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COULD THE WTO BETTER SERVE THE POOR?

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P R O C E E D I N G S

MR. BLUSTEIN: Welcome, everybody, to Brookings. My name is Paul Blustein. I'm a journalist here. And we're here to discuss a new book by Chad Bown, *Self-Enforcing Trade: Developing Countries and WTO Dispute Settlement*.

I first became aware of this book a few months ago when I was finishing a book that I was working on and needed to think some really big thoughts about what I wanted to say about the issue of WTO dispute settlement, and was it really fair to developing countries or not. I wasn't going into nearly as much detail as Chad is, but I still needed to try to say something kind of deep and quick about it.

And so I knew that Chad was working on something related to this, and sent him an e-mail. And he got back to me right away. And I asked him to have just a conversation. He said, "I can do better than that. I can send you a PDF of this forthcoming book."

And I can tell you, it was fantastically helpful to me. It's a wonderful book, just as a resource, in terms of some of the data that it presents about how the system works, what many of the cases have been, and how they break down. It's a fantastically valuable piece of work.

So I'm going to introduce Chad, for those of you who don't know him, and also briefly introduce the panel, who will be commenting on the book.

Chad received his Ph.D. in economics from the University of Wisconsin in the late 1990s. I just want to interject an editorial comment here: Go Badgers. I got my B.A. degree -- a few years before Chad got his Ph.D. And after grad school, Chad's first academic job was at Brandeis University in Boston, where he spent the next five years doing what most tenure-track academics do, he buried his head in data, and he wrote article after article on a dusty old topic -- he just happened to pick one that most of us, at least I hope, in this room don't think of as dusty or old -- which is the topic of developing countries and WTO dispute settlement.

Now, five years ago, Chad came to Washington to spend a year at Brookings under its very generous Okun-Model Fellows Program for recent Ph.D.s. And it is during his time here that he started meeting some of the people that were working on the inside of these disputes that he ends up describing in this book.

And since then, after returning to Brandeis, he struck out to do more fieldwork. This time he was spending a year, 2008, at the WTO Secretariat in Geneva as the Economic Research Division's visiting

scholar. And just this past September he returned to Washington again. This time he is now finally in a permanent role as Senior Economist in the Research Group at the World Bank.

And in addition to his research on the topic of the WTO, one of the other things Chad does at the Bank is to manage the Bank-sponsored Global Anti-Dumping Data Base. I'm sure many of you have become familiar with this. It's been quoted a great deal in the press in recent months, after the eruption of the financial crisis. And this is a monitoring and information-dissemination initiative. It tracks detailed and almost real-time data on the global spread of protectionism. So that's something that, obviously, people in this room, I'm sure, have been paying pretty close attention to in recent months.

So we also have three excellent panelists to comment. I'll introduce them briefly, as well.

On my far right, your left, is James Durling. He's a partner at Winston & Strawn. His practice focuses on international trade law. I was teasing him before we got together, I said -- because he specializes in anti-dumping cases, and since he represents mostly foreign companies in anti-dumping, and countervailing duty, and other trade remedy investigations, I teased him, I said, "Well, you're in the anti-dumping business. Well, no, actually, you're in the dumping business."

But for those of us who've been writing about and study the subject, of course -- I mean there are some people who would, in Washington, after all, who would accuse him of, I don't know, selling out to the foreigners, I think there's an awful lot of people in this room who would, I think, agree with me that he's actually on the side of the angels in these cases.

He also provides advice to clients on WTO cases, and he has significant experience in litigating disputes and other trade disputes between the U.S. and foreign countries. And his practice is particularly significant in representing Asian companies, particularly Japanese and Korean ones. He's also worked with clients in Thailand, Malaysia, Singapore, Taiwan, Indonesia and the Philippines. And he also handles a wide range of issues where other regulatory laws affect international trade.

Next to him is Kimberly Ann Elliott. Kim is someone who, when I was a reporter at the *Post*, was someone who was really a go-to person for me when I needed to know when I was supposed to think about big trade issues.

