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497

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To U.S.
Sovereignty

By Joe Cobb



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The new GATT agreement and the proposed World Trade Organization (WTO) has sparked a vigorous debate among conservatives in this country, and in some cases the argument has taken on an ugly tone. Last year H. Ross Perot was so visible during the NAFTA debate that I think some conservatives look upon his populist-oriented followers as potentially natural recruits for the conservative constituency. The unpopularity of President Clinton in general, and among conservatives in particular, makes it simply incomprehensible to some that a conservative institution like The Heritage Foundation could support the proposed World Trade Organization.

When I was growing up in Kansas, as a teenage Goldwater supporter, we used to speak contemptuously about the "Liberal Eastern Establishment." Now I find my populist conservative friends think that I am one of them, because I support GATT and the WTO. But what I do think is quite funny is that all of the conservatives who oppose the WTO are making the same arguments against it that Ralph Nader has been making. Both Ralph Nader and Pat Buchanan call the WTO "world government." Nader testified before the House Ways and Means Committee on February 1, 1994, that

The Uruguay Round negotiations would strengthen and formalize a world economic government dominated by giant corporations, without a correlative democratic rule of law to hold this economic government accountable. ... The provisions of trade agreements, if approved by Congress, could undermine existing U.S. domestic law, not only in the direct regulation of commerce, but in areas ranging from food and auto safety to natural resource conservation.

By implication, Nader is saying a world government would dominate the United States just as the federal government today dominates our state legislatures.

There are two questions we need to answer in reply to Ralph Nader and others who also fear "world government." The first is the factual question about U.S. domestic law and whether the World Trade Organization has any authority to change it. Second is how our political relationship with other nations might change, as a member of the WTO, which could powerfully influence the U.S. Congress to "go along," and adopt or repeal laws that regulate trade.

Before we address those two issues, however, I think we need to digress into an inquiry in political theory. The concept of "sovereignty" is at the center of this debate, but I haven't seen anyone really define the term very well, much less to look at what it means to us in the United States. Let me turn first to that question.

United States Sovereignty: We the People

What is a threat to United States sovereignty? We need to have a clear idea what sovereignty is before we can answer the question. In general terms, we understand sovereignty to mean a nation's independence from other governments, and its freedom of choice to act politically. In history, there are many examples of sovereignty concentrated in a single ruler like the tsar-autocrats of Russia, or the French King Louis XIV, who declared, "I am the state." But states today have elaborate procedures that decentralize their sovereignty, for example, through periodic elections, independent courts, etc. For a constitutional republic like the United States, our sovereignty also includes an important central element described in the phrase, "Congress shall make no law.... "

We reject the idea that a king is sovereign, and we reject the idea that a few hundred congressmen in Washington are sovereign, even if we do have a right to vote for some of them. We say "the people are sovereign," and in a society based on individual rights this is more than a slogan. The U.S. Constitution makes its clearest general statement of popular sovereignty in the Bill of Rights, Amendment IX: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Sovereignty includes not only our right to feel safe against a foreign army's invasion and to vote for those who make our laws, but it also touches a family's daily economic life, the right to own property, and to work and invest in private businesses. A large part of our sovereign "independence from government and freedom of choice to act politically" comes from the decentralized power of a free market economy. Popular political movements rely on fundraising and volunteers, who need the economic independence only a competitive capitalist economy provides. Democracy depends on a free market economic system, which in turn is based on consumer sovereignty, which is really "voting with dollars" for our favorite products and services. American political sovereignty is necessarily tied to the people's right to sell or buy whatever they find useful.

The claim that our sovereignty is threatened by the new GATT agreement has a false premise. U.S. sovereignty isn't threatened by fair trade rules that make it harder for lobbyists in Washington to get special favors and trade protections from Congress, at the expense of the average American family. The real threat to U.S. sovereignty is from the "nationalization" of it—the concerted effort by special interests and lobbyists to focus all power over the American economic system in the hands of Congress and the bureaucrats in Washington who regulate us.

GATT and the Principle of Equal Rules

The GATT, and the WTO, are based on a series of "executive agreements" going back to 1948. Congress authorized the President—starting with F.D.R. and every President since—to negotiate and sign new GATT agreements, and Congress subsequently passed the laws to implement those agreements, which cut tariffs, repealed quotas, and made U.S. statutes reflect the GATT rules that other countries were also adopting. The GATT started in 1948 to draw up rules for fair international trade, to define certain equal rights under which all governments agree to permit non-citizens to do business with their own people.

