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Four Charges Against the WTO*

Abstract: My comment on the third chapter of Peter Singer's *One World* consists of two parts. In the first, I criticise a common but simplistic approach to the issue of economic globalisation. This approach presumes that charges against the WTO can be translated—more or less directly—into charges against current development trends of the global economy. The WTO is not the only institution that legally structures the global economy, nor are decisions of the GATT or WTO panel necessarily reliable indicators of the major trends in the ever more integrated world market. It is, moreover, far from clear whether competition between jurisdictions leads to a 'race to the bottom'. In the second part of the paper, I (i) criticise the idea of a general conflict between 'the market' and 'democracy'. (ii) I defend the WTO's consensus rule against Singer's charge of being "a very strange view of democracy" and try to make its benefits clear.

The following remarks are devoted to the third chapter of Peter Singer's *One World* which comes under the heading "One economy". On an abstract level, what I understand to be the central political messages of chapter 3 find my wholehearted support. It is a matter of utmost importance that the global economic institutions be democratic and responsive to concerns about the environment, animal welfare, and human rights (EAWHR).¹ I am not so sure, however, whether we have an adequate understanding of what these political messages mean on a more concrete level. In order to avoid misunderstandings, let me give a brief list of points on which I agree with Singer. First and foremost, institutions like the WTO are imperfect and so are markets. Political philosophers and social scientists should constantly scrutinize whether opportunities for improvement exist. Singer seems to accept "the general argument for the economic benefits of a global free market" (*OW* 92). Nevertheless, he insists on our asking "if there are ways of making it work better, or at least less badly" (*OW* 92).

Second, in accordance with economic theory, he states that markets produce efficient results only if property rights are defined properly and external effects can be internalized. Without this "there is no reason to expect free trade to be Pareto efficient, let alone to maximize welfare" (*OW* 93). Due to an insufficiently defined framework of legal property rights, natural resources are not priced in a manner which allows for their efficient consumption. "Even though all nations share the global environment, the 'tragedy of the commons' rules here ..." (*OW* 93)

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¹ Environment, Animal Welfare, and Human Rights (EAWHR)

Third, it is undeniable that global trade in many markets (particularly in those which are of import for less developed countries) is not free; subsidies for agricultural producers in the EU and the US are a notorious case in point. "The WTO itself has pointed out that the rich nations subsidize their agricultural producers at a rate of \$ 1 billion a day, or more than six times the level of development aid they give to poor nations." (OW 95)

Fourth, a government, however exploitive and unjust, is regarded as legitimate in terms of international law as long as it holds the monopoly of coercive power. A legitimate government in this sense can grant concessions for the exploitation of natural resources to foreign investors and raise debts on the international capital market. Frequently, the monetary means thereby acquired are not used to the advantage of the population. According to Thomas Pogge, Western countries violate their negative duty not to participate in harmful practices when they acknowledge kleptocratic regimes. As a result of this, Singer supports the proposal that Western states should press for a reform of international law to the effect that undemocratic regimes lose what Pogge calls the 'resource and borrowing privilege', i.e. the right to sell the country's natural resources and to borrow money abroad at the cost of their population. This "would deny dictators the resources they need for buying weapons, paying their supporters, and boosting their bank balances in Switzerland" (OW 104).

These four points (and many more which remain unmentioned) I find highly plausible. Let me now turn to the claims that seem to me contentious or in need of clarification.

The chapter's title refers to economic globalisation and its consequences. Singer, however, chooses a relatively narrow focus. In the first sentence, he writes: "if there is one organization that critics of globalization point to as responsible for pushing the process onward—and in the wrong way—it is the World Trade Organization." (OW 51) In other words, the *altermondialistes* assume that the shortcomings of the WTO are not only symptomatic of, but causally responsible for those of the present global economy. Singer does not subscribe explicitly to this view, but it is quite clear from the context that he joins forces with critics of globalisation and considers the WTO to be by far the most important part of the network of institutions which shape the global economy. According to Singer, criticism of the WTO implies similar criticism of the current form of economic globalisation.

