

UNIVERSALS, GLOBAL TRADE LAW AND AGRICULTURE: TOWARD A CULTURAL STUDY

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I. INTRODUCTION

On September 25, 2008, there was an attempt to try once again to start up the Doha Round negotiations on agriculture. The Indian Ambassador to the World Trade Organization (WTO) made a statement about the resumption of the discussions. Ujal Singh Bhatia said the farm talks were about more than just cutting tariffs and subsidies and integrating agriculture into world trade rules. "Agriculture is not like other sectors... There are billions of people who are poor and are farmers. And there are issues of food security which involve the whole world's population. You cannot treat agriculture therefore only from the perspective of market access". The statement related to a clash between the United States of America (USA) and India over a proposal in the farm talks – to create a "special safeguard mechanism" to enable farmers in poor countries to cope with a flood of imports. The USA and developing country food exporters feared such a safeguard could be used to shut off new export opportunities and even roll back existing ones. India and other big developing countries countered, saying their farmers need a safeguard that will permit a quick response to an import surge that threatens their

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E-mail: colemanw@mcmaster.ca. This paper is revised version of a paper presented at the JITD Conference "Beyond the Doha Round", on November 7th 2008 in Istanbul. The author would like to thank Ji Xiaoxin for her excellent research assistance support for the preparation of this paper, Professor Ziya Onis for his critical review of the paper at the conference, the members of a seminar in Political Science at the University of Waterloo for advice and comments, and Professor John Weaver for his useful and detailed suggestions for revision.

livelihoods, if necessary by raising tariffs temporarily above current "pre-Doha" levels. The Minister concluded: "We are not talking about tinkering with one or two numbers here and there. We're talking about a whole philosophical approach to this issue and unless we find a solution which embraces all these concerns... I think we will not find a solution".

The Indian Ambassador's reference to not treating agriculture from the perspective of market access only and to having a whole different philosophical approach to agriculture leads to some questions about what he might mean by such an approach. In particular, the reference invites us to think about cultural differences in agriculture across the world. Before engaging in such thinking, however, let us make some preliminary observations. First, the Doha Round is the first set of global trade discussions where developing countries might be said to have had a real voice and influence on the negotiations. Under the former General Agreement on Tariffs and Trade (GATT) system, they were mostly not present and when they were, their voices were far from being central to the discussions. Second, two entirely new agreements became part of global trade law with the conclusion of the Uruguay Round and the founding of the WTO, the Agreement on Agriculture (AA) and the Agreement on Sanitary and Phytosanitary Measures (SPS). Third, conventionally in the global political economy, when confronted by a statement like that of the Indian trade minister, we seek to explain an impasse in terms of different state interests, competing needs and so on. Such explanations, however, often assume that states know their interests well. They also assume that somehow interests are unproblematic and self-evident to states and individuals. Political economy has also shown little interest in investigating whether cultural factors help construct how interests are understood.

In conventional political economy, it is also unusual to question the cultural dimensions of law itself. Scholars will argue that the form and provisions of law, including international law, reflect the interests of the more powerful actors. So particular provisions of the law will be pointed to as have been

influenced by the USA or the European Union (EU) or other actors like transnational corporations. Most scholars in the field, however, will assume that the framing of law itself is relatively autonomous from culture. State actors can read the law, understand it, agree or disagree with it, seek to reform it or protect it. As such, law is seen to be culturally neutral or at least readily understandable across cultures.

In this paper, I challenge this notion of law as being autonomous from culture and readily understandable across cultures. I raise the question whether some of the difficulties that emerged over agriculture in the Doha Round negotiations might be related to the cultural imprint of global trade law. I cannot answer this question in this paper. Rather, what I offer is some thoughts about how we might proceed conceptually to investigate such a question and what methodological strategies might be most useful in this investigation.

I organize the paper in the following parts. First, I outline the case for viewing law as part of culture, not above it or beyond it, and then use this observation to provide a brief cultural reading of trade universals, particularly the notion of “free” trade. Second, when it comes to proceeding conceptually, I make reference to the thinking of Anna Tsing, a cultural anthropologist, who has considered systematically the processes whereby universal ideas help in the forging of global connections in the service of hegemonic powers. I then turn my attention to the history of the framing of the texts of the WTO focusing on agriculture. I argue that these texts were highly influenced by an epistemic community, dominated professionally by experts from the Anglo–American democracies and that the texts reflect the cultural position of this community. The final section addresses the issue of methodology: how might we investigate whether cultural factors have affected the Doha Round negotiations. Here I consider the interaction between these legal texts and the structures, policies, and reactions by China upon its accession to the WTO in 2001.

II. LAW AS CULTURE

Human beings create the categories of their own experience. By knitting together ideas and actions, they construct a world of meaning that appears to them as "real" (Rosen, 2006:4). The law is one distinctive way among others of imagining the real. As Kahn (1999:6) stresses, the rule of law is neither a matter of revealed truth nor of natural order. It is a way of organizing a society under a set of beliefs that are constitutive of the identity of a community and its individual members. As a part of culture, law may best be seen as "a framework for ordered relationships" (Rosen, 2006:4). This orderliness grows out of its dependence on other realms of its adherents' lives. Moreover, it is a product of a particular history and constitutive of a certain kind of historical existence. In this respect, law's claim upon us is not a product of law's truth but of our own imagination – our imagining its meanings and our failures to imagine alternatives (Kahn, 1999:39). A cultural study of law must thus focus on the character of experience under belief in the rule of law (Kahn, 2001:158).

