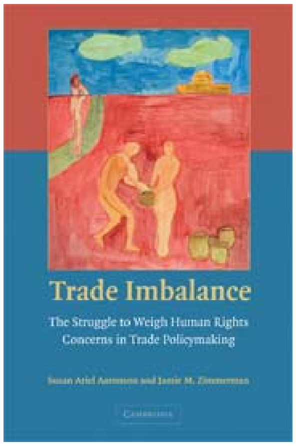

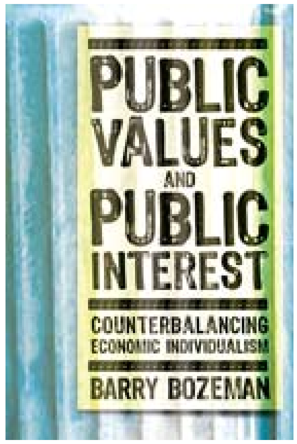

Rights & Interests: Trade & Disputes

By Howard Guille

<u>Trade Imbalance: The Struggle to Weight Human Rights Concerns in Trade Policy-Making</u>. By Susan Ariel Aaronson & Jamie M. Zimmerman. New York: Cambridge University Press, 2008. 337pp.

<u>Public Values & Public Interest: Counterbalancing Economic Individualism</u>. By Barry Bozeman. Washington, DC: Georgetown University Press, 2007. 219pp.

<u>The Impact of the WTO: The Environment, Public Health & Sovereignty</u>. By Trish Kelly. Northampton, MA: Edward Elgar, 2007. 220pp.

The global financial crisis led to the steepest drop in global activity and trade since World War II (International Monetary Fund 2009c). Recession means unemployment of people and resources. It is a bad time to be a worker and a despondent one for worker representatives. The crisis began, publicly at least, with financial panics and ensuing bank failures in the United States in September 2008. The financial bubble of securities and derivatives burst because of "the obesity of banks and shadow banks" (Johnson 2009). However, politicians and governments had given bankers and financiers a license for excess by deregulating finance and trusting open markets. In essence, elected politicians gave small government to bankers, who in turn gave neo-liberal globalization to us.

Capitalist crises are a time to write-off old assets and old ideas. Some see the current crisis as an opportunity for a "better" globalization. One of the discussions at the 2009 World Economic Forum concluded, "[f]inancial governance requires a new mindset and a new paradigm of thinking. This is not a time for piecemeal reform, but for large-scale, big picture rethinking on how best to govern global capital and the world marketplace" (WEF 2009a). This statement gives a lead to asking what a "better globalization" might entail, especially for labor and the environment. I will use this organizing question to approach the three books under review even though they are not directly about the global financial crisis. Two are about trade; one is explicitly on human rights and trade, the second about the record of the World Trade Organization (WTO) on public health and the environment. The third book illuminates important issues about ascertaining the public interest, which is especially germane to evaluating claims about trade.

Free Trade Survives the Global Financial Crisis

The task of salving the wounds of the financial crisis is now being placed on governments. For example, the International Monetary Fund (IMF), an arch-priest of open markets, is telling governments to restructure and recapitalize failing banks, by nationalization if necessary (IMF 2009a). Economists from banks and academies have disinterred Keynes and are rushing to affirm the goodness of government. This puts regulation, institutions, government, and the state back on the table. However, most of the Keynesian-based responses to the crisis are limited to demand management and certainly do not include his proposal for a "board of national investment" to coordinate a "somewhat comprehensive socialisation of investment" (Skidelsky 1992: 227-28). The current intervention by governments is designed to repair the damage caused by financial excesses but not to confront globalization or the principles of free trade. Any hint of "protectionism" attracts stern warnings and "Buy America" proposals are described by "European diplomats" as "a provocative shift away from free trade" (Shipman & Sherwell 2009). Indeed, support for free trade seems to be the new test of liberal market credentials for politicians of the "left" and Australian Prime Minister Rudd has restated support for the Doha Round and free trade (Crook 2009; Rudd 2009).

