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Introductory Essay: Uncorking International Trade, Filling the Cup of International Economic Law

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SYMPOSIUM

INTERFACES: FROM INTERNATIONAL TRADE TO INTERNATIONAL ECONOMIC LAW

INTRODUCTORY ESSAY

UNCORKING INTERNATIONAL TRADE, FILLING THE CUP OF INTERNATIONAL ECONOMIC LAW

JEFFERY ATIK^{*}

I. INTERNATIONAL TRADE AND INTERNATIONAL ECONOMIC LAW

This project begins with international trade law. International trade law has been, and will likely continue to be, the primary focus of attention of the International Economic Law group (IELG) of the American Society of International Law (ASIL). International trade has dominated our prior conferences; it is the professional center of the greater number of our membership. That said, international trade law, as a discipline and as a professional specialization, risks isola-

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tion.

How much richer is the term "international economic law." Here we find international trade law and much more. International economic law includes monetary law, competition/antitrust law, intellectual property and law and development. It embraces (or should embrace) alternative perspectives, such as Third World and feminist critique, and interdisciplinary approaches,¹ and concerns itself (or should concern itself) with the distribution of wealth and justice and with the preservation of culture, the environment and peace. All of this is quite heady. The problem, today in 2000, is whether international economic law is a coherent tag: does it usefully describe anything?

International trade law designates a specialization within the profession. Private practitioners of international trade occupy themselves with antidumping and countervailing duty measures and customs arcana. U.S. trade lawyers operate chiefly from Washington; their counterparts can be spotted in Ottawa, Brussels, and Mexico City. Public international trade lawyers, those representing governments before the WTO and regional organizations, wrestle with the permissible limits of state action within an anti-NTB network of treaty undertakings. They handle disputes on the legality of import prohibitions, quotas, market access, and the like, mediating local political demands (including increasing demands for the respect for non-trade values) within a bounded system of institutionalized cooperation.

International trade is also a well-defined body of legal scholarship. While some important international trade scholarship has focused on domestic law remedies,² the greater part has focused on the activities of the central international institutions: first the GATT and now the

1. The 1994 *Interdisciplinary Approaches to International Economic Law* ASIL IELG conference championed both alternative perspectives and interdisciplinary approaches. See *infra* note 6.

2. See, e.g. Alan Sykes, *Countervailing Duty Law: An Economic Perspective*, 89 COLUM. L. REV. 199 (1989) (questioning the United States' use of countervailing duty laws); see also Raj Bhala, *Rethinking Antidumping Law*, 29 GEO. WASH. J. INT'L L. & ECON. 1 (1995) (reviewing economic arguments against current antidumping laws).

WTO. International trade has become an alluring subject for legal scholars. It features important institutions (WTO, European Union) and an elaborated jurisprudence. Its decisional law is more and more a topic for watercooler discussions. The launching of the Seattle Round brought the greatest political demonstration in the United States since the Vietnam era, sharpening media and public attention. International trade is now a mature field.

Still international trade law is peculiarly confined. International trade, as understood in both the profession and the academy, coincides with the decisional authority of its central institutions: national (ITC, ITA) and international (WTO, EU, NAFTA, Mercosur and the like). Even when "globalization" is attacked, the institutional boundaries of international trade law remain uncompromised. The "trade and . . ." discourse is largely a plea for trade institutions to be more comprehending of other values. Rarely is there a proposal to move a "trade and . . ." debate to fora outside the realm.⁴ True, international trade institutions seem often to poorly comprehend the imperatives of sustainable development or the preservation of indigenous cultures. This apparent short-sightedness may be more an awareness of the limits of institutional authority than pure incomprehension.⁴

3. Daniel Esty's proposal for a "Global Environmental Organization" is a notable exception. DANIEL ESTY, *GREENING THE GATT: TRADE, ENVIRONMENT AND THE FUTURE* (1994). See also Jeffrey Dunoff, *From Green to Global: Toward the Transformation of International Environmental Law*, 19 HARV. ENV'T'L L. REV. 241 (1995) (discussing trends in international environmental law). The notion of the establishment of a World Environmental Organization is currently in play. See *European Union: EU Working Group Formed to Examine Creation of World Environmental Organization*, BNA INTERNATIONAL ENVIRONMENTAL DAILY, July 18, 2000.