She's a visiting fellow at the Peterson Institute for International Economics since 1982, and she's also a senior fellow at the Center for Global Development. And she's the author or co-author of numerous books and articles on a wide variety of trade and globalization

issues. She's co-authored two books on the cost of trade barriers in the United States. And in recent years, she's written about a number of issues related to globalization, including labor standards, the role of developing countries in the trading system, the causes and consequences of transnational corruption. So, like I said, when I needed to think about some of these issues, she was someone who was very high on my list of people to call.

Her most recent book is *Delivering on Doha*. This was a tremendous resource for me in writing about the WTO and the Doha round -- *Delivering on Doha: Farm Trade and the Poor*. This was published in July 2006.

I won't read all the list of publications in which she's published, but I was impressed to see that among those is the *Bulletin of Atomic Scientists*. It didn't seem quite in keeping with all the rest of them, but I'm sure that there's some explanation for that.

MR. BLUSTEIN: And closest to me here is Gawain Kripke. He's Senior Policy Advisor on International Trade Issues with Oxfam America, based here in Washington. And he directs the policy work of Oxfam's Make Trade Fair campaign. I'm sure that most of you have heard of it if you've been following the trade debate. And if you haven't heard of Make Trade Fair -- well, you just haven't been paying attention. Because,

I mean, they've been very active, of course, in doing advocacy work, as the name of the initiative implies, so that international trade can be a powerful force for reducing global poverty.

And prior to joining Oxfam, Gawain was Director of Economic Programs for the environmental organization Friends of the Earth.

So, without further ado, [over to Chad...]

MR. BOWN: Thank you very much, Paul. So, thank you everybody for coming today, and I'll thank in advance the panelists for being here, and also for the comments that, hopefully, will be quite critical of what I have to say.

This project is many years in the making. I just wanted to thank multiple sources before I even get into telling you what it's about. As Paul mentioned, it really began during my first trip to Washington -- or my first extensive trip to Washington -- a year spent at Brookings five years ago now. But along the way, I've had, you know, numerous rounds of support from the World Bank, from Brandeis, of course, where I spent 10 years of my career, from the WTO Secretariat in Geneva, which was nice to host me for a year. And then also the German Marshall Fund. And then, finally, the Hewlett Foundation, which generously supported, you know, my ability to take time to write this book.

So I wanted to thank all of them before I even get started.

So -- getting started. What is this book about? So if I were to tell you this book is about the WTO, which it is, and ask you, you know, if there's one thing when you think about the WTO that comes to mind, probably most of you would say, "Doha." Right? So that's -- no? Okay. That's probably the first thing that would come to my mind.

And this book is not really about Doha, but Doha is certainly one of the important things that the WTO tries to do, right? So the WTO is essentially -- it provides three important fora for countries out there. One is what it's doing right now in the Doha round of negotiations: provide a multilateral forum for trade liberalization negotiations, following on after the Uruguay Round, the Tokyo Round, the Kennedy Round, et cetera -- dating back now 60 years, countries have been getting together under the auspices of the WTO and, before it, the GATT to liberalize trade.

That's really only one of the three things that it does. The other two things that it does are what I call "illumination." So if the first fora is negotiation, the second is illumination. So it's a forum of some transparency, providing some information and monitoring about what governments are actually doing with respect to their trade policies -- the trade policies, and how they're changing in ways that may affect foreigners and change conditions of market access.

The third piece, the third fora that it provides, which is the main focus of this book, is litigation -- a forum for the resolution of disputes, the settlement of disputes. In reality, it's actually more than just litigation. It's a complex process of economics, law and politics put together that I'll talk about more in depth.

So why Doha? So, well, arguable one of the reasons why it has been so difficult to bring Doha to fruition is because of -- well, we'll see, I guess. Maybe Doha will come to fruition in Geneva in December. I don't know. We'll place bets on that afterward. Probably not.