Workers and the environment are on the receiving end of the current crisis where "[a]dvanced economies are suffering their deepest recession since World War II" (IMF 2009a: 2). As the OECD says, "[t]he crisis is killing jobs in all corners of the economy" (OECD 2009). Recession is defined as "negative growth" or, more plainly, a reduction in the level of national output. Even more plainly this means going backwards. The IMF assesses that the advanced economies shrank by 3.2% in 2009, with a fall of 5.3% in Japan, 4.8% in the United Kingdom, 4.8% in Germany and 2.5% in the United States. The newly industrialized Asian economies shrank by 1.2%, Russia by 9.0%, Mexico by 6.8% and Brazil by 0.4%. The rate of growth fell from 9.6 to 8.7% in China and from 7.3 to 5.6% in India (IMF 2010). The International Labor Organization (ILO) reports that global unemployment increased by 34 million in 2009, with the largest increases in the developed economies, Central and South-Eastern Europe and Latin America and the Caribbean (ILO 2010: 9). Job losses occurred very quickly; 500,000 jobs were reported lost in the United States in November 2008 alone (Reedy et al. 2008) and 300,000 jobs lost in Australia in December-January 2008-2009. In China, some 670,000 small and medium enterprises are said to have closed with more than ten million migrant workers losing their jobs (Bezlova 2009). Another report claims that twenty million (15.3%) of Chinese rural workers who had migrated to towns lost their jobs (Radio Australia 2009).

A shrinking economy means that some people must get less, and "the young, the old and migrants are hit hardest" (OECD 2009). Differences also occur between countries. Some of the differences can be seen in the IMF data cited above. Japan and Germany are the worst-off developed economies; Russia and Mexico the worst-off transitional and emerging ones. The recession is more severe in the United Kingdom than in the United States, and in New Zealand more so than in Australia. The difference between the Anglophone countries is intriguing because they are widely presumed to have shared the "innovations" of the turn to neo-liberalism and promarket policies under Reagan (US) and Thatcher (UK), who were of the "right," and Hawke-Keating (Australia) and Lange-Douglas (New Zealand), who were of the "left."

Note, though, that "national differences" obscure differences according to class, occupation, and region, and the overwhelming point is that the already poor, the unskilled, and the landless will suffer the most in any period of adversity. I share the view expressed at Davos that "a major share of the cost of the financial and economic crisis will be borne by hundreds of millions of people who have not shared in the benefits of recent growth" (WEF 2009b). Put another way, the poor lose the most in war and benefit the least in peace.

Trade and Globalization

The free movement of trade and finance are the characteristic features of globalization in the late twentieth and early twenty-first centuries. A supra-national system of open, unfettered markets in goods, services and finance operates across most of the world and its peoples, and economic and political power is shared between national states and global corporations. The world's financial markets are centered in London, New York and Tokyo but do not rely on national institutions or national currencies. The markets have constructed a bewildering array of securities and derivatives that are traded to the tune of $US 1 trillion per day. Almost all of this is speculative and less than five percent of the total financial transactions are needed to fund trade and travel between countries. In turn, trade is dominated by transnational corporations, and half of what is counted in statistics as national trade in manufactures is actually moving between branches of the same corporation. Alumina is a good example; statistics show it is the largest manufactured export from Australia. Yet almost all the alumina exported from Australia is being shipped within the same company; alumina is refined in Australia by Comalco (now RioTinto-Alcan) and shipped to smelters in Iceland and New Zealand owned by the same corporate group.

More generally, production is organized as "commodity chains" (Geraffi 2006) in which global firms bring together components from geographically scattered subsidiaries or contractors. This can be very complex, for example, Toyota's use of "just-in-time" methods across the globe. Or, it can be a centralized marketing exercise whereby global brands such as sports clothing is made to very tight specifications and margins by contractors in Southern Asia, South East Asia, Central America or Eastern Europe. The overall point is that the global organization of production by corporations is not "free trade" as postulated in economic theory. Instead, free trade and open movement of foreign direct investment (FDI) has made the world a relatively seamless single market for corporations. Despite this, economists cling to trade theories based on countries. Corporations know better; thus Barnevik, the one-time chief executive of Asea-Brown Boveri, said "[w]e function as a lubricant for worldwide economic integration," and "[w]e make visible the invisible hand of global competition" (Taylor 1991: 105).

Moreover, governments of the advanced North and the developing South seek to make their economies "competitive" in order to attract and retain foreign direct investment (FDI) from corporations (Panitch 2001: 44). Many attractions are laid out to tempt corporations, including tax holidays, market share, trained labor forces, research grants, and export process zones exempt from domestic labor laws. The World Bank keeps a scorecard of this in its "Doing Business" web-site, which assesses nations based on ten indicators of how welcoming they are to corporations (International Financial Corporation (IFC) 2009). These include taxation, protection of investments, corporate regulation, employing workers, and starting and closing a business (IFC Doing Business 2009). This is the most frequently accessed web-site hosted by the World Bank Group. The Bank claims the material is for "information only" and is not prescriptive. However, there is clear evidence that various bodies use a poor rating on the "Doing Business" index as grounds for suggesting "reform." For example, "Pacific Economic Survey 2008," a report and set of recommendations on Pacific Island nations undertaken by AusAid (the Australian government Development Agency) draws heavily on "Doing Business," including a table titled "The Pacific is being left behind on indicators for ease of doing business" (AusAid 2008). Likewise, the International Trade Union Confederation (ITUC) has had a long-running battle with the World Bank about how "Doing Business" has been used to demand dilution of labor laws and practices (Bakvis 2006).[1] Indeed, even the Bank's Internal Evaluation Group has stated that the "Doing Business" survey is prejudiced in favor of deregulation and overstates the statistical evidence of links between the indicators, economic growth and national well being (Aslam 2008).

