

Minsky Conference 2011

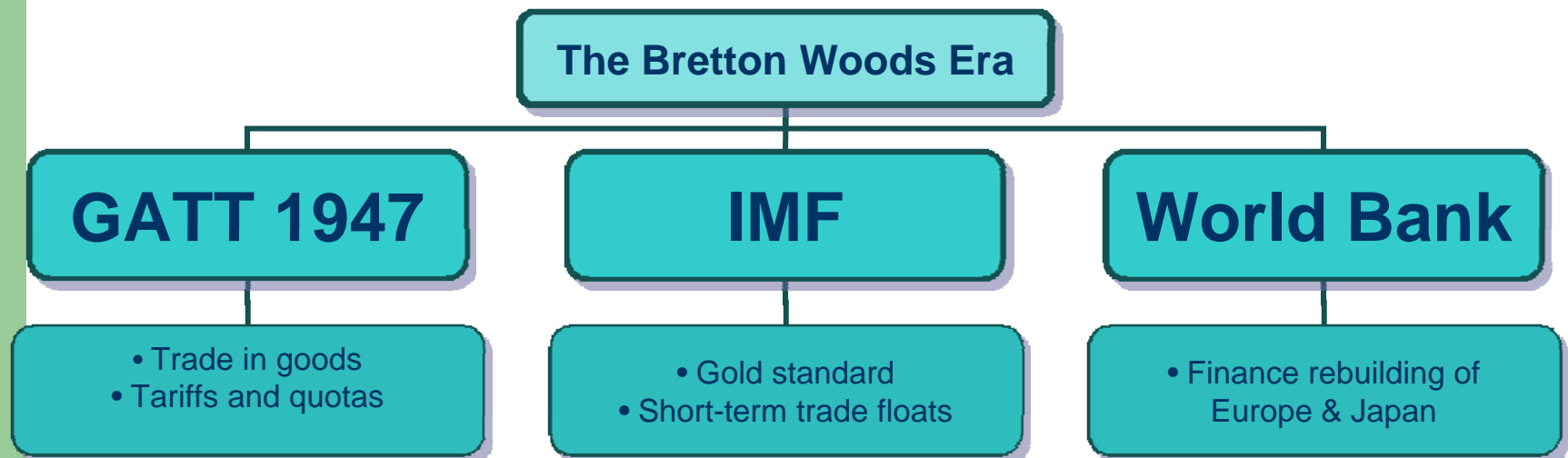
Problem is not really *absence* of a global regime of financial regulation...

BUT

Existence of a binding global financial governance regime via WTO and other 'trade' agreements that explicitly constrains governments' domestic financial regulatory space and includes strongly enforced provisions that conflict with paper 'commitments' at G-20, UN related to global norms

From Actual Trade Agt. to Expansive Int'l Governance Regime Branded as Free Trade

The Bretton Woods Era (post-WWII to mid-1970s)



(early 1990s to present day)

The Corporate Globalization Era

WTO

- dispute settlement agreement

IMF

- long-term loans
- structural adjustment conditions

World Bank

- funding of major projects by private sector in developing countries (conditioned on structural adjustment)