4. GATT panels and the WTO Appellate Body have expressed their commitment to public values, such as environmental protection, while failing to incorporate these values in their decisions, citing the limits of their authority to do so.

In *Tuna-Dolphin* the panel declares its wish "to underline that its task was limited to the examination of this matter 'in the light of the relevant GATT provisions,' and therefore did not call for a finding on the appropriateness of the United States' and Mexico's conservation policies as such." The panel expressed its view:

that the adoption of its report would affect neither the rights of individual contracting parties to pursue their internal environmental policies and to cooperate with one another in harmonizing such policies, nor the right of the

International trade law suffers from these artificial limitations. What is outside of international trade law (such as international monetary law) is often poorly understood or ignored. The debate may unquestionably be one of appropriate international economic cooperation: competition policy, monetary law, migration. Yet these issues, beyond the limited competency of international trade institutions, fall outside the limits of the field of international trade, to be passed on by other lawyers (banking lawyers, antitrust lawyers, IP lawyers, etc.) and by scholars of other camps. There is an absence of meaningful dialogue from within and without international trade law. International trade is sealed within its vessel; the bottle may be transparent (one can see it from without), but it is confined all the same.

Compare this with international economic law. The emergence of international economic law as an important strand in international law is regularly celebrated, at least by its adherents.⁵ Indeed, the

Contracting Parties acting jointly to address international environmental problems which can only be resolved through measures in conflict with the present rules of the [GATT].

GATT Dispute Settlement Panel Report on United States Restrictions on Imports of Tuna, Aug. 16, 1991, 30 I.L.M. 1595 (1991).

There is similar language in *Reformulated Gasoline*: "It is of some importance that the Appellate Body point out what this does *not* mean. It does not mean, or imply, that the ability of any WTO Member to take measures to control air pollution or, more generally, to protect the environment, is at issue." *United States-Standards for Reformulated and Conventional Gasoline*, 29 April 1996, WT/DS2/AB/R.

An even stronger pledge to environmental values (notwithstanding the holding) is found in *Shrimp-Turtle*:

We have *not* decided that the protection and preservation of the environment is of no significance to the Members of the WTO. Clearly, it is. We have *not* decided that the sovereign nations that are Members of the WTO cannot adopt effective measures to protect endangered species, such as sea turtles. Clearly, they can and should.

United States-Import Prohibitions of Certain Shrimp and Shrimp Products, October 12, 1998, AB-1998-4.

5. See Joel Trachtman, *The International Economic Law Revolution*, 17 U. PA. J. INT'L ECON. L. 33 (1996) (focusing on the economic underpinnings of international law). But see Michael Wallace Gordon, *A Comment on the Recent Change of the Name of the University of Pennsylvania Journal of International Business Law to Journal of International Economic Law* in FOLSOM, GORDON AND SPANOGLE, INTERNATIONAL BUSINESS TRANSACTIONS: A READER (1997).

string of conferences sponsored by the American Society of International Law (ASIL) on international economic law have been central points of celebration.⁶ The most ardent champions of international economic law see it as a central discipline, where the positivist tools of legal realism are applied to what has been an arid, doctrine-encrusted branch of legal science. International economic law, in this view, claims the entire field of international law as its object of study.⁷

Despite these assertions it remains an open question whether international economic law yet coherently describes a discipline. The few published definitions are catalogues of stray topics.⁸ This may reflect (horrors!) the simple failure of a discipline to form. International economic law does not yet describe what lawyers do, nor what legal scholars see as the focus of their study. Rather it is a big tent,

6. The first international economic law conference sponsored by the ASIL IELG was titled *Interdisciplinary Approaches to International Economic Law*. The *Interdisciplinary Approaches* conference was held in Washington in February 1994. The symposium was published as *Interdisciplinary Approaches to International Economic Law*, 10 AM.U.J. INT'L L. & POL'Y 595, 595-887; see also Joel Paul, *The New Movements in International Economic Law*, 10 AM.U.J. INT'L L. & POL'Y 607 (1995) (introducing the symposium).