The free trade model began with David Ricardo and his 1821 doctrine of comparative advantage. This is still the basic model of free trade and an axiom that enjoys a place in economics almost beyond criticism. Blinder, an advisor to the US Democratic Party, echoes Milton and Rose Friedman when he says that "Like 99% of economists since the days of Adam Smith, I am a free trader down to my toes" (Blinder 2001: 4). [2] Free trade underlies multilateral policies concluded under the World Trade Organization (WTO) and agreements such as the North American Free Trade Agreement (NAFTA) and the US-Australia Free Trade Agreement. Nonetheless, as Blinder notes, "[d]espite this intellectual barrage, many 'practical' men and women continue to view the case for free trade skeptically" (Blinder undated).

Contrary to Blinder (who categorically rejects any protectionism), arguments to limit free trade deserve respect as political efforts to pursue particular social and economic outcomes. There is wide global acceptance for stopping all trade in some products – for example banning trade in ivory or "conflict diamonds" (CITES 2007; Kimberly Process undated; United Nations 2000). Local reasons to limit trade include national security, energy and food sufficiency, economic development, protecting farmers and rural areas, and maintaining national culture, especially films, media, literature and creative works. It bears emphasizing that despite the ubiquity of the free trade dogma, all countries make decisions to protect something, be it French film-makers, US corn producers and arms manufacturers, Australian apple growers and media owners, and Japanese rice farmers (Buckman 2005; Dunkley 2005).

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[1] Bakvis (2006) documents how the IMF & World Bank used the "Doing Business" index to pressure seven countries to deregulate labor laws in 2005-2006 alone. The seven countries were Bolivia, Colombia, Ecuador, Lithuania, Nepal, Romania and South Africa.

[2] Even when expressing alarm about the shift of service jobs from the US, Blinder still said he was "trying to save free trade from itself" and that "Trade protection won't work" (Blinder 2007:4).

Human Rights and Trade Policy

Advocates of free markets believe that the market, except in very exceptional circumstances, produces the most efficient use of resources and, by corollary, both monopolies and state intervention are inferior. In a very profound way, free marketers are indifferent to the actual outcomes; whatever occurs is the will of the market. This puts those who want protection and regulation on the defensive. It is a particular example of a general rule that those who want to change market outcomes have to justify their position. Free trade is natural; protection, to the contrary, is unnatural. Further, as if committing unnatural acts were not enough, protection is also condemned as 'rent seeking', that is advancing sectional interests. In consequence, the onus of proof is placed on protectionists to justify limiting free trade. The purist will brook no interference in the market despite the many social, ethical, and economic arguments that can be mounted against it. In part, this brings human rights into play. Proposals for water privatization are opposed by reference to a right to water; rights of children are used to oppose child labor. Similarly, export processing zones are criticized because of restrictions on unions and freedom of association.

The book by Aaronson & Zimmerman is about human rights and trade policy. It centers on case studies of "what South Africa, Brazil, the European Union and the United States do to promote human rights at home and abroad as they seek to expand trade" (24). The approach is ambitious and makes comprehensive use of WTO Trade Policy Reviews, national materials, and interviews with "policy-makers, negotiators, business leaders, labor rights leaders, NGO activists and scholars" in each of the four case studies[3] (Aaronson & Zimmerman: 25). The people who the authors refer to as 'policy-makers' in their case studies "see trade as an engine of growth but thought that trade could undermine internationally accepted human rights" (Aaronson & Zimmerman: 26). In addition, they all say that human rights and trade exist in separate spheres, and the authors conclude "in most countries, policy-makers develop trade policies as if they are strictly commercial policies" (Aaronson & Zimmerman: 190). The "policy-makers" to whom the authors refer seem to have internalized the axiom of free trade. However, it is unclear who the policy-makers are: they could be just the politicians and public servants the authors interviewed; or they could include the business, labor and NGO leaders. I would hope that environmental and labor representatives were less likely to accept free trade.