In individual societies, the rule of law is an organization of institutions, practices, persons and objects within the spatial project that is the state. The state's time is history; its space is territory (Kahn, 1999:40). Law's space and time have their own history. Law carries forward the past as an authoritative source of substantive norms. Kahn (1999:44) observes that "legal decision-making differs from other kinds of policy formation in just this way; it always begins with a set of sources that already have authority within the community's past. The genealogy of space, in turn, focuses on the concept of the border, a concept "redolent with remnants from the larger tradition of Western religious and political experience. The rule of law is always rule over a defined territory... Law's space is always bordered space" (Kahn, 1999: 45–6).

Much of what we call today international law and global law grew out of national law, particularly as developed by the major Western imperial powers: Spain, Portugal, France, the United Kingdom (UK) and the USA. Accordingly, key legal terms like "trade", "free", "liberal", "protection" have

domestic, then regional histories. At first, they were applied only to agreements involving two or more of the European states. When they were extended further beyond these states, it is unlikely that those persons brought newly under their ambit would share the same set of beliefs about self and community that were found in these Western societies. In the absence of such beliefs, the law can appear as a form of coercive authority. For those implicated, they found themselves having to negotiate around a set of rules, under a threat of coercion, without understanding the significance of those rules to those who see them as "ours" (Kahn, 1999:36).

Geertz investigates how legal systems from one part of the world might relate to those in other parts by examining Islamic and Indic law and their differences from Western law. He does so by putting the Western notion of right (*Recht, droit*) into dialogue with parallel notions of *haqq* in Arabic and *dharma*, a Sanskrit word. He shows that the legal sensibilities that grow out of each of these words lead to crucial differences in how the legal systems function. The Western system focuses on establishing a relationship between independently gathered "facts" and then interpreting them in relationship to a legal rule. In contrast, in the Islamic legal sensibility, adjudication is not a matter of joining an empirical situation to a legal principle rather "they come already joined. To determine one is to determine the other. Facts are normative: it is no more possible for them to diverge from the good than for God to lie" (Geertz, 1983: 189). When written evidence is accepted, it remains the case "that its worth is largely derivative of the oral character of the individual or individuals who, personally involved in its creation, lend to it their authenticity. It is not... the document that makes the man believable; it is the man (or, in certain contexts, the woman) who makes the document such" (Geertz, 1983: 191).

The Indic legal sensibility is distinguished from others in that right and obligation are seen "as relative to position in the social order and position in the social order is transcendently defined" (Geertz, 1983:198). What is

just for the householder is not necessarily so for the vagrant or hermit. What is unique here is not so much the differencing of justice according to social location but that the codes which govern the various sorts of men and women define what they primordially are. Quoting a study of Bengal by Ronald Inden and Ralph Nicholas, Geertz adds: "As a consequence of this legal premise... no distinction is made, as [it is] in American culture between the order of "nature" and an order of "law". Similarly, no distinction is made between a 'material' or 'secular' order and a 'spiritual' or 'sacred' order. Thus there is a single order of beings, an order that is in Western terms both natural and moral, both material and spiritual (1983: 198)".

Several conclusions emerge from this kind of analysis that are relevant to our understanding of international law. First, Geertz, (1983: 218) notes that any comparative study of international law and national or local law will need to involve "cultural translation": "a comparative approach to law becomes an attempt...to formulate the presuppositions, the preoccupations, and the frames of action characteristic of one sort of legal sensibility in terms of those characteristic of another". Such a step is necessary given that we are living in a situation of profound and ever-increasing legal pluralism. Moreover, as we noted above, the substantive, authoritative norms carried forward in international law have their own history. They are rooted in Western philosophy and grow out of imperial designs as is noted in the next section of the paper.

Second, commenting on interactions between "the Third World and the West", Geertz proffers that the dissensus that is present derives from the persistence of legal sensibilities formed in earlier times where societies were somewhat more self-contained and their confrontation by others "not necessarily more admirable or more deeply conceived but certainly more world successful" (Geertz, 1983:220). This tension between local and imported (international) notions of justice animates the judicial process. It is not a situation of transition from the local to the assimilation and

adoption of the international. To the contrary, it involves a hardening of positions.

This hardening of positions relates, in part, to the myth of progress that is found in international legal scholarship. As Kahn (1999:108) reminds us, it was not so long ago that the categories of "civilized" and "uncivilized" were explicitly invoked in the law. When international legal institutions are described as "primitive" or "nascent," the suggestion is that they have not evolved to the point where they replicate (Western) domestic legal institutions. Similarly, the codification of international law "makes progress" when it takes an increasingly positive form embodied in multilateral treaties. So the passage from customary law to treaty law is also seen as "progress" (Kahn, 1999:108). For Geertz then, it is not surprising that legal pluralism is becoming more entrenched, not less so as the myths of progress in international law are confronted. Accordingly, the central issue becomes how to understand and work with the "florescence" of legal pluralism as its varieties become ever more wildly intermingled (1983:221).

Finally, Rosen (2006: 167) opines that in a globalizing world of increasing legal pluralism, it is still an open question whether international law will simply be the law of the powerful or whether local law, working around the edges, will be more important. Although many business agreements outside the West might incorporate references to English or American law or international law as governing when legal disputes occur, it may only mean "that trade arrangements based on non-legal ties will become all the more important". He adds that the local has a way of reasserting itself in the face of global law; resulting changes in local law will, in the end, be reciprocated internationally despite the power differentials. Accordingly, Geertz concludes, whatever the uses of certain features of international law might have in ordering the relations between states, those features are "neither lowest common denominators of the world's catalogue of legal outlooks nor universal premises underlying all of them, but projections of aspects of our own onto the world stage" (1983: 221).