But one of the arguments behind why Doha is so difficult, at least currently, is because of all of the prior work that the WTO has already done, that the countries have already done under WTO auspices. So now we live in a world -- prior to the crisis, anyway, but even, arguably now still even during the crisis -- that is relatively open, certainly by historical standards. And certainly much of the industrialized world is quite open.

And so one of the important jobs of the WTO system is to help keep those markets open. And so the resolution and the presentation of disputes is a way in which the WTO helps countries keep the massive amount of commitments to open markets, it helps to keep

those open and available to all the countries out there in the trading system.

So this book is very much about this third particular function of the WTO, the litigation function. And before I -- or to get into that, I guess I should talk a little bit about what I mean by "WTO disputes" that are the focus of this book.

So if we think about today's disputes, the ones that roll off the tip of the tongue are things like tires, chicken feet, paper, auto parts, oil-country tubular goods, export restrictions on raw materials -- both disputes that we're pretty sure are taking place right now, and then potential disputes which may be taking place.

And, as you are probably all aware, the WTO reached a major milestone last week by having the 400th formal WTO trade dispute being initiated under its auspices since 1995. This is a large number of cases that have been brought forward.

Arguably, trade disputes now -- at least the ones that come forward under the WTO -- are just part of the day-to-day business of the international trading system in a global economy. I mean, it's just sort of out there. For a little bit of historical perspective, in the immediate period after the conclusion of the Uruguay Round, beginning in '95, most of the high-profile disputes were U.S. European trade skirmishes. So we had

the famous cases on bananas, beef hormones, Byrd amendment, the Foreign Sales Corporation. I'm looking at some, at you lawyers in the crowd, and you're looking nostalgically up into the sky, the good old days of these types of cases. Zero in -- right? Byrd amendment.

So what do we learn from these disputes? Well, what happened in most all of these disputes is, you know, the disputing parties in these ones that I listed, primarily the U.S. and the Europeans, figured out a way to resolve their frictions -- typically by keeping market access open. And while it wasn't always immediate, what it did prevent is these bilateral frictions between countries from spilling over and harming other trade relations between the countries, or damaging the broader system. So the dispute settlement process at the WTO has certainly contained a lot of these frictions, and kept them manageable.

Nowadays, though, dispute settlement under the WTO is no longer just about U.S.-European trade. So, you know, we have a number of high-profile recent disputes involving the emerging economies like Brazil -- so these major agricultural cases between the U.S., Europe and Brazil over cotton and sugar. And in the news now there's a lot of back-and-forth between the U.S., Europe and China over a number of issues, including intellectual property rights for movies and music, the financial services firms case which ended last year, auto parts -- the case that's

been ongoing for awhile now about the U.S. anti-dumping, kind of on duty procedures, et cetera. Poultry.

It's trying to use a system to help integrate China into the global economy, which is going to require adjustment on both sides. So you have China becoming more market oriented, becoming more disciplined with respect to the rules of the trading system, and you have U.S. and Europe and other more established players making space, making room for this new and major kid on the block.

So we've got that. We've got the historical disputes, the U.S. and Europe. We've got the new players, Brazil, India, China. But even beyond that, when you look at the cases that are out there, there's a lot of trade disputes that are occurring by other, smaller, poorer developing countries. So as I was researching this book -- how many of you have heard of the case involving Rahimafrooz Batteries from Bangladesh? The Mohsin match factory from Pakistan? The Tubac steel company from Guatemala? The APRIL fine pulp and paper company from Indonesia? All examples of cases out there where exporting firms from developing countries have convinced their government to self-enforce their trading interests at the WTO -- firms that, you know, even for those of us that are the closest watchers of trade policy have probably never heard of before. And this is one of the beauties of the WTO system.

And what I'm going to argue, and what I try to argue in this book, is that this is quite important -- in fact, more important, perhaps, for developing countries, the WTO dispute settlement system, than it is even for the development and industrialized countries.

Okay. The WTO dispute settlement system itself -- sound like it's law, but really it's much more than that. It's equal parts law, economics and politics.

So let's walk through a little example to help give everybody a framework for which at least I, in the book, present how an economist might think about this.