Aaronson & Zimmerman say that US policy-makers behave differently "at the intersection of trade and human rights" than do their overseas counterparts. US policy-makers conflate rights and freedoms and treat rights as divisible rather than universal (183-4). The United States is said to promote some particular rights; by extension, this suggests that it avoids pressing some other rights. The authors do not explore how this came about; perhaps it could be useful to ask whether it goes back to the Cold War antagonisms about political rights versus economic rights. They do compare the approaches taken by the United States and the European Union. The United States emphasizes

[3] A full list of interviews is provided in the appendix (Aaronson & Zimmerman: 209-16). The list includes a considerable number of interviews in India although this country is not included as a case study.

particular rights to do with labor, intellectual property, and judicial due process, while the European Union expects that all human rights must be protected to receive trade benefits.

The United States is more aggressive than the European Union in seeking that trade partners provide for the rights they emphasize (Aaronson & Zimmerman: 196). However, the list is narrow and the rights are mainly "process" ones—especially the labor rights. For example, the right to collective bargaining does not necessarily mean that wages are above the poverty level. This is not a point made by Aaronson & Zimmerman; however, they do note that the United States is asking for more on labor rights from trade partners than it is providing at home (2007: 169-70). Indeed, if the International Labor Organization (ILO) core conventions were written into trade treaties, the United States could find itself the subject of actions to enforce rights (Moran & Hufbauer 2007).[4] Of course, other countries are also selective. The former coalition government in Australia accepted the US-Australian free trade agreement that included provisions to extend the life of patents and copyright but looked askance at a requirement from the EU for a blanket human rights commitment including labor and Indigenous rights (Kent 2003; Murray 2000).[5]

Aaronson & Zimmerman conclude that the gap between trade and human rights is widest with labor rights. They say "none of our case study countries have figured out how to balance policies to attract investment and create and retain jobs while promoting core workers rights" (Aaronson & Zimmerman: 193). This is a significant finding, but the authors offer no further explanation or analysis of why the task is so difficult. Some speculations are in order given that the countries involved are Brazil, South Africa, the United States, and the European Union. Is it that corporations and the suppliers of FDI can bid down labor rights in a "race to the bottom"? Or, have governments made investment such a priority that they have effectively stopped thinking about labor rights? In either case, it seems that there are only limited opportunities for lasting improvement in labor rights by pressuring national governments. Improvements will need to come from global or coordinated international action.

Aaronson & Zimmerman do suggest that the United States and European Union should "collaborate on labour rights objectives" (2007: 205) and conclude that this could "build both a *demand* for labor rights as well as a *supply* of laws, skills and administrative expertise for labor rights in the developing country" (Aaronson & Zimmerman: 207, emphasis added). The terms "demand" and "supply" are the language of economics and the sentence implies that a "balance" of rights will be established through some kind of "market." The approach resembles "public choice" economics. The authors may not consciously subscribe to such views. Nonetheless, the statement shows that market thinking seems to have become deeply embedded into their explanations of the world.

[4] Furthermore, with respect to the trade-labor linkage, Kuruvilla & Verma say "the fact that this linkage is most clearly advocated by the United States, a country that has very limited commitment to improving labor standards within its own borders, reinforces the perception that this is a protectionist device" (2006: 6-7).

[5] Note the current Australian Labor Party government signed the European Union – Australia Partnership Framework in September 2008. The second term of the chapeau reads "having regard in particular to their shared commitment to the respect for and promotion of human rights, fundamental freedoms, democracy and the rule of law which underpins their internal and external policies" (Smith 2008). This was the clause that troubled the former government.

I kept coming back to the sentence about demand and supply of labor rights in trying to understand my unease with this book. It is competent and comes from a well-funded and well-focused research project. However, it is neither a theoretically informed piece that helps an activist better understand the issues nor a practice manual about changing them. In the end the book is an empirical exercise testing "if promoting *certain* human rights could be trade enhancing or if increased trade inspires policy-makers to do more to protect *specific* human rights" (Aaronson & Zimmerman: 7, emphasis original).

The problem for me is that the book lacks passion and position and is written with little account of the partialities, politics and ideology of free trade. I can sum this up best by conveying my sense that there is no particular reason the book is about human rights and trade. To use an Australian expression, by crossing out dog and writing in cat, the book could be just as easily about human rights and housing or human rights and education. The authors do not discuss the economics of trade or the political economy of free trade. Neither the "Washington Consensus" nor neo-liberalism are mentioned anywhere in the book. The approach is quite disturbing and "value-free." As Ergas says in another context, slavery might have been an efficient system of production but this does not make it acceptable or appropriate (Ergas 2008).