III. UNIVERSALS, GLOBAL CONNECTIONS AND FRICTION

International trade norms and rules are designed to support the forging of global connections. Anna Tsing, a cultural anthropologist, looks at such processes in terms of the movement of knowledge and related “universals”. “To turn to universals is to identify knowledge that moves – mobile and mobilizing – across localities and cultures. Whether it is seen as underlying or transcending cultural difference, the mission of the universal is to form bridges, roads, and channels of circulation” (Tsing, 2005:7). In a practical sense, generalization, to a universal like free trade then is a hope, something to be wished for, based upon a particular, culturally-situated body of knowledge. Speaking of it does not mean that it is pre-formed, that the world is ready for actualizing it, and that it will fit easily with other knowledge.

Several processes are involved in the formulation of ideas as universals, their use in forging global connections and their eventual codification in law: collaboration, engagement, generalization, and the creation of gaps. I illustrate these processes by reflecting upon selected examples related to the origins of the notion of “inter-national” law in Europe. The notion of international trade, trade between nations, began as local knowledge in a particular socio-cultural setting: Western Europe. The early imperial powers – Britain, The Netherlands, Spain and Portugal – developed and nurtured the knowledge. As merchants from these countries traversed the seas, issues about what was “national” and what was “inter-national” became important and scholars, traders and rulers began to think about them. Particularly influential in assisting this thinking were the writings of Grotius, a Dutchman, who wrote a brief published as “The Freedom of the Seas” in response to a request from the Dutch East India Company (VOC). The VOC was seeking to justify legally the capture of a Portuguese ship in the Straits of Malacca in 1602. Grotius outlined a case for making the seas commonly available to all trading nations. He suggested that rules be developed to decide which parts of the sea belonged to nations and which others were available to all ships. In writing this text and

drawing on existing practices, knowledge of trading, past and ongoing conflicts, Christian thinking about God, and of course the law as it stood, he participated in the development of local European knowledge.

The legal knowledge developed by Grotius in his text does not instantly become a universal. Rather, it starts out as a point of view, a place for discussion, perhaps even a basis for conflict and war. To move to the status of being a universal requires collaboration: individuals, companies, nations, monarchs working together on a body of knowledge even if they are fighting one another (Tsing, 2005, 246). If we are speaking of the Dutch, the Spanish, the Portuguese, the English, and the French in the 17th century, we are looking at individuals, organizations and rulers with profound cultural differences between one another. To find agreement on the idea that the seas are common and not to be controlled by one nation or another, forced them to reach past these differences to try to find some common ground. They may not even have understood one another. To agree upon and practice the idea– the seas everywhere are common to all– involves friction. The discussions, exchanges of texts, wars, and seizures at sea are all examples of the friction involved in the building of global connections.

Universals “travel” when collaboration involves engagement. Tsing (2005: 270) writes that calling universals “engaged” acknowledges the fact that “to be effective they must enter the fray. Universal claims allow people to make history, but not under the conditions those claims might lead them to choose”. Collaborating brings together cultural differences, conflict, tension, and involves the moving around of knowledge before it yields assent to a universal such as the seas are international. Tsing (2005:8) adds: “Engaged universals travel across difference and are changed or changed by their travels. Through friction, universals become practically effective”. And in the process, cultures and identities change. An example in this instance is that another universal, the notion of a nation, becomes a stronger idea as does that of a national identity. Rather than thinking of themselves primarily as persons from Delft, naval officers or

ship's captains will gradually come to think of themselves as being "Dutch" or as coming from the "United Netherlands".

If we look closely at these engagements of the major European powers of the 17th century, and the collaborative effort involved in developing the body of legal knowledge that supports the idea that the sea was international and common to all, we see a process of generalization taking place. The European powers were forced to move beyond arguments for control based upon having "discovered" an area, or having won a war, or occupying of a territory, or receiving a title to a territory granted by the Pope. Grotius considered all of these arguments in his text and looked for a way to generalize beyond them. In seeking to find compatibility common to these very different situations and to make a general argument, he had to resort to logic and to moral principles.

Grotius opens his argument by asserting a general principle: "Every nation is free to travel to every other nation, and to trade with it" (1916:7). He justifies this principle by a moral and religious, thus cultural, argument;

"God Himself says this speaking through the voice of nature; and inasmuch as it is not His will to have Nature supply every place with all the necessaries of life, He ordains that some nations excel in one art and others in another. Why is this His will, except that it be that He wished human friendships to be engendered by mutual needs and resources, lest individuals deeming themselves entirely sufficient unto themselves should for that reason be rendered unsociable? So by the decree of divine justice it was thought that one people should supply the needs of another..." (Grotius, 1916:7)

Grotius then moves from this position to argue that refusing to see the seas as common would, in effect, be a step against Nature, against Natural law, and against God:

“Those therefore who deny this law, destroy the most praise-worthy bond of human fellowship, remove the opportunities for doing mutual service, in a word do violence to Nature herself. For do not the ocean, navigable in every direction with which God has encompassed all the earth, and the regular and occasional winds which blow now from one quarter and from another, offer sufficient proof that Nature has given to all peoples a right of access to all peoples? Therefore this right belongs equally to all nations”.

In making this kind of generalization, Grotius rises above the details of what the Portuguese were doing in Ceylon or the Moluccas or why the VOC seized a Portuguese ship.

Grotius comes up with arguments and justifications that open the possibility of generalizing in a way that bridges the differences between the Dutch and the Portuguese. Clearly, publishing his text was not sufficient to the task but it helped initiate a process of debate and deliberation that permitted the European powers eventually to get past profound differences and agree upon a body of legal knowledge. As Tsing (2005:89) observes: "Convincing universals must be able to travel with at least some facility in the world, and this requires negotiations across incompatible difference".

Once generalized, this universal – the seas are international and thus commonly available – helped facilitate building global connections by European powers as part of the apparatus that constructed the global scale in the 17th century. Brook (2008: 8) observes that this century was one of second contacts; sites of first encounter became places of repeated meanings. He adds:

“Exchanges were being systematized into regular trade. The common factor was mobility. More people were in motion over longer distances and sojourning away from home for longer periods of time than at any other time in human

history. More people were engaged in transactions with people whose languages they did not know and chose cultures they had never experienced” (Brook, 2008: 19).