The second ASIL IELG conference, *Institutions for International Economic Integration*, was held in Bethesda, Maryland in May 1996. The *Institutions for International Economic Integration Symposium* was published at 17 NW. J. INT'L L. & BUS. at 351-1056. See Joel Trachtman, *Toward Comparative Analysis of Institutions for International Economic Integration*, 17 NW. J. INT'L L. & BUS. 351 (1996-1997) (providing an introduction to the symposium).

The third ASIL IELG conference, *Linkages as Phenomenon: An Interdisciplinary Approach*, was held in Washington in December 1997. The *Linkages* symposium was published at *Linkages as Phenomenon: An Interdisciplinary Approach*, 19 U. PENN. J. INT'L ECON. L. 209, 209-708 (1998) and 19 U. PENN. J. INT'L ECON. L. 709, 709-768 (1998) (providing an addendum). See Frank Garcia, *The Trade Linkage Phenomenon: Pointing the Way to the Trade Law and Global Social Policy of the 21st Century*, 19 U. PENN. J. INT'L ECON. L. 201 (1998) (providing an introduction to the symposium).

7. Jeffrey Dunoff and Joel Trachtman, *Economic Analysis of International Law*, 24 YALE J. INT'L L. 1 (1999).

8. See Trachtman, *supra* note 5, at 48-50 (discussing the definitions of international economic law provided by John Jackson and Ernst-Ulrich Petersman). Trachtman defines international economic law as a species of competition law, where the constrained competition is that among the states. See *id.*

embracing multiple subdisciplines, methodologies and approaches. It is an accommodation, willing to harbor trade scholars, monetary experts, and business lawyers.

International trade law fits comfortably within the tent of international economic law. Yet international economic law, whatever it is, is something more than international trade law writ large. It is certainly more than international trade plus the "trade and . . ." issues, such as labor, environment, and human rights.⁹

The *Interfaces* conference project was designed to escape from the confines of international trade law and to move toward other sites of international economic law. The task thus was modest. We did not seek here to reach the outer bounds of international economic law (wherever they may be). Rather we hoped to examine particular interactions, some institutional, others interdisciplinary, between the core of international trade law and other points of cooperation and/or contest. By doing so we hoped to give more content to, and hence more meaning to, international economic law.

II. INTERFACES: UNCORKING INTERNATIONAL TRADE

The term "interface" was prominently used by John Jackson to describe the problems arising in the interactions between the GATT system and non-market economies.¹⁰ It was somewhat a Cold War vision, describing the economic frontier between the West and the Communist bloc.

We have recycled the term "interface" for purposes of this confer-

9. "Trade and . . ." was the topic of the 1997 *Linkages* ASIL IELG conference. See Garcia, *supra* note 6, at 201.

10. "The challenge of today's international trade policy is to design "interface" programs which will diminish the tensions and difficulties generated by these normal differences between societies, while maximizing the economic benefits assumed to flow from increased trade." John Jackson, *United States Policy Regarding Disruptive Imports from State Trading Countries or Government Owned Enterprises With Particular Emphasis on Antidumping and Countervailing Duties*, in DON WALLACE ET AL. (EDS), *INTERFACE ONE* (1980) at 2. See also *The Interface Problem*, in JACKSON, DAVEY AND SYKES, *INTERNATIONAL ECONOMIC RELATIONS* (4th ed. 1995) at 1140-1142.

ence to describe particular sites for examination. These are located at the outer boundaries of the world trading system, at doorways where authority is ceded to other institutional solutions. An archetypical interface, as we use the term, is the frontier between international trade law and international monetary law. Much of global international economic coordination is divided between the trade authority of the WTO and the monetary authority of the International Monetary Fund.