It is presumably for this reason that the chapter deals with economic globalisation by discussing four popular charges against the WTO, confirming three of them and being indecisive about the fourth. Interestingly enough, the fourth charge is the only one which Singer discusses on the basis of (economic) research on the effects of free trade policy on long term trend data. The evidence for the other charges is of a more anecdotal nature. The four points are:

1. The WTO [economic globalisation] places economic considerations ahead of concerns for the environment, animal welfare, and even human rights.
2. The WTO [economic globalisation] erodes national sovereignty.

3. The WTO [economic globalisation] is undemocratic.
4. The WTO [economic globalisation] increases inequality; or (a stronger charge) it makes the rich richer and leaves the world's poorest people even worse off than they would otherwise have been.

It is very common to base charges against the present working mechanisms of the world economy on the rules and decisions of the WTO alone. Undeniably, the WTO plays a crucial role in the global economic order. But such is the complexity of the world economy that it takes a lot more to describe what *it* is and does than merely describing what the WTO is and does. No-one would feel well-informed about the state of, say, the American economy exclusively on the basis of information about government and Supreme Court decisions which have to do with the working of the economy. Why is this, seemingly trivial, point relevant here?

Let me illustrate what I have in mind with the dolphin-tuna example. This is how the WTO sums up what the case was all about:

"In Eastern tropical areas of the Pacific Ocean, schools of yellowfin tuna often swim beneath schools of dolphins. When tuna is harvested with purse seine nets, dolphins are trapped in the nets. They often die unless they are released. The US Marine Mammal Protection Act sets dolphin protection standards for the domestic American fishing fleets and for countries whose fishing boats catch yellowfin tuna in that part of the Pacific Ocean. If a country exporting tuna to the United States cannot prove to the US authorities that it meets the dolphin protection standards set out in US law, the US government must embargo all imports of the fish from that country. In this dispute, Mexico was the exporting country concerned. Its exports of tuna to the US were banned. Mexico complained under the GATT dispute settlement procedure. ... The panel reported to GATT members in 1991. It concluded:

- that the US could not embargo imports of tuna products from Mexico simply because Mexican regulations on the way tuna was produced did not satisfy US regulations. (But the US could apply its regulations on the quality or content of the tuna imported). This has become known as a 'product' versus 'process' issue.
- That GATT rules did not allow one country to take trade action for the purpose of attempting to enforce its own domestic laws in another country—even to protect animal health or exhaustible natural resources. The term used here is 'extra-territoriality'." (WTO 2003)

Peter Singer contends that the product/process-distinction of the GATT (and later on of the WTO) panel gives "commercial interests precedence over environmental protection" (OW 69). The precise meaning of Singer's contention is far

from clear, but the most plausible interpretation is that he is saying globalisation as we know it today harms EAWHR.

Even if one agrees with Singer's views about some of the GATT panel's decisions, it would be too hasty to conclude that globalisation and its institutional structure is harmful to human rights, animal welfare, and the environment.

(a) First, there seems to be a strong negative correlation between the increasing integration of the world economy during the last decades and dolphin killings in the eastern tropical Pacific. At the end of the 1960s about half a million dolphins were killed each year compared to 28000 in 1991. Notwithstanding possible criticism of the product/process distinction, this information makes the prospects of dolphins in an integrated world economy look less grim. However, it might not be representative of the general trend. In order to arrive at an assessment of the relationship between the world economy and animal welfare in general it would be necessary to analyse a substantial number of cases. Of course, I cannot do that here. My point is merely that we have to take long-term trends into account if we want to give our claims about an integrated world economy and its effects a solid basis. Such a basis is missing in what Singer says.