The creation of a global scale of operations was made possible through significant technological innovations in communication, transportation, and weaponry. Building this global scale was by no means smooth. France adopted autarkic policies and the British favoured mercantilism in response to Dutch commercial innovation and ventures.

None the less, more and more people were confronted with the idea of a world where no place could not be reached, no place is not implied by some other place, and no event is not potentially shared with other parts of the world (Brook, 2008:23). The universal idea of "freedom of the seas," and the legal corpus of which it was a part, thus travelled with the Europeans where it was engaged by non-Europeans creating further friction, was rethought, and then generalized once more to be used to extend European imperial influence. In touching down in new places, it had to be translated into new languages, adjusted to different cultures, giving rise to new forms of friction. Sometimes British or Dutch or French hegemony was advanced; other times it was challenged and thrown back. And as Tsing observes, sometimes gaps opened up: conceptual spaces and real places where universals like freedom of the seas did not travel well (2005: 175). We can think of parts of the ocean where pirates were dominant or coastlines where European ships were challenged regularly in East Asia, the eastern coast of Africa and the Arabian Sea as examples of such gaps. Or we might refer to decisions by China and Japan in the 17th century to close themselves off to foreign trade for their own particular reasons also as instances where “gaps” emerged.

IV. A CULTURAL READING OF TRADE UNIVERSALS

Thus the concept of free trade and its formulation into international law have a history. To paraphrase Kahn (1999), they carry forward a history of decision-making based upon European interests, culture and norms. Kahn (1999:43) writes: "the rule of law is the manner in which the authoritative character of the past appears". These norms, in turn, continued to be projected onto a world stage with the GATT and then the WTO. And as these norms become the basis for building global commercial connections, frictions continue to occur, resulting in decisions and practices that might not fully accommodate the dominant European states and the USA.

A full reading of the history of free trade is not possible here, but some limited points can be made that point to the cultural and political context in which the body of knowledge and thinking about this universal emerged. In the 16th century, Francisco de Vitoria, a Dominican theologian and international jurist, called upon natural law (using human reason to interpret the divine plan of what is right and just) to suggest the rules for contacts between Spanish explorers and aboriginal peoples in the Americas (Irwin, 2006:21). He asserted that Spaniards have a right to travel into the lands of these peoples "provided they do no harm to the natives" and that the "natives" had no right to prevent them from doing so. This proposition, he argued, was derived from the law of nations (*jus gentium*), the very law upon which Grotius was to later expand. He added that it followed from this law that foreigners "may carry on trade, provided that they do no harm to citizens" (Irwin, 2006:21). This derivation of a right to trade from the natural law of nations, of course, served to justify Spanish interests at a time when it was a great maritime power, seeking to plunder what riches it could find in the Americas.

Phrasing this right to trade in terms of "free trade" appears to have originated at the end of the 16th century in English parliamentary debates over foreign trade monopolies. The English Crown had followed the practice of granting select merchants or companies the exclusive right to

engage in trade in a particular region of the world. The term "free trade" arose in opposition to these practices of the Crown to describe a situation where entry into commercial activity in a particular region was unrestricted. Hence the idea was that merchants would be able to carry on trade without official permission or approval. These arguments grew out of English notions of individual liberty and natural rights under common law.

These same cultural values continued to influence the body of knowledge about free trade that became more sophisticated in the 17th and early 18th centuries and moved closer to the conceptual understanding that we know today. The most sophisticated analytical argument was penned by Henry Martyn in his tract entitled *Considerations upon the East India Trade*, published in 1701. His focus was on monopoly restraints on the East India Trade, specifically involving the British East India Company, and on English restrictions on the import of manufactured imports into India. He dwelt on the incentives for individual merchants to make a profit, the role of governments to provide necessary public goods like fortresses and military support, and the overall economic situation of the nation. Working with these factors, he emphasized what have come to be fundamental economic notions of opportunity costs, efficiency and productivity (Irwin, 1996:57–59).

The depth of Martyn's analysis was not to be reached again until the publication of Adam Smith's *Wealth of Nations* in 1776. Smith's contributions are multiple and begin by his anchoring his thinking in the European concept of a nation, national economy and national income. It is not my purpose here to review Smith's contributions but to note that in addition to this cultural idea of relations between nations his thinking was grounded in another cultural universal: individuals are autonomous and act in a self-interested way. As Irwin (1996:79) writes,

"With clarity and persuasiveness he maintained that the natural liberty of individuals interacting in the economic realm, each seeking their own betterment by providing goods and services

to others, would lead to an efficient allocation of resources from the standpoint of society; the wants and desires of individuals would be met, if it was profitable to do so, and the annual revenue of society (real national income) would be raised to its highest level".

Over time, these cultural notions about relations between nations and autonomous self-interested individuals have become naturalized as self-evident "facts" through the processes of collaboration, engagement and generalization. The accompanying body of knowledge served to advance the economic interests of imperialist European states throughout the later 18th and then 19th and 20th centuries. The knowledge fit with the globalization of particular notions of capitalism, of what it means to be a nation and to have a state, and what the rules should be between nation-states. It provided a rationale for the creation of colonies and for the extraction of goods from these and other more informal parts of empires.