Chantal Thomas positions her work precisely at this interface.¹¹ She examines a recent WTO decision, the *India - Quantitative Restrictions* case,¹² where India's resort to import quotas to address a balance-of-payments crisis was successfully challenged. Thomas chronicles the elaborate *pas de deux* between the international monetary and trade regimes leading to this dispute. In the early 1990s India suffers a balance-of-payment crisis. The IMF, in response, imposes a structural adjustment program that includes significant trade liberalization. However quotas on textiles and certain other goods remain; India invokes GATT Article XVIII to justify the maintenance of these quotas.

The WTO Appellate Body rejects India's assertion that Article XVIII permits India, as a developing country with inadequate monetary reserves, to deviate from the GATT's general prohibition on quantitative restrictions. WTO/GATT culture has changed, Thomas observes, from an attitude of pragmatic resignation to developing country resort to the balance-of-payment exception to a much more legalistic (and far less indulgent) insistence on narrow access to any "special and differential treatment."

Thomas uses the term "international economic law" to include both the law of the GATT/WTO and the law of the International Monetary Fund. While the case she examines is a GATT/WTO decision, it is positioned at an interface of authority between the WTO and the IMF. Thomas observes that the WTO is reasserting authority

11. Chantal Thomas, *Balance-of-Payment Crises in the Developing World: Balancing Trade, Finance and Development in the New Economic Order*, 15 AM. U. INT'L L. REV. 1249 (2000).

12. *India-Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, August 23, 1999, AB-1999-3.

on a question that in years past it had largely ceded to the IMF. While the Appellate Body decision teaches that determinations of the IMF of the adequacy of reserves are to be given great weight, these IMF findings remain subject to a critical "assessment" by WTO panels. Thomas has isolated a telling site of institutional struggle.

Timothy Canova's article also focuses on the role of the international monetary regime within the contemporary international economic order.¹³ Canova argues, responding to the query included in the conference Call for Papers¹⁴, that the neoliberal economic program "generates injustice, fear, and insecurity, as opposed to peace and justice."¹⁵ Canova assails two features of the current international monetary order: the unjust burden of adjustment in monetary crises and the unchecked rise of central bank autonomy.

First, he notes that the burden of currency adjustment now falls exclusively on the deficit state. This is a rarely questioned piece of contemporary monetary orthodoxy. The IMF's much feared Structural Adjustment Program places tremendous hardship on "the weakest and poorest people of the victim countries."¹⁶ Canova asks why should the surplus nations not be required to adjust their currencies or otherwise assist. This, Canova reminds us, has worked well in the past, as in the Marshall Plan.

Second, Canova attacks the movement toward central bank autonomy. As central banks are removed from political control, they become captured by private interests (including private banking interests.) The result is monetary policy that protects capital at the expense of labor, Canova warns. U.S. Federal Reserve independence has been emulated in Europe, Latin America, and elsewhere. While central bank autonomy may promote monetary "discipline," this discipline often has costs that are not recognized.

13. Timothy Canova, *Financial Liberalization, International Monetary Dis/Order, and the Neoliberal State*, 15 AM. U. INT'L L. REV. 1279 (2000).

14. "Will the new world economic order we describe lead to greater peace, stability, fairness and justice?" See Call for Papers, *infra*, in the Annex.

15. Canova, *supra* note 13, at 1281.

16. See *id.* at 1292.

The papers of Chi Carmody¹⁷ and of Michael Ryan, Christopher Lenhardt and Katsuya Tamai (Ryan et al.)¹⁸ are comparative institutional studies. Carmody examines public participation across the World Bank, International Monetary Fund, and WTO and generally finds the WTO the most closed of the three institutions. All three institutions need to be more active in outreach in order to encourage more meaningful public participation.¹⁹ And, Carmody argues, all need to devote more effort to raising visibility. Informal contacts may be just as important as formal participation in building legitimacy.