The Uruguay Round of negotiations that produced the new GATT agreement was initiated by the United States at a conference in Uruguay in 1986. In 1988, Congress instructed the U.S. negotiators to ask for new, stronger powers to resolve trade disputes, because other countries often violate the GATT rules and deny equal rights to Americans. These

new powers to insist that governments follow the GATT rules are now the most controversial issue about the WTO.

What is most remarkable about the GATT, during its almost 50 years of existence, is the purely voluntary nature of it. A government's membership in GATT is like membership in a chess club: if you join, you agree to play by the rules, but nobody can arrest you if you break a rule. The penalty is that others will then refuse to play with you. The essential nature of a "trade sanction" is that it represents the partial withdrawal of the equal rights that member governments in GATT extend to each other's citizens. If one government is found to be violating the rules, other GATT members reciprocally "violate" the rules against it in turn by imposing a tariff, which would otherwise be against the rules, on some imports from the violating country.

But the GATT rules are not self-enforcing on the government of the United States. The nations that negotiate GATT rules, and the U.S. executive branch, have to wait for Congress to pass specific laws to give those rules any authority over U.S. citizens. The legal status of GATT is technically a "non-self-executing Executive Agreement." To implement it, Congress has to adopt whatever legal changes the agreement calls for. A treaty with a foreign nation is an example of a self-executing agreement, which has the status of law in U.S. courts when ratified. The GATT agreement has less legal weight than a treaty, which is executed by Senate ratification.

A lot of hot air has been blown over the issue that the United States would have only one vote among about 120 members, but this fact misses the point that the WTO is not a legislature and a new GATT rule is not U.S. law. The "voting" argument is a distraction. Future amendments to GATT are not the issue. The real objections that opponents have to the WTO and GATT are already printed in the text of the Uruguay Round agreement. Market opening reforms will force some protected industries to make unwelcome adjustments to a global economy. Any future amendment proposals would still be "non-self-executing" under U.S. law and if Congress refused to adopt them, they wouldn't have much impact on the world's largest free market economy.

A "Supreme Court" of Trade?

Pat Buchanan likes to call the World Trade Organization a "supreme court of trade," which echoes ominously in conservative ears, particularly for those who are angered by *Roe v. Wade* and other sweeping judicial decisions that have centralized the American government over two centuries. The opposition of Pat Buchanan and Ralph Nader, to the WTO dispute settlement procedures is a more substantive objection, but a dispute settlement ruling cannot be likened to a ruling by the U.S. Supreme Court because it simply would not have the force of law.

As part of the 1988 Trade Act, Congress instructed the U.S. Trade Representative to negotiate "for more effective and expeditious... resolution of disputes and... better enforcement of United States rights." Since 1948, the United States has been the most active user of the dispute settlement process. As the world's largest exporter, U.S. business people are continually running up against discrimination in foreign countries.

Under the GATT's old dispute settlement procedures, governments always reserved the right to walk away from the arbitration if they were about to lose. A dispute panel could be blocked from reporting violations of the GATT rules. Under the new procedures, a dispute settlement report cannot be blocked; in each case, it will be finished. If a government

is found to be discriminating against the citizens of another country, in violation of the GATT rules, the plaintiff can ask for "compensation." This might take the form of "sanctions," new tariffs imposed on imports from the violating country, or anything else both sides might agree on.

Opponents of the World Trade Organization have tried to make "sanctions" sound like a tax on America, imposed by a world government in which the United States would be vastly outvoted. But a trade sanction is a tariff on imports. The country that "won" a dispute settlement case would get the right to put a tax on its own people who import goods from the country that the WTO panel found to be violating the GATT rules.

The real power of a dispute settlement decision is to embarrass a country that loses an arbitration, because it will have been shown to be "cheating" on the rules it agreed to, and that every other government has agreed to respect. Other governments thereafter can respond to its proposals for trade concessions with questions about hypocrisy, double standards, faithlessness, and unreliability.

The "Nationalization" of Sovereignty

The second concern of opponents to the World Trade Organization is how much our relationship with other nations would change. Other nations can accuse the United States of violating the GATT rules. If dispute settlement decisions ruled in favor of foreign governments, there is a good chance that Congress would make further changes in U.S. law. This is where activists like Ralph Nader, as well as other special interests and corporate lobbyists become very concerned about the influence of the WTO over U.S. "sovereignty." It would compete directly with the influence they worked so hard to earn, or have paid so much to buy.

The political process in Washington is famously described as a game of special interest lobbying for tax loopholes, pork barrel spending, laws and regulations that make some giant corporations rich and restrict competition. The lobbying by some American industries for trade protection is no different from what they do for other causes. The most important difference is the "us" versus "them" rhetoric. Whenever a special interest gets a subsidy or a congressional district gets a federal government project, we can understand how millions of other taxpayers are paying for it. Some Americans are better off, and some are worse off. In the debate over trade policy, however, the rhetoric takes on the color of foreign policy, sovereignty, and an implied common interest of all Americans.