This expert knowledge drew from conceptions of individual (male) autonomy and national autonomy that served European and later American interests very well (Coleman, Pauly , and Brydon, 2008). Writing in the late 19th century, the sociologist, Georg Simmel (1971: 219) argued that the oppressiveness of medieval institutions gave rise to the idea of the pure freedom of the individual based on "natural" equality. This eighteenth-century idea of individualism, he added, came to be complemented by another version of individuality in the nineteenth century, that of the particular and irreplaceable person. Such an idea has become incorporated into what Charles Taylor (2004: 23) calls the "social imaginary": "the ways people imagine their social existence, how they fit together with others, how things go on between them and their fellows, the expectations that are normally met, and the deeper normative notions and images that underlie these expectations". In the West, this imaginary is translated into notions related to autonomy: people have "a right to choose for themselves their own pattern of life, to decide in conscience what convictions to espouse, to determine the shape of their lives in a

whole host of ways that their ancestors could not control” (Taylor, 1991: 2). Being founded on this imaginary related to individualism and nationhood, free trade became a powerful universal idea used in the forging of global connections around the world by the Euro–American powers throughout the modern period.

V. FREE TRADE, EPISTEMIC COMMUNITIES AND AGRICULTURE

Forging connections based upon the notion of free trade and the Western theoretical rationale for such trade has generated substantial friction when applied to agriculture and food, both among the hegemonic powers and between these powers and countries in other parts of the world. This friction is not surprising because the consumption of food is central to human life and the commodification of food thus raises concerns about life itself. In addition, given this central place of food in human existence, it is invested with tremendous cultural significance in all human societies and plays a key role in many cultural practices and ceremonies, including those of religion. Modern notions of collective autonomy of nation–states are easily extended to related ideas of food security and self–sufficiency. And we might expect important differences in culture across societies. These differences are particularly significant when societies with low numbers of farmers relative to overall employment and highly industrialized agriculture are compared with societies with high numbers of farmers and less intensive production.

Evidence of the friction generated by this contradictory relationship is abundant within Western states in the history of the trade regime, particularly as the dominant powers moved to define a legal framework in late 1940s (Coleman, 2008). The GATT was less than a decade old when the US Congress ensured that national interests in agriculture and food would take precedence over trade rules. The Common Agricultural Policy for the emergent European Economic Community followed in the USA footsteps when it took form in the early 1960s. In both instances, aversion to liberalized trade is often explained in terms of the power of agricultural

lobby groups on the one side and overweighted farmers' votes in low population rural voting districts on the other. Although plausible, these explanations seem to take little account of the rapid decline in numbers of farmers during the same period and the presence of powerful interest groups, particularly agribusiness, on the other side. Little attention has been given to the possibility that cultural norms about food and about national self-sufficiency provided the grounds for more widespread societal support for resisting trade universals when it came to food. Initially, these debates remained heavily within the Western states; developing countries were not party to the trade regime. From their perspective, GATT rules were continuations of longer-standing Euro-American economic practices from the imperial age. Accordingly, in the period after the Second World War, they put their emphasis on alternative forms of resistance to free trade, particularly commodity agreements to be negotiated outside the trade regime.

Public policies themselves provide evidence for the friction arising from the free trade universal being applied in agriculture and food in the post war period in the wealthier countries. Beginning in the inter-war period but expanding rapidly after 1945, a nest of export subsidies, price supports, price controls, import controls, quotas, supply management, marketing boards, single sellers, corporatist arrangements, "iron triangles" and so on became commonplace in all Western states. Eventually, a "Farm War" being waged between Europe and the USA, using these kinds of policies, visited so much collateral damage on their respective economies and fiscal policies, as well as those of other Western states, that a truce had to be found (Wolfe, 1998). Seeking such a truce became a central goal of the Uruguay Round agriculture trade negotiations.

The finding of the truce and the uneasy resolution of conflicts between the dominant powers involved the construction of several new universal terms based upon a particular body of knowledge that was specific to trade in agriculture. These terms became central, then, to the AA and the SPS of the Uruguay Round. In looking at the origins of these new universals, I

argue that the origins of the body of knowledge upon which they are based continue earlier tendencies of Western cultural dominance.

I have suggested elsewhere (Coleman, 1999) that the framing of universals for the AA can be traced to an epistemic community of agricultural economists (Haas, 1991). This disciplinary base provided a policy evaluation framework that was shared between agricultural economists in the academic world, agricultural economists and mainstream economists in official bureaucracies, advisory councils and semi-public think tanks, and even economists employed by some producers' interest groups. These linkages between the private academic world and decision-makers were facilitated by intermediary economic research units such as the Economics Research Service (ERS) of the United States Department of Agriculture (USDA), the Bureau of Agricultural Economics and the Industries Assistance Commission in Australia, the former Economic Council of Canada, the *Wissenschaftlicher Beirat* (Scientific Advisory Council) to the German agriculture ministry, the *Institut national de recherche agronomique* in France and so on. These relationships gained additional solidity from the tendency of agriculture ministries in some countries to contract out research work to academic specialists and from the movement back and forth of agricultural economists between the academy and government in some countries, particularly the USA.

Further institutionalization of the epistemic community came with the formation of the International Agricultural Trade Research Consortium (IATRC) in June 1980. An informal association of government and university economists interested in agricultural trade, the IATRC came into existence on the heels of growing interest in agricultural trade policy. Experts working in the ERS and the Foreign Agricultural Service (FAS) of the USDA felt a need for greater contact with academics working in the area (Josling, McCalla and White, 1997:2), while academics were interested in having a greater impact on policy development. The meetings of the consortium were designed "to facilitate the interchange of ideas between academic, government and business researchers, and between researchers

and individuals involved in the formulation and implementation of policy" (IATRC, 1997:2). Initial financing came from the ERS, with the FAS and the Canadian ministry of agriculture eventually also becoming contributors. All three government agencies enjoyed a seat on the Consortium's Executive Committee in the early 1980s. At this critical point, then, the IATRC was dominated by members from the USA and Canada, with some representation from Australia, a small number from Western Europe and virtually none from outside the Organization for Economic Co-operation and Development (OECD).