So, suppose we work for an exporting firm in a developing country. In the book, I have this woman that works there, her name is Michelle, Michelle Brown. And she works for a firm that all of a sudden loses their access to foreign markets. Something happens in a foreign market, and it's her job to try to convince -- first to try to make sense of what's going on, and then it's to work the way through the process to use the WTO dispute settlement system to try to restore that lost market access.

So how does she do it?

Well, first of all, we have to recognize that she really has to do it on her own. The WTO, while providing a wonderful system, does

not have a police force out there, does not have independent prosecutors in which they pursue cases. It's a self-enforcing system. And what that means is, poor Michelle has to do the work on her own to organize her firm with other firms in the industry, convince their government that this is a case worth pursuing, and then actually have the government pursue the case in Geneva.

And what I do in the book is illustrate, through a very simple model -- because I'm an economist, right? So I am an economist. I should get that out there. So we need to think about this using models -- but a very simple model of how this works in practice.

And there's really three important phases which this goes through. And the most talked about is the middle phase, of all of the lawyering, the litigation phase.

But before that, we've got the pre-litigation phase, where we've got the information gathering. And it's not only information about legal stuff, potential WTO violations, but it's putting that in context. How important are these violations? If we were to get rid of these trade barriers that might be in violation of the WTO rules, what is the benefit of doing so? And to do that, we need to have other forms of expertise, in addition to just legal expertise. We need to have economists -- right? -- to be able to put

value numbers on what the size of that market access would mean, how that would translate into additional jobs, growth, development, et cetera.

We need political expertise. What's the likelihood that this foreign country that imposed this new trade barrier is actually going to get rid of it? How are they likely to comply with any adverse rulings that might come from Geneva and the WTO? So what is their appetite for change? We need political expertise there, that really understands what's going on in the domestic politics in that country, as well.

So that's the pre-litigation phase. There's a lot of expertise that's needed there. Then we have the litigation phase in the middle. And then at the end, we have the post-litigation phase. Because as we also know in the WTO system, the countries found to have violated the rules, you can't throw that country in jail. All you can do is threaten to retaliate, to take something else of potential value away from that country. Or, if you're talking about small developing countries, perhaps use alternative ways, and more creative ways, of trying to help generate reform and compliance with WTO rulings. And I'll talk a little bit more in a moment about some specific examples of how this has worked in practice.

But first we build a basic model to show how this has typically worked, document how it's worked at least over the last 14 years or so by the rich countries, the developed economies out there, and then

how it's starting to be used by developing countries, and where the hurdles are along the way that prevent them from being able to access the system. And we asked the question: what are these hurdles? What initiatives have various stakeholders and groups within the international trading system -- what I call the "extra-WTO" community, non-governmental organizations, think tanks, et cetera -- what have they done to support developing countries here? And what more needs to be done? Where has this complementary activity by the extra-WTO community fallen short?

So I want to highlight briefly three areas that the book talks about in some depth, and then I'll conclude.

The first is the Advisory Center on WTO Law -- the ACWL. And so what this is, is it's a very important creation. It's a legal services center for developing countries. So poor countries out there -- one of the arguments is, the disputes that they would likely be involved in would be expensive for them, if they had to go out and hire private sector lawyers. So let's create an international institution that provides low-cost, subsidized legal assistance for them. So we've done that. In 2001, this Advisory Center was established in Geneva, and it fills a critical need in the trading system.

So in the book, after introducing the Center, and sort of the theory behind it, and what it is that it's supposed to do, I then look at the data. What cases has it been involved in since its inception? How might its introduction to the system, how might that be affecting WTO dispute settlement more broadly?

A couple of interesting patterns and facts in the data come to light. So the Advisory Center is quite small, fewer than 10 lawyers. And yet, they have been -- if we think about the Advisory Center. Suppose the Advisory Center weren't a legal assistance center, suppose it were a country, a member of the WTO itself. It would be the third most active offensive litigant in WTO dispute settlement, following the U.S. and Europe -- the European Community.