Ryan et al. consider an even broader set of international governmental organizations (IGOs).²⁰ Ryan et al. apply recent advances in the understanding of organizations as centers of “knowledge management” in order to raise our expectations of what IGOs can do. Ryan et al. argue that IGOs should not be seen as mere instrumentalities of their constituent national members, but rather as independent and often unique repositories of expertise that can generate solutions more efficiently than can be achieved through traditional international bargaining. The authors hope to reawaken the study of IGOs to learn how IGOs promote international cooperation by serving as “cumulators and managers of knowledge.”²¹ The respective roles of general function IGOs and specific function IGOs need to be understood. Ryan et al.’s piece is a vibrant example of how an interdisciplinary contribution can bring new insights.

Philip Nichols also argues that international organizations can do more. Specifically he sees a role for the WTO as coordinator in the

17. Chi Camody, *Beyond the Proposals: Public Participation in International Economic Law*, 15 AM. U. INT’L L. REV. 1321 (2000).

18. Michael Ryan, Christopher Lenhardt & Katsuya Tamai, *International Governmental Organization Knowledge Management for Multilateral Trade Law-making*, 15 AM. U. INT’L L. REV. 1347 (2000).

19. Carmody criticizes the tendency for international organizations to repeatedly meet with the same select group of contacts in each country.

20. Ryan et al.’s working title gave us an alphabet soup of considered organizations: WTO, UNCTAD, World Bank, WIPO, UNEP, ILO, WHO, FAO, ISO, ITU and UNESCO. See Ryan at 1376-78.

21. Ryan et al. at 1348.

adoption of law for electronic commerce.²² Nichols's paper is placed at the interface between international trade and private law. The development of a law for electronic commerce is woefully chaotic, due in large part to the multiplicity of venues and initiatives. Nichols calls on the WTO to serve a leadership role in coordinating the eventual adoption of law, much as it now serves a coordinating role in the field of intellectual property through cooperation with WIPO. Nichols makes explicit the link between harmonized legal infrastructure and the realization of the benefits of international trade. An organic, evolutionary approach may no longer be affordable. Rather the WTO should rise to the occasion as an institution for private law formation as well as the guarantor of the broader international trade regime.

Isabella Bunn argues that a "right to development" is needed to inform international economic law.²³ Bunn recounts the false-start emergence of the right to development within the New International Economic Order dialogue of the 1970s. The right to development is now re-emerging as an integral part of human rights, and as such should be integrated within the practice of international economic law, Bunn argues. Incorporation of a right to development would bring increased foreign aid, debt relief and an end to harsh structural adjustment policies, greater responsibility of business firms, an end to unilateral sanctions, and the adoption of trade rules with a "social clause" that would protect workers. The GATT, Bunn notes, simply ignored development; the WTO is just beginning to take note.²⁴

Thomas and Canova explore the interface between international trade and international monetary law. Both show that trade and monetary institutions operate in tandem, though perhaps not consciously, to perpetuate the inequalities that divide the developed and

22. Philip Nichols, *Electronic Uncertainty within the International Trade Regime*, 15 AM. U. INT'L L. REV. 1379 (2000).

23. Isabella Bunn, *The Right to Development: Implications for International Economic Law*, 15 AM. U. INT'L L. REV. 1425 (2000).

24. See Bunn at 1465 (GATT replied that it "had no information to offer" when asked to contribute to UN consultation on realization of social, economic and cultural rights, including right to development; in 1999 WTO Director-General recognizes need to "improve the conditions and opportunities for the most vulnerable economies.")

developing worlds. Camody and Ryan et al. compare international organizations that span international economic law. Both articles expect a greater contribution from international organizations. Nichols gives a ground's eye view of the creation of a body of private law, seeing a role for the WTO. Bunn presents the normative case for integrating a right to development within international economic law. Each of these studies has ventured "out of the box" of international trade law. Each has contributed to giving value and meaning to international economic law.