The absence of a wider discussion leads to some questionable assertions; for example, "[m]any developing countries are eager to privatize essential services such as water and electricity" (Aaronson & Zimmerman: 21). No reference is made to the conditions which the International Monetary Fund (IMF) has imposed as part of its structural adjustment programs. One of these was free trade, another was privatization. By my count, over 100 governments have had to enter "letters of intent" with the IMF in the last two decades. These include the large economies of Russia, Mexico, Brazil, South Korea, Indonesia, Turkey and Argentina, almost all countries of Sub-Saharan Africa and South America, and the transition economies of Eastern Europe. The letters of intent are available on the IMF web-site (IMF 2009c) and almost all of them require privatizations notably of banks, telecommunications, airlines and utilities, as well as liberalization of trade, market determination of currency exchange rates, and free access to and legislative protection for foreign investment. An almost identical formula of "opening up to the market" was applied everywhere. Indeed, in 2004, the then Acting Managing Director summarized the Fund's approach as "the promotion of free trade is one of our duties" and "we consistently urge governments to liberalize" (Krueger 2004).

The WTO and the Rules of Trade

The big question missing in Aaronson & Zimmerman is whether economic and social rights and environmental sustainability can be guaranteed in a world of free trade and free movement of capital. The right to get and keep a livelihood with a decent income is more substantial and harder to achieve than are the process rights of collective bargaining. Likewise, preventing the extinction of vulnerable species and maintaining threatened landscapes require rigorous controls over land-uses and investments. Free trade removes economies from local control, and the establishment of the World Trade Organization in 1994 inaugurated a comprehensive code of trade rules. Members of the WTO (currently 153 countries) are required to accept <u>all</u> WTO rules and are "bound" by tariffs and other protective measures that are applied at the date of accession.[6] The transnational corporations are the main beneficiaries. One principle of the WTO is that all trading partners must be treated equally. A second is that foreign and local goods and services must be treated equally and given "national treatment." These rules provide corporations with a so-called "level playing field." The free movement of finance and the strong backing given to the unfettered movement of FDI by the IMF and the World Bank reinforces this. While the majority of transnational corporations come from North America, Europe and Japan, they are being joined by firms from the South. Some corporations from India, China and South Africa are now organizing production across the North as well as the South. Mittal-ArcoSteel is the world's largest steel producer; Chinalco is taking a strategic stake in Rio-Tinto, the world's second largest mining corporation; and Infosys has pioneered "global delivery" (aka outsourcing) in information technology.

While global corporations dominate trade, the WTO is a body comprised of nation states. Indeed, WTO prides itself as a "member-driven" body that operates on the basis of consensus.[7] Unlike the IMF and the World Bank, it has "one member one vote." The most distinctive feature is the dispute mechanism that operates as an enforceable regime over all members. Once a country joins the WTO, the dispute procedures are binding and enforceable on that country. This is almost unique in international bodies. For example, decisions of the International Court of Justice are only binding if the parties to a case agree to it in advance. Likewise, the International Centre for Settlement of Investment Disputes only hears disputes with the prior written agreement between the state and the investor. Any WTO member country can raise a dispute with any other the application of WTO rules. Thus, Canada complained that Australia was using inappropriate quarantine regulations to prevent whole salmon imports. The complaint was upheld and Australia altered its regulations. In another dispute, Antigua and Barbuda complained that the United States was prohibiting US residents from accessing off-shore betting and gambling services. In this case, the complaint was upheld and Antigua and Barbuda was empowered to restrict services imports from the United States to the value of $21 million per year, the assessed value of its losses.

There has been widespread criticism of the dispute procedure, in particular that it is used to advance open trade at the expense of the environment, labor and society, and is dominated by the North. These are separate issues, although some WTO critics conflate them. Countries of the North use the dispute procedure more than countries of the South. The United States has raised 92 disputes, the European Union79, Canada 31 and Japan 13. In comparison, Brazil has raised 24, Mexico 20, India 18 and China 3. Note though, that the United States is also the respondent in most disputes (105 compared to 64 for the EU and 14 for China) (WTO 2009a). More generally, the northern countries have dominated WTO proceedings. The main reason is the sheer scale of the operation – small countries simply cannot afford to staff the myriad of trade negotiating committees

[6] Being "bound" means that the tariffs in force at the date of accession cannot be increased without compensating trading partners. For most countries who were members of GATT, accession was either at the beginning or mid-1995. Cape Verde, Tonga, Ukraine and Vietnam are the countries to join most recently. The largest countries outside the WTO are Russia, Serbia, Algeria, Iran and Iraq. All are candidates for accession.

[7] The WTO explicitly distinguishes itself from the IMF and says the WTO is different from some other international organizations such as the World Bank and International Monetary Fund. In the WTO, power is not delegated to a board of directors or the organization's head (WTO 2009b).

that are in almost permanent session.[8] There were signs that the North's dominance had been broken in the tail end of the Doha Round, when Brazil, India and South Africa had to be included in the WTO leadership group in order to restart negotiations. Moreover, the South coordinated their demands through the Group of 20 formed at the Cancun Ministerial in 2003, and this has clearly limited US and EU ambitions to expand the rules on trade in services.