GATT

trade in goods,
tariffs/quotas

GATS

services deregulation,
privatization

SPS

limits on food safety,
invasive species
protection

TBT

limits on environmental,
consumer safety,
workers' safety
standards

TRIPS

intellectual property: 20-
year patent terms,
trademarks, copyrights

TRIMS

investment: forbids
development tools used to
regulate investment

AGP

government procurement:
forbids recycled-content,
sweat-free, other
standards

AOA

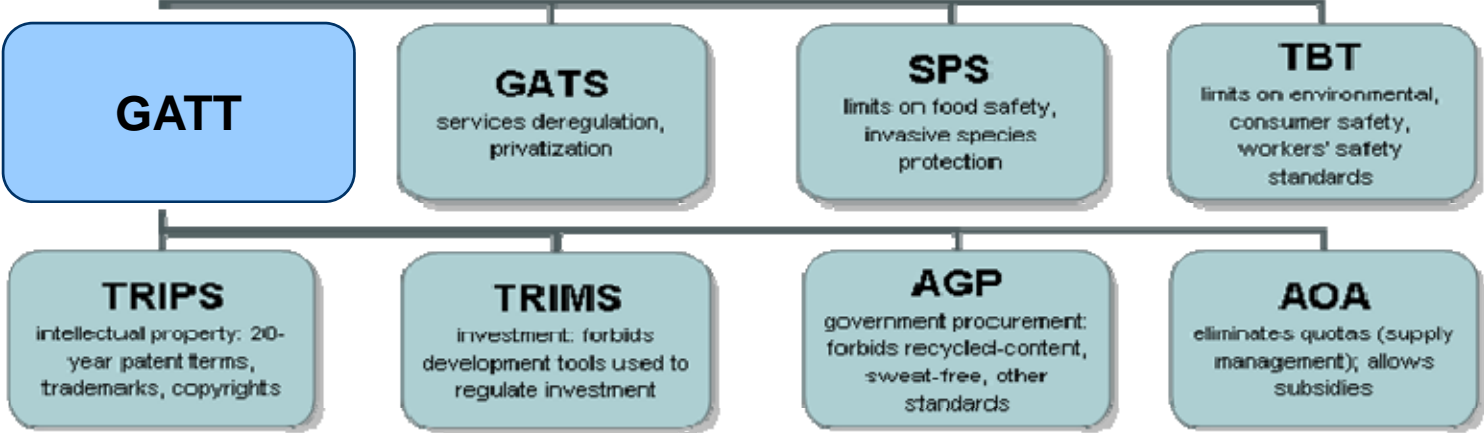
eliminates quotas (supply
management); allows
subsidies

(early '90s to present day)

Corporate Globalization Era II

WTO
(binding dispute settlement)

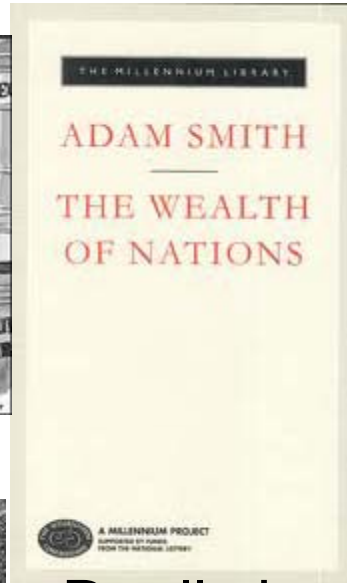
NAFTA, CAFTA, "Free Trade" Agreements
BITS



It's Not Really About "Trade", but a System of Enforceable Global Governance

- **WTO/FTAs REQUIRE: "Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements."** –Art. XVI-4, Agt. Establishing the WTO
(Annexed agreement refers to 16 major "Uruguay Round" WTO agts. Only a minority of them focus on trade per se. Went into effect in 1995 with some phase ins for developing countries)
- **These rules are enforced by binding dispute resolution via foreign tribunals with ruling enforced by trade indefinite sanctions; No due process; No outside appeal**

These pacts are not “Free Trade”



Adam Smith, David Ricardo rolling in their graves? Free trade is an appealing brand, but not what is in the 900 pages of non-tariff rules of the WTO or NAFTA.



Really is a slow motion coup d'etat against democratic decision-making and domestic policy space

Candid revelation from the WTO's 1st Director General: "***We are writing the constitution for a single global economy.***"

-Renato Ruggiero, WTO DG 1995

WTO's General Agreement on Trade in Services (GATS) & FTA service sector chapters **vs.** Financial Regulation

- 5 interlocking WTO agreements: GATS, 2 GATS Annexes on Financial Services, the 2nd and 5th Protocols to GATS (the 5th Protocol established WTO Financial Services Agreement (FSA)) & the Understanding on Commitments in Financial Services
- Scope wide: measures that 'affect services.'" Even covers delegated authority: e.g. credit rating agencies
- Plus countries' GATS schedules of financial services commitments
- Conflict with reregulation trend and existing WTO and FTA rules highlighted in 2009 UN Commission of Experts on Reforms of the International Monetary and Financial System (Stiglitz Commission)

GATS conflates liberalization and deregulation...

“Market Access” (GATS Art XVI-2) simply forbids countries from using a list of 5 *non-discriminatory* regulatory measures in financial sectors they committed to WTO liberalization.

“In sectors where market-access commitments are undertaken, the measures which a Member *shall not maintain or adopt* either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as...”