(b) Second, the philosophical observer should be very aware that the story about the relationship between the world economy and the environment would be insufficiently captured if bilateral and multilateral agreements and consultations between states were ignored. This point has been stressed especially by the WTO. Take the dolphin-tuna example again. Shortly after a coalition of environmental groups had organised an effective boycott of canned tuna in 1988 American official pressured the Mexican government to reduce the number of dolphins killed by Mexican-owned fishing vessels. "The Mexican government agreed to modify its tuna fishing regulations, and the number of dolphins killed by its fishing fleet declined from 49.000 in 1988 to 16.000 in 1991." (Vogel 1995, 107) David Vogel remarks that between 1986 and 1992 the decline in the number of dolphins killed by Mexican vessels was "much more rapid than that of the foreign-owned fleet together" (1995, 107). Given this record with respect to dolphin welfare the Mexican government interpreted the 1991 import-embargo by the US to be "symptomatic of the efforts of developed nations to protect themselves from growing competition from third world countries" (Vogel 1995, 108).

I am not competent to go into the legal details of the case here, but the dispute appears to be much more about the *how* and *who* of the rule-making for the world economy than about a conflict between 'commercial interest' and 'animal welfare'. The Mexican government had undertaken substantial efforts in the direction of animal welfare already and was very likely willing to do even more. It perceived the standards set by the American side as too high, given Mexico's economic circumstances. Moreover,

"Mexico argued that if the Americans wished to protect dolphins caught by Mexican fishing fleets or in Mexican territorial waters, they should do so by negotiating an international agreement with Mexico or by adding the dolphin species being killed to CITES [the

Convention on Trade in Endangered Species]—not by acting unilaterally.” (Vogel 1995, 110)

Again, seen against this background the central issue of the dolphin-tuna case appears to be a disagreement about the way in which environmental concerns should be legally implemented. I find it difficult to accept the case as warrant for a charge against free trade and globalisation; I find it even difficult to accept it as warrant for a charge against the WTO. The WTO does not stand in the way of governments who are mustering support for stricter environmental standards and a more effective protection of animal welfare and human rights.² This brings out quite clearly why it is so important to keep in mind that the WTO is not the only factor that structures world trade. Those who think that the WTO is causally responsible for what happens in the world economy tend to pay insufficient attention to the network of international agreements concerning EAWHR or the responsiveness of corporations to moral pressure.

(c) Third, Singer does not take objections to attempts at ‘extraterritorial jurisdiction’ by unilaterally banning the import of products very seriously. In contrast to the Mexican government (and all other members of GATT), he has no reservations about unilateral measures as long as they serve the right cause. That they may open the ‘door to a possible flood of protectionist abuses’ (WTO 2003) does not worry him because these abuses seem trifling compared to what is at stake on the other side. This approach is in danger of overlooking the fact that ‘protectionist abuses’ may well be harmful for the environment and animal welfare. For example, there is some evidence that “the more closed the economy, the greater its development of ‘dirty’ industries” (Vogel 1995, 123).

Some researchers have come to the conclusion that ‘competition’ between different jurisdictions does not lead to a ‘race to the bottom’ in terms of the most permissive environmental and health regulations. Quite the reverse, there are examples for the so-called ‘California effect’, that is the adoption of a stricter environmental regime by other jurisdictions. This is because export industries have a strong incentive to adopt product (and to a lesser degree: process) standards of the most important import countries. Since the populations of many significant import countries are relatively sensitive to EAWHR we have grounds to expect that “on average and in the long run” the race will go to the top. For this reason, we should try to assess the overall effects of a free trade regime for EAWHR and compare it to the effects of a regime in which governments are free to impose unilateral measures.