The WTO Disputes Procedure

The second book under review (Kelly 2007) is an analysis of nine environmental and health disputes adjudicated by the WTO (Kelly: 2). There are seven main chapters, each built around one or more related topics including protecting turtles in shrimp trawling, access to generic drugs to treat HIV/AIDS, limiting trade in asbestos, hormones in meat, and the regulation of genetically modified organisms. The detail for the chapters comes from the WTO dispute processes, especially the application of phytosanitary requirements and the implementation of the "TRIPS" (trade-related aspects of intellectual property rights) Agreement. The collection is impressive and a very useful interpretation for those unversed in the arcane language of trade. Kelly sets the discussion in a much wider frame, especially the question of whether the WTO advances "trade at the expense of the environment and public health" and whether it undermines "national sovereignty over environment and health" (Kelly: 8). She argues that the WTO is able to balance trade, environment and public health without overly restricting sovereignty. Indeed, she concludes, "criticism has been overblown" (Kelly: 201).

Many labor and environmental organizations and activists will disagree with Kelly's conclusion about the WTO since, for them, the WTO is one of the three diabolic forces of neo-liberal globalization. Yet, the record from WTO disputes is mixed. Using the WTO procedures to ban asbestos, and setting up the political climate that enabled a negotiated settlement giving access to generic HIV/AIDS drugs, were big wins. Against this there has been less success in controlling trade in meat with hormones or in stopping the spread of genetically modified organisms. As Sands wrote about the WTO dispute procedures, "economic rules cannot be taken in hermetic isolation from other rules of international law" (Sands 2006:116) . Nonetheless, the stock criticisms are that the WTO disputes procedures are over-long, too complex and favor developed countries. These complaints may be true, but the judicial system in the United States, Australia and many other places is equally time consuming and also favors the rich. Furthermore, despite being structured against the poor and powerless, the judicial systems occasionally alter things, for example the recognition of the title of Aboriginal and Torres Strait Islander peoples to land and the overturning of two hundred years of *terra nullius* by the Australian High Court in 1992.

The WTO dispute procedures have two redeeming features even though their use and outcomes will be tempered by *realpolitik* and disparities of power. One is that the procedure applies as a

[8] According to the WTO, "Only about one third of the 30 or so least-developed countries in the WTO have permanent offices in Geneva, and they cover all United Nations activities as well as the WTO" (WTO: 2009c).

condition of WTO membership; any country can bring a complaint against any other country. The second is that the decisions and outcomes are binding and enforceable. The launching of a complaint may well be a step in reaching a negotiated outcome, as Kelly shows with regard to generic drugs.[9] The WTO dispute procedures provide mechanisms that are missing in the International Criminal Court (ICC) and the International Labor Organization (ILO). Thus, for example, because Israel has not ratified the ICC, there is no chance of the Court compelling the State of Israel or its military to respond to complaints about actions during the invasion of the Gaza Strip in 2008-2009. On the other hand, the ILO investigates numerous complaints about breaches of labor rights and standards but its reports and recommendations are ignored because there are no enforcement powers. It would have made for interesting times if, in the last few years, New Zealand or Papua New Guinea had been able to impose countervailing penalties on Australian goods and services because the Australian Government at the time failed to act on ILO findings about breach of basic conventions.

What to Do with Free Trade

The central problem is the WTO rules, not the WTO dispute procedure. In other words, the primary question is what to do with free trade and the WTO, and not what to do with the WTO dispute procedure. I think that we need to contest two aspects of the received wisdom about free trade. One is that free trade is the best route to economic growth and the second that free trade is the best route out of poverty. There is mounting evidence that both aspects are flawed ideas and policies. In a recent paper for the "moderate" Commission on Growth and Development, Kanbur is clear about the "lack of any robust positive association between trade and poverty reduction" (Kanbur 2007: 3). Much credit needs to go to Milanovich who, from within the World Bank, has mounted a compelling critique of the orthodoxy that open borders mean increased economic growth. He has also demonstrated that greater inequality is a consequence of free trade (Milanovich 2005).