IATRC members were to play leading roles in the fora that provided the key ideas for the framing of the AA: the OECD committees for Agriculture and Trade and the Committee on Trade in Agriculture on the GATT. Out of these committees, with IATRC members' help, were to come the basic concepts that were to evolve into the Aggregate Measure of Support (AMS), definitions of domestic support, tariffication, and classifications of policies into Green, Blue and Amber box categories (Coleman, 1999). When incorporated into the AA, these concepts then became part of a significant step forward in international public law regulating trade, one backed by a Disputes Settlement Understanding whose *de facto* binding powers made the WTO's "court" more powerful than the International Court of Justice, or as Ostry (2009) writes: "the strongest dispute settlement mechanism in the history of international law".

Although developing countries participated to a greater degree in the Uruguay Round of negotiations than in any previous round of trade talks since the founding of the GATT in 1947 (Winham, 2005), there is little evidence that they played any more than a marginal role. In agriculture, as I have indicated, the table was set early in GATT and OECD committees where developing countries were largely absent, if not completely so, when it came to the formulation of the legal text. The thinking behind the framing of the key concepts came out of neo-classical economics, the disciplinary offspring of Adam Smith and other late 18th and early 19th century moral philosophers and political economists. The building of

world agricultural trade models by members of the community helped "level" the world in an analytical way and support the argument that all would be better off if the views of the community were to be followed. In a way, the situation was hardly different for the SPS. Formulation was dominated by the OECD countries again, drawing from the expertise of food scientists who had been active in the Codex Alimentarius Commission, itself dominated by OECD countries since its founding in 1962 under the auspices of the Food and Agriculture Organization of the United Nations.

To borrow Geertz's terms again, therefore, we can see the AA and SPS as projections of the wealthy countries' own views of agriculture and food onto the world. And given the structure of the Disputes Settlement Mechanism, the entrenchment of Anglo-American legal influence was even deeper. A French negotiator encouraged more study of international economic law in French universities by stating that experts were needed in "*le droit économique international qui est encore très largement anglo-saxon*" (cited in Ostry, 2009).

VI. METHODOLOGICAL ISSUES

To this point, I have argued that much of global trade law has its origins in West European and American cultures, which was then projected onto other parts of the world with minimum consultation and securing of consent. Accordingly, the possibility exists that difficulties in negotiations about future reconfigurations of trade law may be informed by important cultural differences between the originating societies and the large number of newer ones that became part of the WTO. These latter states become involved in these processes in a meaningful way for the first time in the Doha Round. How one might think then about a cultural study of global trade law that would assess whether difficulties or problems for less wealthy countries in accepting and working with that law are due partially to cultural differences?

Tsing provides a framework for investigating the friction that arises when universal ideas like those in global trade regulation are a means for building global connections. She suggests that processes of collaboration permit the building of a body of knowledge that supports the universals and that this knowledge is part of the engagement with other persons and societies in making these connections. As the universals are more widely engaged, new processes of generalization take place that respond to the friction that occurs. The movement of universals across the world is never smooth. Accordingly, I suggest that research on the questions posed in this paper might be best pursued by focusing on collaboration, engagement and generalization as a starting point. I reflect on such a methodological approach through a brief account of a society that only recently has agreed to build new global connections based on the WTO corpus: China.

A) Some Reflections on Chinese Agriculture

China acceded to the WTO in 2001 and now is bound by a legal corpus that fits poorly with its own cultural values, history and agricultural economy. After the death of Mao Zedong in 1976 and a brief interim period involving a power struggle between prominent leaders from the Mao period and Deng Xiaoping, one of many of the founding group of party leaders disgraced and attacked during the Quiet Revolution, the latter emerged victorious. He then initiated a period of gradual opening up of the economy coupled with increasingly significant policy changes internally. The revolution of 1949 had been led by the party in cooperation with the peasantry and one of the first steps taken by the new regime was the elimination of the traditional landowning gentry in the countryside. After a brief interlude of individual peasant farms, the collectivization of agriculture began in 1955 and was largely accomplished by the end of 1956. Individual land ownership was abolished and land was transferred to agricultural cooperatives, which were organized in a vertically integrated way with small village cooperatives at the base.

Deng Xiaoping moved to unwind the collectivization experiment in 1980, proposing policy changes that have come to be termed the "Household Responsibility System". Under this system, the rural peasant collectives have "contracted" agricultural land to rural households for production (Ho and George, 2003: 689). Initially the land use contract was for 3 years but has been successively expanded, culminating in contracts of 30 years through reforms to the Land Management Act in 1998 (Ho and George, 2003:690). In effect, this policy has led to a secondary market for contracted land, with such lands being rented, bought, sold and mortgaged as if they were private property (Meisner, 1999:463-64). Nonetheless, this market has serious flaws due to the lack of property rights, no management mechanism, and party control at the village level permitting interventions on who gets what land (Xia, 2004:17-25; Oi, 1999).

Even with these changes, the Chinese agricultural system in place at the time of the country's accession to the WTO in 2001 was remarkably different from the agricultural economies whose structures had influenced the framing of the AA and SPS. After the revolution, following the lead of the Soviet Union, China had chosen to concentrate first of all on the development of heavy industry at the expense of light industry and agriculture. In essence, throughout the history of the People's Republic through to accession to the WTO, agriculture helped finance this industrial development through transfers of wealth, particularly in the form of the agricultural tax. The state's support of agricultural producers was negative in value up to 2000 (Liu, 2008:11). The consequent lack of investment in agriculture shows the country lagging behind even many developing countries in mechanization, the use of fertilizers, irrigation systems, transportation routes and so on. Over 500 million people still live in the countryside, with about half of these engaged in agriculture. The average farm size per household is 0.4 hectares, tiny by Western levels (Lu, 2004). The number of tractors per hectares of arable land places the country 85th in the world (Cheng, 2008:90). Farmers are also poorly educated. Of those living in rural areas, only 13 % had high school or post secondary education, compared to figures of 90% in countries like Japan and The

Netherlands (Lu, 2006). Total investment in agriculture and science accounts for 0.2 to 0.4 % of total agricultural production compared to a world average of 1 % and OECD countries' averages of 2.5 to 4.0 %.