III. CASE STUDIES: FILLING THE CUP

The *Interfaces* symposium includes creative, insightful "case studies" by Raj Bhala, Oren Gross, and Amanda Perry. Case studies are particularly useful for filling the cup of international economic law. They are filled with the messiness of the real world, and so test the limits (if not the foundations) of the theoretical constructions which are at the base of the discipline. Bhala, Gross, and Perry each examine a particular and peculiar setting. Bhala takes on the integration of China within the world trading system, a quintessential interface case. Gross tests the free trade area/economic union formulas of Europe and the Americas and then shows them melting in the crucible of Israeli-Palestinian relations. The ordinary prescriptions of economic integration yield to the complex demands of security and national identity in a region marked by a starkly contrasted distribution of economic power. Perry takes a law and development commonplace - that legal systems matter in attracting foreign investment - and shows us that *this just ain't so*, at least for some investors.

Raj Bhala relates the saga of China's accession to the World Trade Organization.²⁵ China has been, is, and always will be a special case. Bhala's essay was written during the finalization of the various Chinese bilateral accession negotiations (particularly the one with the European Union²⁶) and just prior to the vote in the U.S. Congress to

25. Raj Bhala, *Enter the Dragon: An Essay on China's WTO Accession Saga*, 15 AM. U. INT'L L. REV. 1469 (2000).

26. See Clay Chandler, *EU Sign Broad Trade Pact; Accord Opens Way for WTO Membership*, WASHINGTON POST (May 20, 2000).

extend permanent normal trade relations with China.²⁷

China presents the “interface” challenge, as understood in Jackson’s original use of the term.²⁸ While China may not resemble the non-market economies of the former Soviet sphere, China’s domestic economy remains largely state controlled. Foreign investment is circumscribed. Significant tariff and non-tariff barriers are in place. The international trade regime, which China seeks to join, is premised on market-based assumptions of how member countries operate their domestic economies. The set of assumptions was significantly expanded with the close of the Uruguay Round to include the existence of an intellectual property system, limitations on certain investment measures, and a commitment to a more binding dispute resolution system. Given these innovations, China will be asked to move even farther in domestic reform than were other transition economies. Bhala carefully documents the reforms insisted on by the U.S. government in the course of U.S.-China bilateral negotiations.²⁹

Bhala also discusses China’s bid to win “special and differential treatment” as a developing nation, and the U.S. rejection of this position. Perhaps China is, as Bhala suggests, “special and different” in a special and different way, meriting a somewhat *ad hoc, sui generis* approach. Bhala emphasizes the unique in China; his fascination with China’s particularity is evident throughout his essay. Bhala documents the extent of Chinese concessions (from the Chinese perspective) and argues that political reality limits greater movement at this time. All countries have encountered the sovereignty loss question upon adhering to the world trading system. China may simply feel it more.

27. See Matthew Vita & Juliet Eilperin, *House Passes China Trade Bill; Measure to Normalize Ties Wins Easily in the End*, 237 to 197, WASHINGTON POST (May 25, 2000); Eric Schmitt & Joseph Kahn, *The China Trade Vote: A Clinton Triumph; House, in 237-197 Vote, Approves Normal Trade Rights for China*, NEW YORK TIMES (May 25, 2000).

28. See Jackson *supra* note 10, at 2.

29. These span the entire trade agenda, including tariffs, transparency, NTBs, subsidies, trading rights, rule of law, national treatment, pricing, intellectual property, safeguards, agriculture, and foreign exchange. See Bhala *supra* note 25, at 1485-87. Also demanded was progress on distribution rights, foreign investment, financial services and telecommunications. *Id.*

Oren Gross's study is a cautionary tale.³⁰ He accepts the orthodox view of European economic integration: that linking national economies can successfully make intra-regional war unthinkable. He harbors doubts as to whether economic integration *à la* Europe can bring peace in a radically different context. Gross suggests that both Israel/Palestine and Europe are special cases. European stability is due to more factors than the simple establishment of an economic union. Israel/Palestine will operate under different conditions, with different political imperatives. These conditions will require novel, built-to-order institutional arrangements. Off-the-shelf formulas of free trade area/customs union will not work, Gross argues.