It's worked on behalf of 17 different developing countries, on 25 or so disputes. So, while quite small, it's doing a lot of work.

Now, when this thing was getting established in the late 1990s, there was a lot of concern, within Europe, within the United States, about funding. And still, to this day, the U.S. government and the European Commission don't fund the Advisory Center. It's funded by governments, but not the U.S. or the EC. A lot of other governments have put the funding together.

And one of the concerns was, well, this thing was just going to be used to file cases against the U.S. and Europe. And while that has been the case -- there have been cases filed against the U.S. and Europe using the Advisory Center services -- the most interesting thing to note when you look at the data is the Advisory Center, so this legal assistance center that's supposed to work on behalf of poor countries, developing countries, has filed the third most number of disputes against other developing countries as anyone out there in the system.

And that signals something that's of incredible interest and importance for this book, which is when we're talking about developing countries, and how they want to use the WTO to self-enforce their trading interests, it's not that they only want access to the U.S. or the European or rich-country markets. They also want better access to other developing country markets, as well. And they're showing that through the cases that they're bringing forward in which they're using the Advisory Center.

Within the set of cases they've worked on, by all accounts it looks like they're doing a good job. They've got repeat clients. So, you know, a client uses them once, they come back and use them again.

It doesn't look like the advisory center has actually introduced any new countries to the WTO dispute settlement system. All their clients have had some prior experience using the WTO. But they

seem to be using the WTO in different ways. They seem to be filing more sole-complainant types of cases, where they don't have to rely on the aligned interests of other countries. They seem to be pursuing them farther through the process, getting legal rulings which may help achieve the outcomes, their market outcomes that they want.

And they also seem to be pursuing perhaps a smaller scale of cases, as well -- which suggests, from an economics perspective, that this, that the introduction of the Advisory Center into the system may be making more of the commitments that countries take on when they negotiate these rounds enforceable. Smaller amounts of trade are now being subject to WTO litigation with the Advisory Center's backing.

All that being said, there are, perhaps, some unintended consequences of the Advisory Center. One is that it creates a disincentive for private sector actors, law firms, to go out and ambulance-chase, to create clients in potential developing countries. Because if they were to do so, go to a developing country, go to exporters in developing countries and say, "Hey, some other country out there just imposed this new trade barrier. You should think about hiring me, this law firm, to work with you to pursue a case with your government at the WTO." Law firms may be more hesitant to do that now, because that, you know, requires their own investment and costs in figuring those kinds of violations out, because you

present that information to firms, or policy-makers in developing countries, and they can then take it to the Advisory Center and use their services at lower cost.

So this is to suggest not that the Advisory Center is doing anything bad, or doing a bad job. It just is -- there is a need, an additional need for somebody else to step in and fill that gap when it comes to generating this kind of information. And the Advisory Center itself can't do it because of its own mandate.

I want to talk briefly about another chapter in the book, which is Chapter 8, which describes the increasing role of non-governmental organizations, and especially development-focused NGOs, in the WTO system and, in particular, WTO dispute settlement.

So I used the lens of a particular case when I described much of the activity here. And so this is the famous cotton case, where Brazil brought a WTO challenge against the United States' agricultural subsidy programs for cotton, and they were found to have, you know, essentially injured Brazilian industries, as well as the cotton producers in other countries around the world, as well, including those in West Africa.

So if we think about various places along the way in which development-focused stakeholders might step in and provide assistance

to developing countries, there are at least two -- aside from the litigation phase, which is what the Advisory Center covers, the legal assistance.

The first is this pre-litigation phase, helping generate information, and helping to perhaps organize firms, farmers, industries -- and their policy-makers -- in developing countries. And so here, of particular note is the work of a number of stakeholders, including some of the work of Oxfam, some of the work of the Idea Center in Geneva, as well as the International Center for Trade and Sustainable Development -- which helped encourage, especially, cotton farmers and the industry in a number of West African countries to think about using the WTO to help pursue this dispute. There's a lot of lessons to be learned from this particular activity.