Finally, the income gap between rural and urban dwellers is increasing. After the initial Deng reforms in the early 1980s, the urban–rural ratio was 1.7 to 1. At the time of accession, it had grown to 2.9 to 1, rising further to 3.2 to 1 by 2005. If one takes into account social welfare benefits available to urban workers but not rural workers, the gap is even larger (Lu, 2006). As urban residents increase their average income, they become interested in different kinds of foods: more beef, dairy products, eggs, more processed products, and a greater variety of fruits and vegetables; they also make greater use of restaurants. Given the low investment in agriculture by the state, combined with low human capital in rural areas, Chinese farmers have a difficult time meeting these demands and thus production becomes even more threatened as barriers to trade are lowered (Chen, 2003:134).

At the time of accession, state intervention into agriculture was (and still is) pervasive. The Ministry of Agriculture is a very powerful agency, one that survived relatively intact the widespread administrative reforms in the country in the 1990s. If anything, it emerged being able to extend the scope of its intervention into agricultural marketing and food processing. Its power to intervene is enhanced further because of the fuzzy boundaries between the state sector, semi–state bodies and an emerging private sector (Waldron, Brown and Longworth, 2006:285–86). It either controls or has considerable power over firms involved in providing agricultural inputs, first and secondary food processing, and food distribution. About 50% of large agriculture enterprises were shareholder ones in 2000, in which government departments are usually the major shareholders (Waldron, et al.,2006:290). The state plays a crucial role in agricultural vertical integration through the use of its powers. The state also has a strong capacity to influence business decisions through mechanisms linked to central planning. Retaining such a strong state role

is necessary so as to oversee the likely future movements of people from rural to urban areas through more intensive agricultural production. The ministries responsible for agriculture in wealthier countries also combined social welfare and economic roles during the decades where this kind of transition took place for their countries.

Given the planned nature of industrial development and the ever present danger of peasant discontent resulting from the transfer of wealth from agriculture to industry, the state fixed key product prices throughout the period since economic reforms began. Purchase prices were established for wheat, grain, corn, sorghum and beans beginning in 1978, with varying changes taking place in the system over the subsequent 20 years (Liu, 2008:12; Cheng, 1997; Qi, 1997). These price decisions were implemented through state enterprises controlling the distribution system. Other supports or subsidies were used to facilitate the effective distribution and sale of key commodities.

In summary, China joined the WTO sharing some characteristics with other developing countries – a large peasant population relative to employment in non-agriculture sectors and price controls over core commodities – and a production, processing, transporting, and distribution system characteristic of a planned, state-directed, economy. These two characteristics meant that its agriculture and food sector differed very much from the assumptions about the sector in the body of knowledge that influenced the AA and SPS.

B) Research on Culture and Law

The long term objective of the AA and SPS measures is to achieve "substantial progressive reductions in agricultural support and protection over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agricultural markets". This objective reflects a Western perspective in that agricultural economies are assumed to have achieved a level of "development" such that "support" and

"protection" are no longer needed. These supports and protections were put in place originally in the nineteenth century as European and later North American and other rising states were seeking to "develop" their agricultural economies. In the shelter of "support" and "protection," they sought to raise their productivity and efficiency, all the while giving space for growth to emerging industries for agricultural machines, chemicals and plant seed varieties. As argued above, the collaborative relationships over two centuries that built the body of knowledge upon which these agreements were built largely involved experts and state officials from the "West", particularly the UK, The Netherlands, and later the USA. I noted earlier that the formulation of the AA and SPS depended heavily on an epistemic community dominated by the Anglo-American states.

Building this corpus of knowledge on agricultural trade took place during a particularly revolutionary period of agricultural development beginning in the US in the late 1930s and in the developed countries in the late 1940s (Bairoch, 1999; Malassis, 1997). This revolution resulted from the vast expansion in the use of chemical pesticides and herbicides, more scientific approaches to seed selection and animal breeding, and a refinement in agricultural machinery and its much more common use. Whereas the yields for wheat had risen from 6.9 quintals per hectare in 1800 to 10.3 quintals in 1936 in developed countries, they more than doubled from 11.2 to 27.7 in the forty year period from 1950 to 1990 (Bairoch, 1999:100). After a careful review of varying estimates of total factor productivity growth, Federico (2005:79) concludes that productivity grew slightly less than the non-farm sector between 1870–1913, matched the performance of other parts of the economy between 1913–1980, and "dramatically outperformed" the other sectors after 1950. With these vast increases in productivity, employment levels in agriculture fell drastically. For example, in the USA and France, 50% and 49.2% of the labour force were employed in agriculture, forestry and fisheries in 1870. Today the figures are under 3%.

Having undergone similar processes and being increasingly deeply integrated with one another, the issue of "support" and "protection" came to take on a negative connotation among the experts collaborating on rules for agriculture. "Fair" competition required some procedure for putting these measures into a common metric, modeling how reducing these measures would affect the "world" economy, and then identifying who had to reduce what to achieve the competitive goal. Modeling is an important tool in Tsing's process of generalization, i.e., in formulating universals that can be applied globally. It all makes sense providing that countries understand agriculture in relatively similar cultural terms and see advantages arising from reducing protection and support. As we know, however, achievements in reducing protection and support based on the AA are minimal at best. The USA, the EU, and Japan tend to still "protect" and "support" their agricultural sectors at very high levels.