(d) Fourth, there is an independent reason for resisting attempts to enforce standards unilaterally. If, for instance, the G-7 states have the right to restrict market access for foreign producers on the basis of environmental regulations, the excluded country has to bear the full costs of adaptation. For poor countries this may turn out to be a too heavy burden. With regard to the problem of international distributive justice it is desirable that the rich countries (which

² “In May 1992 the United States, Mexico, and eight other nations, which collectively accounted for 99 percent of the tuna catch in the ETP [Eastern tropical Pacific], signed the first major international accord to protect dolphins.” (Vogel 1995, 116)

have the strictest environmental regulations) take care of a significant share of the adaptation costs. The easiest way of reaching this is to ban unilateral import restrictions, thereby giving poor nations a bargaining position. The rich states would then have to specify in advance what they are willing to contribute in order to finance their environmental preferences (or—as Singer prefers to put it—their ‘nation’s values’). It may come as a surprise to many that the WTO’s free trade ideology can, under some circumstances, work in the interest of the less developed world. It, therefore, makes sense to resist the idea of ‘extraterritorial legislation’.

Let me sum up briefly the main points of my general remarks. First, there is a danger of oversimplifying the issue of economic globalisation. Second, the WTO is not the only institution that legally structures the global economy nor are decisions of the GATT or WTO panel necessarily reliable indicators of the major trends in the ever more integrating world market. Third, it is far from clear whether competition between jurisdictions is conducive to a ‘race to the bottom’. Last, there is reasonable doubt in regard to the benefits of extraterritorial environmental legislation.

I will now turn to the discussion of the more specific issues.

The first charge: The *first charge* mentioned by Singer contends that the WTO places economic considerations ahead of concerns for EAWHR. At first glance, that will hardly surprise us. As is generally known, the WTO is concerned with removing barriers to trade, a task description which makes it clearly part of the ‘economic realm’. Consequently it may be described as an ‘economic institution’³ which gives priority to economic values. Since considerations which are typical for those in the economic realm can and often do conflict with concerns for EAWHR it seems fair to expect that the very existence of the WTO is not conducive to EAWHR; it will either worsen the situation in regard to human rights and animal welfare or not contribute to the betterment thereof. In this reading, the first charge against the WTO appears to be trivial. But I think that this sort of reasoning is misleading for two reasons.

(a) The first is of an empirical character and states that the promotion of free trade is the main but not the single objective of the WTO. GATT’s Article XX lists a number of political ends that the agreement should not hinder such as the protection of public morals, human, animal or plant life or health. Singer has a lot to say about this point but I will not address his comments on it in this paper.

(b) The second reason has to do with the concept of ‘economic values’ which Singer employs. At one point, he writes that it remains to be seen whether “values other than that of free trade will be given real weight” (OW 70).

Regarding (b), in what sense can free trade be called ‘a value’? Certainly not in the sense in which a beautiful landscape, an endangered species, a work of art or a conversation with friends can be said to have value or to be values. Whatever the merit of free trade consists in, its value is surely not intrinsic but instrumental. It makes no sense to weigh something which has intrinsic value,

³ “The WTO is not an environmental agency. ... Other agencies that specialize in environmental issues are better qualified to undertake those task.” (WTO 2003)

like animal welfare, against something which hasn't, like free trade. One has to weigh the intrinsic values which free trade allegedly promotes against other intrinsic values which are not promoted or even harmed by it.

According to textbook economics, free trade is ("on average and in the long run" as Singer quite rightly remarks) not only advantageous from a global perspective but also from that of each involved economy. The reason is that free trade enables economies to concentrate resources on sectors in which they have a relatively high productivity. Instead of producing certain goods at relatively high costs themselves, each country can buy them on the international market with income from their more productive sectors. They can increase their output or enjoy more spare time as they please.

Why does textbook economics assume that a higher global output is good? Roughly speaking, a higher output is good because, in principle, it allows for a better satisfaction of people's preferences. In other words, standard economic theory has a preference-satisfaction account of the good. The case for free trade rests on the idea that it has the potential to make all people better off in terms of preference satisfaction. Whether this potential is realised depends upon the distribution of benefits. Most economists are convinced that, at least "on average and in the long-run", all people will profit from an open global economy. In a nutshell, what the WTO purports to promote is the welfare of the people ("on average and in the long run"). (Without doubt, this is a much too simple view of the good but that shouldn't concern us here.)