Any solutions must take into account both political and economic³¹ reality. A customs union would strip an eventual Palestinian state of the ability to set an independent commercial policy. A free trade area would require complex and contentious internal borders. Gross argues for a hybrid model.³² The model advanced by Gross and others in context of informal discussions includes features of a free trade area (including autonomous commercial policy), but does not require fixed borders. More importantly there would be free movement of workers between Israeli and Palestinian territories.³³

The economic solution to be adopted between Israel and an eventual Palestinian state may or may not correspond to the model described by Gross. His work usefully anticipates problems and positions, and demonstrates a hopeful (despite the surrounding pessimism) willingness to try out new formulas to map out ground for cooperation.

Amanda Perry presents a fresh and surprising work.³⁴ Her project is the most pointedly empirical of these papers. She asks an apparently ordinary question - does law matter? - and collects some re-

30. Oren Gross, *Mending Walls: The Economic Aspects of Israeli-Palestinian Peace*, 15 AM. U. INT'L L. REV. 1539 (2000).

31. Gross points out the great disparity in size between the Israeli and Palestinian economies. *See id.* at 1551-63.

32. *See id.* at 1609.

33. *See id.* at 1617-18.

34. Amanda Perry, *An Ideal Legal System for Attracting Foreign Direct Investment? Some Theory and Reality*, 15 AM U. INT'L L. REV. 1627 (2000).

markable responses. Perry examines the legal system of Sri Lanka and the perception of it held by foreign investors. She finds that Sri Lanka's legal system differs from the "ideal paradigm," at least in the eyes of investors. The bureaucracy is corrupt and subject to influence, the courts are inefficient, laws are not particularly stable. She then asks the investors if this matters and discovers that for many investors, this non-ideal legal system is no problem at all.³⁵

Perry recognizes that different legal systems can offer efficiency and predictability, qualities that investors allegedly value. Thus the law reform movement (understood to mean emulating Western legal values) does not necessarily optimize efficiency and predictability in all settings. Perry's study may ultimately say more about the foreign investors than about the Sri Lanka legal system; she speculates that the investors may be "non-conforming," and by this she means they may have Asian origins, experiences, and expectations more in align with Sri Lanka reality. Thus law reform may operate to select which investors thrive in a particular host country.

International economic law needs more empiricism. Our ability to generate idealistic views of international law far outstrips our ability to challenge these notions through observation and critical analysis. The works by Bhala, Gross, and Perry remind us that every case is a special case. We need to be particularly cautious in generalizing prescriptions. Economic integration that works to bring peace to Europe may fail in the Middle East. Law reform may not matter to investors in certain countries. The WTO system does not embrace look-alike members; certain countries, such as China, because of their size, importance, and history, will not easily fit.

IV. THE *INTERFACES* CONFERENCE

The February 2000 conference of the International Economic Law Group (IELG) of the American Society of International Law was convened to consider the relationship between the core of WTO-oriented international trade law with other fields of international economic law activity.³⁶ The Call for Papers challenged writers to

35. *See id.* at 1645.

36. Conference theme planning began at the IELG business meeting held dur-

“explore the interplay and interdependence of the WTO-based trading system with other sites of international economic law.”³⁷

The conference program committee³⁸ reviewed the abstracts submitted in response to the Call for Papers, selected the most promising work and then re-thought the design of the conference. The final conference structure included both thematic panels with commentary³⁹ and three stand-alone presentations.