A second example of ways in which NGOs, in this particular instance -- and it's, again, very much Oxfam's work here, that perhaps Gawain can speak to a little bit more in a few moments -- educating the public about what these agricultural policies in the United States, you know, were doing, or the impact they were potentially having in the development, putting a development face on these types of policies, and documenting some of their studies that they commissioned, documenting the impact that these were having on the already impoverished -- so poor

farmers in poor countries, in particular countries like Chad and Benin and others in West Africa.

So here, the lessons from Oxfam were really to -- the way I interpreted it as an economist -- helped shape the terms, or refocus the terms of the debate . And for countries that lack the retaliation capacity -- even if you win this WTO dispute against the United States, are you really going to be able to threaten to take away something of value to the United States? Right? Arguably no.

But what you can do is you can help create a climate for reform within the United States by helping to engage others on the issue. And so I interpret some of Oxfam's work in this area as not only engaging exporters, U.S. exporters, which is the typical retaliation threat model, to stand up and ask for reforms, but to also engage others: the general American public, consumers, taxpayers. "Do you know what your tax dollars are being used to subsidize in the United States?" Some of their actions here were particularly interesting -- very difficult to achieve outcomes here, but, you know, quite path-breaking in terms of the strategy and the attempts. So the book has a chapter that sort of pursues some of those, as well.

The last thing I wanted to touch on is that the major remaining hurdle that really nobody within the extra-WTO community, the

outsiders, has tackled yet, which is this issue of providing information: monitoring, surveillance -- the needed information that exporting firms really need at the beginning of any of these cases to help inform themselves about whether or not they're actually going to pursue WTO dispute settlement.

And so here, it's more than just information on legal evaluations. It's potentially putting dollar values on this. How much trade is at stake? Is it politically feasible that there's going to be reform in the potential defendant country -- this pre-litigation phase.

So what I do in Chapter 8 is I've proposed a new, what I call "institute for assessing WTO commitments." I think that's what I call it, the IAWC. And I describe what it would take to generate the kind of information that interested stakeholders -- whether they be the Advisory Center, whether they be private law firms that might be interested in working for developing countries, whether on a reduced-fee basis, pro bono basis, other stakeholders -- the kind of information that's needed to get out there to increase both the information set of exporting firms and their government representatives in these cases, but also, you know, the international community and the set of stakeholders more broadly, help inform them about potential areas that are worth looking at.

So I have lots of details in there about governance, and staffing, and all of those kinds of issues. But the last thing I wanted to touch on is the particular areas of under-analyzed market access.

So where aren't folks looking right now, for potential WTO violations? Where isn't the private sector looking, essentially?

And the argument is, there are certain policies, for one, that are very difficult for exporters in developing countries to understand why it is that they lost market access. So stuff that occurs behind the border. Things that occur at the border -- we're talking about the anti-dumping data base that I helped to work on with the Bank, safeguards, changes in tariffs, new quantitative restrictions -- things that occur at the border, firms understand that. They can see why they lose market access in those situations.

What they have a more difficult time understanding is, when all of a sudden they were selling some product into a market and now they're not. And they don't know why. Was it just a normal change in consumers' tastes and preferences? Was it a subsidy that might be a WTO violation in the other country? Is there something weird about the country's tax code? Is it, you know, a new technical barrier to trade, or SPS measure? Those are the really difficult ones to understand. And that's where more information needs to be provided by the public.

Second -- so that's policy. Second is countries. We have a lot of information being provided already out there on what's going on in the U.S. and Europe. There's a lot of other economies out there that have market access that's quite valuable to developing countries, but for which we have very little information as to what's going on. So we need more information being generated there, as well.

All right, I think I'm over my time, so I won't spend -- the handouts we have, in addition to, you know, information about the book and all this kind of stuff, some of the monitoring efforts that we've been doing at the Bank, in terms of the protectionism during the crisis, I'd be happy to talk about that during the question and answer session.