The 'economic values' which the first charge against WTO mentions have to be understood accordingly: something has value from an economic point of view if it satisfies preferences; it has instrumental value if it provides things which satisfy preferences. Preference-satisfaction approaches are in principle accessible to considerations of animal welfare but in standard economic theory only human preferences count. I do not want to go into the concept of the good in economic theory any further. It suffices to have the point put on record that 'economic values' does not mean 'values of businesses and corporations' but 'satisfaction of human preferences' (whatever they may turn out to be). For the sake of argument, let us assume that the textbook case for free trade is correct in principle; individuals will have ("on average and in the long run") more resources to fulfil their preferences by market transactions; and states—thanks to economic growth and an improved fiscal situation—will be in a better position to provide desired public goods and services.

According to this understanding, an examination of the first charge against the WTO boils down to the question whether there is a conflict between increasing opportunities for human preference satisfaction and EAWHR. The answer to this question will partly depend upon facts about human preferences. Are these preferences such that they are harmful to animal welfare, for instance? Posing the question in such a general way, an answer hardly seems possible. But it appears save to say that we observe preferences which are harmful to EAWHR as well as preferences which are not. Some people find the idea of consuming commodities the production of which involved violations of human or animal rights unacceptable; other people apparently don't care. I would like to call the

first class of people 'the caring' and the second class 'the indifferent'. According to the analysis presented here, the first charge against the WTO is not about a conflict between 'commercial interests' and a range of moral concerns; whether commercial interests and moral concerns collide depends heavily upon the shape of consumer preferences; when a substantial number of people are 'caring', the business community will be eager to fulfil their wishes. There are numerous examples for the responsiveness of corporations to the moral or environmental concerns of consumers. I might mention in passing that the dolphin-tuna case is one of these examples.

In substance, the first charge against the WTO urges us to ask: Is it acceptable that the rules of the WTO allow the import of commodities produced in ways deemed illegal by some national jurisdiction, thereby enabling 'the indifferent' to fulfil preferences which 'the caring' find morally objectionable? *Prima facie* the answer has to be in the negative. If the legislative body of a democratic state makes certain practices illegal within its territory, it expresses normative considerations and values that should be binding for all citizens. Why should some of them get the opportunity to do what the elected representatives wanted to prevent?

The reply to this question favoured by many liberals in the traditional sense is that the members of parliament often do not represent the majority's preferences or values but promote those of a minority. There is a substantial danger that protectionist measures will enter the stage in the guise of concerns for the environment or animal welfare. Having qualms about parliamentary power is not the same as having qualms about democratic procedures. Why? Markets are places where people can reveal their preferences by purchase or non-purchase, at least in a liberal society with free media. The rejection of an import embargo based on environmental regulations is not necessarily a rejection of the 'vote of the people'.

Consumer boycotts, for instance, are effective and non-coercive ways of expressing value-judgements. Coming back to the tuna-dolphin case again, after a consumer boycott three huge American companies "announced that they would no longer sell tuna which had been harvested by purse seine techniques" (Vogel 1995, 106). Even if it is legal to import tuna which had been caught with purse seines in the eastern tropical Pacific, the consumers can (and should) abstain from purchasing it. They can thereby express their unwillingness to consume food the production of which avoidably killed thousands of dolphins. In many cases a substantial drop in sales after crucial facts had been made known to the public is enough to encourage producers to employ techniques that are less harmful to animal welfare, the environment or human rights. In other words, supply and demand are influenced not only by commercial interests but also by value judgements. Since it reveals normative attitudes of people the market can function as a democratic forum when the public is sufficiently informed by free media.