Academic reviewers commissioned by the World Bank have made a savage critique of such research, including the heavily promoted work of Dollar and Kray (2000) which claims that trade promotes growth. The review says of this work "[m]uch of this line of research appears to have such deep flaws that, at present, the results cannot be regarded as remotely reliable" (Banerjee et al. 2006: 53). In addition, the value of the outcomes from the Doha Round of trade liberalization are being revised downwards. The Carnegie Endowment puts the net world benefit at a one-off increase of 0.2 percent of total world GDP (Polaski 2006). The Research and Information System for Developing Countries (RIS) puts the benefits at "less than a penny a day for those in the developing

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[9] The so-called Banana Wars (not discussed by Kelly) are another example. In this case, Ecuador persisted with its complaints despite a settlement between EU and the US. The politics of this issue are and were very complex. Ecuador is the world largest exporter of bananas that come from family-scale production. The EU wanted to give preference to bananas from former African, Caribbean, and Pacific colonies (the APC countries) under the arrangements of the Lome Conventions. In turn, Central American countries including Honduras and Guatemala also objected to the preference given by EU to the APC. However, production in these countries is dominated by transnationals such as Chiquita and Dole who in turn were backed by the United States.

world" (RIS 2006: 1). Moreover, almost 80 percent of all gains will go to "high income countries" and developing countries as a whole will actually lose from the changes in agriculture (RIS 2006: 2).

Trade and the national interest are intimates. "National interest," however woolly, is about reasons of state, that is, how to advance or defend the material or spiritual wellness of the *patria*. In a much overused and even abused phrase, the national interest is about "our strategic interests." It can be invoked in favor of free trade or of protection. Supposedly, free trade adds to national wealth and efficiency, even if it hurts some groups and some corporations. Protectionists also call up the national interest to keep jobs, maintain national sufficiency or keep profits at "home." For example, in February 2009, BHP-Billiton was reported as saying of the Chinalco-Rio-Tinto merger[10] that "Australia's national interest is far better served by Rio pursuing a strategy that does not involve the Chinese government" (Stevens 2009).[11] Since BHP-Billiton is a rejected suitor for Rio, this is perhaps an obvious example of using the national interest to cloak special pleading. However, it illustrates the potency of contradictions between self-interest, national interest and public interest. The third book under review by Bozeman contemplates questions of interests and, though it is not a book about trade, it is germane to the issues raised here. His aim is to develop a set of concepts and techniques based on public interest and public value and to use these to counter decision-making based on the methodological individualism and market value of mainstream economics.

Public Interest, Public Values and Trade

Bozeman defines the public interest as "those outcomes best serving the long-run survival and well-being of a social collective construed as a public" (Bozeman: 12, 99). I find this a bit verbose and obtuse despite being sympathetic to the approach. "Social collective" seems the same as "society" and the phrase "construed as a public" appears to be the social collective as a whole (Bozeman: 12-13). His main subject is to ascertain "society's public values" with the aim of "determining the best means of linking public values in specific action contexts (e.g. policy-making) to the public interest" (Bozeman: 14). He envisages a metric of public values to assess the success of state activities and develops an analogy between market failure and public failure. He sees this as a practical tool to counter the dominance of market-based approaches. Market advocates have a "large kit bag of analytical tools flowing from their theories" (Bozeman: 20). In contrast, those advocating public values "find themselves with little analytical support, no matter how strong their moral, political, or contextual case" (Bozeman: 20). Very pertinently, he argues that thinking in terms of public values encourages a public interest perspective but "thinking in terms of market failure and

[10] BHP-Billiton and Rio-Tinto are both transnational mining and resources corporations. BHP-Billiton is the world's largest mining and resource company by market capitalisation and Rio-Tinto the third largest. Both have dual headquarters in Britain and Australia and operate globally. They dominate iron ore and coal exports from Australia. In 2007, BHP-Billiton launched a takeover bid for Rio-Tinto. In 2008, Aluminum Corp. of China (Chinalco) which is majority-owned by Chinese Government purchased 9% of Rio-Tinto. In late 2008 BHP-Billiton withdrew its takeover bid. In 2009 Chinalco sought to increase its share of Rio-Tinto to 18.5% (Bloomburg 2008).

[11] BHP-Billiton was calling on the Australian government to oppose the Chinalco deal with Rio-Tinto in order, it said, "to ward off predatory foreign capital."

government *intervention* conduces a view to efficiency" (Bozeman: 158 emphasis original). He makes the very important point that "market efficiency" dominates policy deliberations because it is the "tool of choice" in the absence of countervailing ideas and what he terms "techniques of public values" (Bozeman: 160).

Bozeman suggests that a concept he calls "Managing Publicness" can be developed that will "entail management for citizens... and not consumers" (Bozeman: 177). It is an alternative to "New Public Management"[12] which, as he notes, was "a creature of Thatcher but it took root most firmly in New Zealand and in Australia" (Bozeman: 184). He also believes that the straightforward techniques of public values mapping and the public value grid that he illustrates can keep market analysis honest. Put another way, it can combat the "maintained truth of market superiority" (Bozeman: 178). This is of direct relevance to how free trade theory dominates its field. However, I think that Bozeman over-estimates the extent to which progress comes from the competition of ideas and under-estimates the ability of the powerful to get the ideas they want. As Marx said, the ruling ideas are the ideas of the ruling class; free trade succeeds because it has powerful friends and not just because it has unthinking supporters.