This is what I call the nationalization of sovereignty, where individual rights no longer count and popular sovereignty disappears, replaced by some statist idea of the government's sovereignty. Congress has the power to legislate tariffs and to restrict international trade in a thousand ways. A domestic industry that faces foreign competition — which simply means that some other Americans have a greater freedom of choice among larger numbers of products and suppliers — might lobby Congress to get restrictions imposed on foreign producers. When the government grants this special favor to the lobbyists and their clients, it hurts other Americans, and reduces their choices of available products. Our government tells them they have to pay higher prices or accept lower quality, at the mercy of the protected domestic industry.

Denying Equal Rights to Other Americans

The example of steel producers and steel users is a classic case of trade restrictions that actually hurt more Americans than they benefit. There was an article in the Journal of Commerce last March about the problems of steel users. The U.S. steel industry is one of the most politically active in restricting trade, but the precision metalforming industry is far larger than the steel industry. It consumes more than 25 percent of the nation's steel production. There are more than 1,200 companies in 38 states, with more than 300,000 employees. This is twice as many workers as in the steel industry itself.

The president of one company, Raymond Hopp of the H.K. Metalcraft Manufacturing Corp. of Lodi, N.J., which makes gaskets and other automotive products, is quoted saying, "If we can't buy steel at world prices, everything could come apart; it could make the difference between a profit and a loss." Another specialized auto parts producer, A.J. Rose Manufacturing Co. of Cleveland, requires particular tolerances, the honing of the metal for a specific purpose, that domestic steel suppliers will not guarantee. It has to bring in imported steel, at a premium price, to satisfy its customers, according to its president, Robert D. Pritchard. Nevertheless, U.S. domestic steel producers lobby Congress very actively for trade restrictions and file actions with the U.S. Department of Commerce to impose tariffs on the imported steel these companies need.

Under the rules of GATT, some trade restrictions that industry lobbyists obtain from Congress could be challenged by other countries. They could file dispute settlement cases and ask the World Trade Organization to determine if the United States were violating the GATT rules. Although the dispute actions would be filed by other governments, on behalf of their own citizens who believe they are being unfairly discriminated against by U.S. trade restrictions, there would actually be many American citizens represented in those actions, with interests directly opposite the official position of the U.S. law, as the precision metalforming companies prove. For every foreign producer who sells goods in the United States there are Americans who make the choice to buy those goods. It is wrong to pretend those Americans have no rights, or no share as citizens in U.S. sovereignty just because Congress has attempted to nationalize it.

Opening Up the Democratic Process

As a conservative advocate of the free market system, I believe the World Trade Organization will actually open up more issues for democratic debate about economic regulation in the United States, and around the world. Every country has a wide diversity of economic interests, both as producers and consumers. The fact that governments have traditionally been protectionist and mercantilist is a sad commentary on the unequal influence in the political process that lobbyists have. During the great age of American protectionism, we should remember, the U.S. Senate was so corrupted by bribery and influence-selling that it led to the 17th Amendment and the anti-trust laws, which might have been unnecessary if we could have simply repealed the tariffs those trusts and monopolies depended on.

Popular sovereignty, as conceived in the Bill of Rights, is actually strengthened by GATT's dispute settlement procedures. The more powerful industrial lobbyists have an advantage in Washington, but the general rules of fair trade are in the broader interest of more Americans, who are not as powerful or don't spend as much on lawyers and politicians to gain influence. If a WTO dispute settlement decision reported that the United

States had violated the GATT rules, and Congress acted to amend U.S. laws to follow the rules, clearly the “sovereign” interests of many more Americans would be honored, not violated, by that congressional response to an embarrassment like violating an agreement to treat others fairly, with equal rights.

The real threat to U.S. sovereignty is the drive to “nationalize” it — the concerted effort by special interests and lobbyists to focus all power over the American economic system in the hands of the bureaucrats in Washington who regulate us. I don’t think the opponents of GATT really understand what popular sovereignty and the free market are all about. The most populist and democratic institution ever to evolve in human society is the free market, with strong protections for private property rights, and the freedom of average people to buy whatever they think is best for their families—regardless of the economic nostrums of protectionists. The bottom line is whether you believe in nationalizing our sovereignty and making the power of the federal government stronger. As a conservative, I believe in the form of constitutional “limited government” our Founders established. The World Trade Organization is no threat to limited, constitutional government.