In my opinion, it is often preferable to give people a 'vote on the market' instead of coercing them by parliamentary decision. Latitude for reasonable disagreement exists in numerous matters. It seems often wrong to restrict the

options of those who have reasonable doubts in regard to the soundness of a regulation. For instance, I am personally not opposed to the peaceful use of nuclear power and much less concerned about GM-foodstuff than many. I welcome that people who are concerned about these matters have in some countries the option of picking a provider which does not sell electricity from nuclear power stations or a retailer which banned GM-foodstuff from its shelves. But I would find it offensive if these people would win a majority that would make the production or the import of it illegal. The market can and frequently does open the—very democratic—opportunity of a ‘dissenting vote’.⁴

Let me now turn to charge (2) (The WTO [economic globalisation] erodes national sovereignty) and (3) (The WTO [economic globalisation] is undemocratic). I argued in the preceding lines that an open market can be a democratic forum. In contrast, the third charge refers to the decision-making procedures within the WTO. Singer criticises the contention made in an apologetic pamphlet edited by the WTO that the decision procedures of the organisation are “even more democratic than majority rule because everyone has to agree”. That the consensus rule is more democratic than the majority rule appears to Singer “a very strange view of democracy”. Is it indeed?

We certainly agree that having a democratic decision procedure is good, but what makes it good? One possible answer contends that a proposal which is supported by a great number of reasonable people is more likely to be a good one than a proposal which is supported only by a small number of reasonable people. I would like to call this the *epistemic view of democracy*. It recommends democratic procedures because they are a device of discovering the right course of action. But if a democratic decision procedure is said to be good because the likelihood of finding out what the right thing to do is increases with the number of reasonable supporters then we should undoubtedly opt for the consensus rule. One may object that in the real world people with morally obtuse or perverse views are amongst us and that the consensus rule would give these people a dangerous leverage. I guess it is this point which makes Singer say that supporters of the consensus rule “have a very strange view of democracy”. He is very brief here but I take his concern to be that morally obtuse or perverse standpoints are given too much power in an organisation governed by the consensus rule. Assume that every member exerts its veto power with probability p in accordance with narrow national interest. The probability that some nation will abuse its power to obstruct the vast majority’s will increases with the number of members. Therefore, the more members have veto power the more likely it is that narrow national interest will prevail.

This line of argument has its merits but it is certainly not the whole story. We should consider the possibility that the consensus rule would also confer power to a moral avantgarde. It could be a device for promoting or preserving the good in a world in which the morally obtuse or perverse are the majority. In other words, a defender of the consensus rule may wonder what makes Singer so sure that the majority’s view indicates the right course of action. Whether the epistemic view of democracy recommends the consensus rule, the simple

⁴ This point is stressed in Vanberg 2000.

majority rule or something else depends upon estimations regarding the number of reasonable people.

There is another point to be made in favour of the consensus rule: It is connected with an exchange of arguments in a way in which the majority rule is not. Since every member has to come up with reasons it is unlikely that a veto is nothing but whimsical or mere expression of national egoism. In the more typical case, member states will withhold their consent as long as they opine that their proposals have not found appropriate consideration. Undoubtedly, there is the chance of linking an issue to other national concerns but this is not necessarily an abuse of bargaining power. Less developed nations, for instance, could insist upon a reduction of tariffs in exchange for stricter environmental regulations. For reasons such as these, I am not convinced that the overall results of the consensus rule are as bad as Singer seems to fear.

So, if Singer's point is supposed to be that the consensus rule could sometimes prevent the taking of morally right decisions one may happily agree. But this is not what he says. What he says is that supporters of the consensus rule have a strange view of democracy; and this I find a bit strong.

Last remark: I am in doubt about the compatibility of charges (2) and (3). If one is concerned about losses of national sovereignty then one has good reason to support the consensus rule. If one is less concerned about such losses one may prefer to have power conferred to a political body governed by the majority rule. But I find it difficult to see who could possibly have at the same time reasonable reservations about both: loss of national sovereignty and veto power.

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