Nine of the *Interfaces* conference papers appear in this symposium issue of the *American University International Law Review*.⁴⁰ This marks the second occasion an ASIL IELG conference has published in this review.⁴¹ We are grateful to the board and staff of the *American University International Law Review* for hosting this symposium and for their excellent editorial work.

ing the March 1999 ASIL annual meeting in Washington. Participants at this meeting and in follow-up e-mail conversation include: Frederick Abbott, Jeffery Atik, Ronald Brand, Isabella Bunn, Chris Borgen, Barry Carter, Steve Charnovitz, Jeffrey Dunoff, Paul Dubinsky, Paul Frantz, Frank Garcia, David Levy, Willajeanne McLean, Sol Picciotto, Amelia Porges, Dick Scott, Gregory Shaffer, Cherie Taylor, Joel Trachtman, Peter Winship, and Gregory Young.

37. The text of the *Interfaces* Call for Papers follows in an Annex to this introduction

38. The *Interfaces* conference program committee included Jeffery Atik (Chair), Jeffrey Dunoff, Willajeanne McLean, Philip Nichols, Andrea Schneider, Cherie Taylor, and Peter Winship.

39. Comments on presentations were provided by Cynthia Lichtenstein, Philip Nichols, Andrea Schneider, Joel Trachtman, and Peter Winship.

40. The *Interfaces* conference included excellent presentations that are not published here. Padideh Ala'i addressed *The Role of Civil Society at the WTO: Is the Western Liberal Conception of Civil Society Applicable to the Developing World?* Jagdeep Bhandari spoke on *International Trade and Migration*. Alberto Costi spoke on *The Use of Free Trade Instruments in the Transition Process of Central and Eastern Europe: Success or Failure?*. Kim Van der Borgh spoke on *Word Trade Law: Effective Rights for Developing Countries?*

41. See 10 AM.U.J. INT'L L. & POL'Y 595 (1995). The Journal of International Law & Policy was the precursor to the American University International Law Review).

ANNEX

INTERFACES CONFERENCE CALL FOR PAPERS

The ASIL International Economic Law conference will explore the interplay and interdependence of the WTO-based trading system with other sites of international economic law. The theme recognizes the expansion of the discipline beyond study of the GATT and the EU to a much wider field, which in turn will occupy much of what constitutes international law proper in the coming decade. The conference will address the structure of the Millennium Round and its fitness for incorporating a broader economic agenda. The scholarly project will demand an augmentation of the tools applied: monetary, labor, industrial and developmental economics all come squarely into play, as does a renewed engagement with sociology, history, and political theory. Will the new world economic order we describe lead to greater peace, stability, fairness and justice?

Possible topics include:

I. INTERNATIONAL MONETARY SYSTEM AND INTERNATIONAL TRADE

This session will explore the increasing importance of the IMF and global capital markets and their influence on international trade. It may also examine the introduction of the Euro and its effect on European economic/political integration, the impact of debt relief and the dollarization of Latin America.

II. COMPETITION LAW AND INTERNATIONAL TRADE

This session will consider the view that antitrust/competition law should be addressed at regional or global levels, including an examination of proposals for the Millennium Round. Controls on the transfer of technology will be explored.

III. DEVELOPMENT AND INTERNATIONAL TRADE

This session will explore the combined effect of the international monetary system, global capital markets and the world trading system on bringing meaningful development to much of the world. It will examine controls on investment, economic reform and the challenges of assuring greater equity of distribution in many developing countries.

IV. PRIVATE INTERNATIONAL LAW AND INTERNATIONAL TRADE

This session will discuss the effects of unification movements (UNCITRAL, UNIDROIT) and harmonized property regimes, with particular attention to the treatment of e-commerce. Controls on e-commerce will likely be a subject of the Millennium Round negotiations.

V. MOBILITY OF PERSONS AND INTERNATIONAL TRADE

Most of international economic law (with the notable exception of Europe Union law) is premised on legal restrictions on labor mobility. Will restrictions on migration fall, and if so, what effect will this have on international trade?