GATS conflates liberalization and deregulations II

- **CANNOT BAN A SERVICE OR FINANCIAL INSTRUMENT IN COMMITTED SECTOR**
 - Some fin services/products so dangerous, lacking in social utility, should be banned. BUT 2004 WTO ruling In Internet Gambling case: regulatory ban is a forbidden zero quota. This is actual jurisprudence.
 - SEC-proposing ban on naked short sales/flash trades; German ban on spec. short-selling: European Centre for Int'l Political Economy says Germany's ban is a GATS violation & not defensible under prudential defense b' while non-discriminatory it's beyond other countries' approach
 - WTO Secretariat 2/ 2010 paper: *“an outright prohibition to provide a certain financial service would be a trade measure subject to scheduling under the GATS”* IE. if a country's deregulation-prone gov't did not k to schedule a ban during the 1990s (as the U.S. did with respect to securities and derivatives, but *only* for onions futures), imposing a ban now in a committed sector would put the country in violation of WTO

GATS conflates liberalization and deregulations III

- **LIMITS ON SIZE, FIREWALLS AND REQUIRED LEGAL FORMS**
 - **US explicitly committed to “reform” Glass-Steagall Act in its GATS - to make it compatible with GATS Market Access rules**
 - **GEITHNER via FOIA: April 1990 - under-30 year-old Treasury Dept official named Timothy Geithner raised the possibility that Glass-Steagall firewalls, state level regulations, and other prudential measures could be challenged under the new global rules...**
 - **GATS Market Access rules could limit countries’ ability to impose firewalls b’ distinct service sectors: prohibit limits on total value of service transactions or assets (Art. XVI(2)(b)), or on the total number of service operations or on the total quantity of service output (Art. XVI(2)(c)), or restrict or requires specific types of legal entity through which a service supplier may supply a service (Art. XVI(2)(e)). (See, Markus Krajewski & Petros Mavroidis (was a lawyer at WTO Secretariat)**

Ban on capital management techniques in committed sectors...

- **When a country commits to allow cross-border trade (Mode 1) in a specific sector, cannot restrict/delay current & capital inflows/outflows related to service. (GATS Art. XVI fn 8)**
- **When a country commits to allow foreign direct investment (Mode 3), it commits to allow current and capital inflows related to that service. (GATS Art. X and XI)**
- **These limits on capital management policy apply to all service sectors bound to GATS (and the FTAs have similar language.) But when applied to fin servs commitments have effect of severely limiting countries' abilities to manage their current and capital accounts**
- **No “limitations” on these obligations allowed**

Financial Transaction Tax as GATS Violation?

Unhappy example comes from EC staff before last G-20:

“the compatibility of such a levy with Article XI of the General Agreement on Trade in Services (GATS), which provides that WTO Members cannot apply any restrictions on international transfer and payments for current transactions relating to their specific commitments, would have to be further assessed. As the EU has taken specific commitments relating to financial transactions, including lending, deposits, securities and derivatives trading and these commitments relate to transactions with third countries, a currency transactions tax could constitute a breach of the EU's GATS obligations.”

- ECstaff working document, “Innovative financing at a global level,” SEC(2010) 409 final, 4/1/10

Debate starting at WTO despite WTO Secretariat's best efforts...

- Stiglitz UN Commission
- Civil society, WTO public forum debates
- Barbados WTO paper (former central banker)
- Brazil, Ecuador, Argentina South Africa interventions
- US, EU and Secretariat denying blocking; pushing 2001 Doha Round agenda of further financial deregulation

UN Commission on WTO- Financial Regulation Conflict

“ Agreements that restrict a country’s ability to revise its regulatory regime – including not only domestic prudential but, crucially, capital account regulations – obviously have to be altered, in light of what has been learned about deficiencies in this crisis. In particular, there is concern that existing agreements under the WTO’s Financial Services Agreement might, were they enforced, impede countries from revising their regulatory structures in ways that would promote growth, equity, and stability.”

More UN Commission Report

“The framework for financial market liberalization under the Financial Services Agreement of the General Agreement on Trade in Services (GATS) under the WTO and, even more, similar provisions in bilateral trade agreements may restrict the ability of governments to change the regulatory structure in ways which support financial stability, economic growth, and the welfare of vulnerable consumers and investors.”

Post-crisis, More Financial Deregulation via 2001 WTO Doha Round Agenda

- **WTO**
 - Doha Round Financial Services Collective Request”
 - Working Party on Domestic Regulation
 - New Disciplines on Accountancy **Bush’s**
- **Korea FTA (now owned by Obama)**

It is a POLITICAL QUESTION

- **Policy incoherence (G-20 calls for Doha Round AND for reregulation)**
- **Threats of challenges against others while simultaneously reregulating – chilling effect**
- **Institutional turf wars (or ignorance) within national governments; WTO and FTAs deflect accountability'; deregulation hidden behind 'free trade' brand**
- **Role of financial firms at WTO, in US and EU 'trade' policymaking vs. diffuse public interest**