less opportunity for resourceful countries to influence the outcome. The neo-liberal orientation of the WTO should no longer be viewed as an imposition from above by the United States (or other carriers of the neo-liberal project) but is instead inscribed into the logic of the institution. As a result, the neo-liberal rules can be applied in a way undesired by the US, as the decisions against the US exemplify.

An argument that relies on negative WTO decisions to show the US's weakening influence must confront claims, following the logic of neo-Realist as well as world-system analysis, that the cases against the US do not "really" matter (because of their relative marginal effect on the US economy at large), and that in any case compliance is supported by the US government for it is seen as an effective way to discard unwanted protectionist measures. These arguments, however, problematically view "US interests" as coherent and unitary in supporting neo-liberal globalism. Instead, as the US's position in multilateral negotiations and its practices at home clearly show, the US government is not interested in trade liberalization *as such.* Instead, it is interested in imposing trade liberalization on *other* countries, in order to improve the access of its internationally-competitive industries to foreign markets, while at the same time preserving policies that

protect US declining industries from international competition (Silver and Arrighi 2003:338).[34] Therefore, while the legalization of the WTO benefited those US interests supporting trade liberalization (including supporters within the US administration), it nonetheless weakened the capacity of the US government to bypass and manipulate the system and hence weakened its ability to balance domestic conflicting interests by combining neo-liberal measures with protectionist ones.

Significantly, it has become more difficult for the US to pursue protectionist goals not only because of the formal constraints of the legalized system, but also because the institutionalization of the WTO had some contradictory implications in regard to US hegemony (in the neo-Gramscian sense). Hegemony here means dominance of a particular kind where the dominant state creates an order based ideologically on a broad measure of consent, functioning according to general principles that in fact ensure the continuing supremacy of the leading state but at the same time offer some measure or prospect of satisfaction to the less powerful. Hegemony, therefore, is not only about military and economic power; it is also about consensus building (Cox 1987: 7, see also Gill 1993, Overbeek 1993). The US hegemonic project, following the argument above, is *not* a neo-liberal project as such. It is, instead, about enhancing and legitimating US's power, hence enabling the US to define, and defy, the economic and political global agenda (Gowan 2003). I suggest that the legalization of international organizations both strengthened and endangered US hegemony. The DSU provided not only a more effective mechanism for imposing liberal trade rules on others but also legitimacy that lacked in diplomatic negotiations. The legalization of the WTO increased the legitimacy

[34] The balance between these two desires is historically specific and would depend on the interplay between the selectivity of the state and international organizations and the strategies of the different interests at a given moment.

of further intervening in domestic trade practices by offering a set of universally-applied formal-rational rules imposed not by threats and unilateral actions (commonly initiated by the United States), but by a panel of disinterested legal experts. The legitimacy was enhanced also by the fact that these legal procedures could be potentially utilized also for the advantage of the less resourceful countries.[35]

But legalization also endangered the prospects of legitimacy, and this is where the contradictions of the institutionalization project lies. While the United States could, and at times did, refuse to comply with the WTO rulings, this has undermined its hegemonic position in a way that had not been the case before the strengthening of the dispute settlement mechanisms. The formality and relative transparency of the legal process made it more difficult to bypass it without other countries taking notice of the inequality. While US hegemony is not threatened by negative rulings (on the contrary, the US's compliance to negative rulings strengthens the legitimacy of the institution for then it is more difficult to perceive it as a tool in the hands of the powerful states), it is threatened when the US chooses not to comply. Moreover, to the extent that they overlap, the vulnerability of US hegemonic project becomes a vulnerability of the globalization project itself. The US's transparent attempts to protect itself from the negative consequences of neo-liberal globalism can be used not only to de-legitimate US leadership but also to de-legitimate the WTO and the claims in favor of globalization and/or neo-liberal policies themselves.

[35] While formal rational legal systems are rightly viewed as a mask to substantive injustices (Feldman 1991, Galanter 1974), it is also the case that in order to be an *effective* legitimating tool, the laws in question cannot be merely a mask. As E. P. Thompson (1975: 263) insisted: "If the law is evidently partial and unjust, then it will mask nothing, legitimate nothing…. The essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation and shall seem to be just. It cannot seem to be so without upholding its own logic and criteria of equity; indeed, on occasion, by actually *being* just."

6. Conclusion

This article offers a new way of thinking about current economic and political transformations, and the conditions under which they become possible, by conceptualizing globalization as a political project of establishing new institutional arrangements. At the core of the analysis is the argument that institutional arrangements affect substantive outcomes by shaping the political influence of competing actors. In the case of international trade, the new institutional arrangements introduced with the establishment of the WTO in 1995, changed the relative influence of domestic non-state actors, state agencies, member-states and the international organization itself over the processes of decision-making and implementing. The Dispute Settlement Understanding delegated authority from the domestic to the international scale (the re-scaling of political authority), altered the relative influence of member-states (the judicialization of inter-state relations), shifted authority from the member-states to the international organization (the institutionalization of international organizations), and shifted authority to internationally-oriented agencies at the level of the state (the structural internationalization of the state). The outcome, as the fate of several US protectionist practices demonstrates, has been of intensified neo-liberal globalism.

The new institutional arrangements created, in effect, a new balance of influence (and, hence, of political opportunities). While the legalization of the WTO equalized the *relative* influence of member-states (so that it reduced the extent to which unequal distribution of resources could be translated to unequal policy outcomes), it weakened the *actual* influence of member-states over the institution compared to the effect of the

internal logic of the WTO (hence reducing the extent to which states—whether resourceful or not—could actively affect the outcomes in the first place). In effect, the new institutional arrangements strengthened the ability of states to pursue pro-liberal remedies but weakened their ability to maintain protectionist practices.

While strengthening the neo-liberal rules and states' adherence to them, the new institutional arrangements also generated contradictions inherent to the process itself and threatening it from within. The legalization of the WTO provided legitimacy to the globalized neo-liberal project, but at the same time—because it made it more difficult to disguise the unequal application of rules for different countries—it turned the US's hegemonic position more vulnerable to criticism. More generally, the institutionalization of global politics, a constitutive element in bringing about neo-liberal globalism, restricts the alternative measures available to member-states within a neo-liberal framework in a way conceived as legitimate but, due to the contradictions inherent in legitimacy through legalization, it also suggests the heightened vulnerability of resourceful countries when they act in a way not compatible with the project, and hence the heightened vulnerability of the project itself.

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