Nonetheless, Bozeman makes the extremely pertinent point that "public values failure occurs when core public values are not reflected in social relations, either in the market or in public policy" (Bozeman: 145). He uses the case study of "genetic use restriction technology" or the so-called "terminator gene" to exemplify private hoarding of previously public goods, an unjust distribution of vital resources and a failure to ask "who should be the owner" of seed stocks (Bozeman: 168Ff). The global financial crisis could be seen in analogous terms. Money and finance, once lubricants to trade and commerce, have become privatized commodities, the trading of which is assessed by the gains of individuals and not societies. More plainly, the economy is a matter of private and not collective interests.

Organized labor has been able at various times to force bourgeois states to temper and regulate the market. The introduction of wage arbitration and industrial protection in Australia and New Zealand at the turn of the 19th Century is one example of where industrial and political labor was able to gain fundamental shifts in economic organization. New state institutions and tribunals set a 'living wage' and provided levels of import protection to enable employers to pay such wages. This recast the political economy of the two countries and institutionalized income transfers from the pastoral sector to urban manufacturing; indeed, protection was used to diversify the economy and society away from "riding on the sheep's back." The welfare and full employment regimes introduced throughout Western Europe after World War II and, to a lesser extent, in Japan, North America, and the Antipodes, are another example. These are, I think, positive examples of what Bozeman calls "public management for citizens" (Bozeman: 177).

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12 New Public Management is, in brief, the application of market economics and corporate models to the public sector. There are various structural forms ranging from making agencies into autonomous profit units that charge out their services through to commercialization, corporatization and privatization. Citizens become consumers, markets are tested and governments are policy-makers not providers. While the changes began under neo-liberal regimes such as Reagan and Thatcher, they became the central dimension of Anglophone left of center governments notably Blair's "New Labor" in the UK and Labor governments in Australia.

Advancing Global Equality and Rights

Human rights and the Covenant on Economic, Social and Cultural Rights provide the public values, using Bozeman's phrase, to argue for limits on trade and for people to be able to control their local economies. There is little wonder, to use Blinder's phrase, that people are sceptical of free trade and trade agreements, since these are virtually synonymous with "out-sourcing," loss of jobs, and devastated communities. This occurs in the South as well as the North. For example, jobs in clothing and textiles transferred from China to Mexico, in call centres from India to Ghana, and in tennis racquets between the Cook Islands and Fiji. On the other hand, demands to protect jobs in one place irrespective of what happens elsewhere can bring the case for human rights into disrepute. This is a fundamental matter; to quote Niebuhr, "Gandhi's boycott of British cotton results in the undernourishment of children in Manchester" (Bromwich 2008: 16). The so-called "beggar-my neighbor" trade policies of the 1930's were nationalistic and sought to shift the misery of unemployment and under-utilization between countries and empires. They stimulated an escalating spiral of restrictions, which, at best, gave some favors to national capitalists. They extended the Depression so that it ended only with mobilization for war.

We can avoid the nationalism inherent in calls to limit trade by envisaging a global regime that advances equality and rights. This goes considerably further than the current arguments that link trade and human rights and include substantive as well as procedural labor standards. The procedural rights to form unions and to bargain collectively are needed, but so are world-wide standards on pay and basic working conditions. Likewise, anti-discrimination procedures should be accompanied by actual gender pay equity. This is to argue for global minimum standards in pay, treatment and conditions. Such global minima will require global institutions to set and enforce them and it could start with an amalgamation of the WTO and ILO. Demands for procedural rights can be dressed up as facilitating market adjustment and efficiency. Demands for a fair global minimum wage or for a global maximum on working hours or for global gender equity are much more radical and involve shifting income from capital to labor and from North to South.

However, we must beware of wishful thinking about what might be achieved out of the current crisis. At the moment, alternative ideas are under-developed, industrial labor is hardly a coherent global force and political labor is predominately national. Global minimum standards are inconceivable without a labor movement that operates beyond national boundaries and without national chauvinism. The establishment of combative workers organizations equivalent in scope to the corporations of Chinalco and Mittal is well overdue if, in the slogan of the Australian Labor Party, "unity of labor is the hope of the world."

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Howard Guille is a retired union official including periods with the Trades & Labor Council of Queensland, Australia (the union peak body) and as Secretary of the National Tertiary Education Industry Union. This included undertaking national wage cases on behalf of the Trade Union Congress of Papua New Guinea and working on policy with unions in the Pacific Islands. He also worked as a university teacher and is currently a visiting fellow (honorary) at Queensland University of Technology, Brisbane, Australia. Contact is hguille@bigpond.net.au.