For its own reasons, China saw a need to become part of the world trading system and sought membership in the WTO. Its principal reasons for participating had little to do with agriculture. With the WTO agreements being a "single undertaking," however, it had to agree to an agriculture agreement that was based on assumptions and thinking quite different from its own. Accordingly, China began to engage with the agriculture trade universals and the associated body of expert knowledge without ever collaborating in building that knowledge. Not surprisingly, then, as Liu (2008:12) observes, China's approach to agriculture policy does not "fit" with the WTO system. The lack of fit has historical roots in that agriculture was not freed from a feudal system dominated by an exploitative, rural, gentry, landowning class until the Communist revolution. Agriculture continued to be seen as "backward" and "feudal" leading to extensive collectivization that lasted for a period of 25 years. Today, land is still collectively owned although policies permit contracts to share out land for agricultural use. Following its socialist thinking, the Chinese government did little to "modernize" agriculture so as to focus on developing heavy and then lighter manufacturing. Policy has been designed to transfer wealth from rural to urban areas through taxation

and little investment, all the while ensuring that prices remain sufficiently low that peasant unrest does not return in significant amounts.

Since China's accession to the WTO, the views of the government have changed and are summarized in its slogan: "Give more, take less, and be flexible". The current leadership talks about building a "socialist countryside," where in the words of Wen Jiabao (2006), the current premier, there will be "developed production, a civilized rural style, clean and tidy villages, and democratic management". Agriculture is identified as one of three rural issues. In the introduction to his speech, the Premier identifies why agricultural reform is necessary.

“Building a new socialist countryside is related not only to agricultural and rural development and the peasants' enrichment but also to the state's lasting political stability and the nation's great rejuvenation. We must stand at the level of the overall picture and regard the building of a new socialist countryside as a major historic mission in the modernization process”.

Nowhere in his long speech does he talk about world agricultural markets, about increasing trade in agriculture, or building an infrastructure to support trade. His focus is social stability and national self-sufficiency.

Under WTO rules, the Chinese are limited in how much they can spend to these ends. The total amount of support (aggregate measure of support) can be no more than 8.5 % of total agricultural output, according to China's accession agreement with the WTO. In reading through articles by Chinese agricultural economists, I am struck by their puzzlement about what would fit in the "green box," including how state-controlled corporations and collective ownership of rural agricultural land will be counted. Several note that some of the key steps that need to be taken fall in the "amber" box, those measures that "distort" trade (Liu, 2008; Yang, 2007). In fact, three key measures implemented since 2001 would seem to be of this kind: direct subsidies to peasants growing grain, subsidies to

improve agricultural varieties in particular commodities, subsidies for purchasing agricultural machinery for particular commodities (Lu, 2006). In reviewing the situation from a legal perspective, Yang (2007:47) observes that there is no systematic framework for understanding current subsidies. In fact, the term "agricultural subsidy" is rarely used in Chinese law. Other terms are found like: "support," "assistance," "encouragement" and "donations" which make it difficult to analyze the Chinese system in WTO terms.

Given the choice, one might surmise, if the WTO had not been a "single undertaking," China might have opted not to accede to the AA in 2001. Its national concerns and priorities relating to building a socialist countryside have little to do with reducing "support" and "protection". To the contrary, the state and party may realize that the time has come for increasing support and protection to rectify the significant imbalances in social welfare, economic opportunity, income, and education between the half billion people in the countryside and those in the cities. Some articles I have read suggest that China stands now where the European, North American and other wealthier countries stood some 60 years ago, when 50% of their population was involved in agriculture, largely as subsistence-based peasants. Fitting Chinese institutions and priorities with the agriculture trade universals of colored boxes and aggregate measures of support is likely creating tremendous friction within the country.

But these are only hypotheses on my part, which may be proven false or wrongly conceived. To research these hypotheses would require, according to Kahn (1999:36), a "thick description" of how Chinese policy makers, agricultural leaders, and other organizations engaged with the WTO corpus of agricultural trade rules.¹ We would need to know more about the background structures of meaning already in place in China that were part of this engagement. We would have to ask whether Chinese agricultural economists have begun to collaborate in the epistemic

¹ Since the mid 1990s, a growing number of agricultural associations and cooperatives have emerged, with some of these implicated in policy discussions (Wong, 2006).

community that continues to build the knowledge that influences trade rules. Finally, we would need to know how, if at all, global trade law influences new policy initiatives like the "Three Rural Issues."

VII. CONCLUSION

I opened this paper with the question whether we have given adequate attention to the cultural embedding of international trade law. I have drawn on anthropological thinking and examples of research that suggest that the translation of cultural practices into universal concepts based upon particular bodies of knowledge in the pursuit of global connections means those connections will only be forged in the presence of friction. There is nothing inevitable about the successful adoption of universals. The core concepts of the legal trade regime and their adaptation and evolution over time are strongly marked by Euro-American thinking and values. In particular, this same thinking and values and a body of knowledge developed almost exclusively in the Anglo-American countries has dominated the incorporation of rules for the trading of agricultural commodities and foods into global trade law.

Is it then all that surprising that when developing countries gained a stronger voice in the transition from the GATT to the WTO that they hesitated on liberalizing further the agricultural rules? Not only was it easy to see that the Agreement was already stacked in ways that permitted the OECD countries to continue to "protect" and "support" their agricultural sectors, but all the while, they were demanding that those outside the OECD make other concessions if they were to be pushed off this position. But it was also evident that the very framing of the legal text reflects cultural values related to the place of agriculture in society such as export-led growth and individual ownership of land. Culture may be a missing variable needed for understanding the frequent dialogue of the deaf in trade negotiations since the creation of the WTO.

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