You know, having worked on this project -- that particular project, separate from this one -- for a number of years, I'm increasingly understanding the difficulties that firms face when they're trying to figure out what it is that's affecting them in foreign markets, and how to monitor that, and how to provide additional information to them in those instances.

To conclude, the argument in this book is, regardless of what happens in Doha -- if we get a major agreement, if we get no agreement -- there's a lot of commitments already out there on the table. The WTO system works relatively well for rich countries. It has a system that could

work for developing countries, and exporters in developing countries. But I think it's going to require more.

And one way to help deal with that is for interested stakeholders in the private community to step in and to do more to work with developing countries to provide them with some of the services that they might benefit from, including monitoring, etc.

Thank you.

(Applause)

MR. BLUSTEIN: Thanks, Chad.

I think I saw a lot of people nodding when Chad was talking about his proposed IAWC. And I think there are a lot of bright young people in this audience who were kind of thinking to themselves, "Gee, that would be a great institution to work for. You'd be doing good and --".

Anyway, we'll start with Gawain Kripke giving some remarks on Chad's book.

MR. KRIPKE: Thanks, Paul, thanks for moderating, to Brookings for hosting, and especially to Chad for giving us the opportunity to have this discussion.

I have to say I'm glad we're not talking about Doha. That has become quite a depressing topic for panels and sessions. So it's

refreshing to be talking about something else, but still on trade and the WTO.

In reading through Chad's book, I was reminded -- it took me back to my school days as a young boy. In the school I grew up in, there was a very large pine tree that always produced pine cones which fell to the ground. And the boys in my school would take the pine cones and throw them at each other. And occasionally, they would take a break from throwing pine cones at each other to look, to throw, every now and then, a pine cone at a girl. And I didn't understand what was going on. I asked my friends, "Why are you throwing pine cones at girls?" And the answer was, "Well, because we like them."

So, there was an expression of interest, but it was quite a hostile expression of interest. And I had that feeling about sort of the underlying thesis in Chad's book, which is that to encourage more throwing of pine cones, especially by developing countries -- not because it's a hostile act, but because we like one another and we want to integrate more, and work more together. So on the one hand, it's a deep expression of wanting to be closer, but the immediate salient expression of that is quite hostile and violent.

And the question to me is, if the thesis is right, that we want to encourage more pine-cone throwing, especially by developing

countries, there must be a limit to how much throwing of rocks to each other is good, and when it just becomes a riot and it's no longer productive, or a communication.

And I think that's an interesting question to ask, because, I mean, Oxfam basically agrees with that thesis, that we do want more cases, and that developing countries in particular bringing cases is empowering to them, is good for the system, and helps represent their interests. And Oxfam has done papers to this effect. In 2005 we had a paper in which we basically made the case for all sorts of cases against U.S. and EU farm subsidies, for example, and sort of laid out the case for them, and invited others to take on those cases if they're interested. There wasn't a lot of up-take, as yet, on those cases.

So we fundamentally agree with that thesis. But I think we also need to look at the limits to that strategy, and how far we want to go -- and recognizing that the disputes themselves are pretty important, are very scary. Countries pay attention to them. They have political and economic meaning. And yet even still, it's a pretty weak mechanism for making change.

And Chad cites the case of the U.S. -- the Brazil-U.S. cotton case, which I would think is a pretty important case. Brazil's not an insignificant economic player, and retaliation from Brazil should have an

impact on U.S. policy-makers. And yet, we're -- what are we, eight years, six, years, seven years into the case? And we're not even close to compliance. I would argue that we're further away than when we started, to compliance with Brazil's basic case.

So the weakness of the tactic is also something to be careful of, because how much do you want to invest in that as a tactical means of achieving your ends, versus other means?

And Chad, I must say, recognizes that. He talks about multiple strategies, and how some of them are structural to the WTO. And so you do have to -- it's not that he doesn't recognize that. But the focus here, and where you put your energies, I think, is an important question.

I really like the discussion of the U.S.-Brazil cotton case -- something I spent a lot of time on. I do think it's an important case for a lot of reasons, and very telling. And I also thought it's really interesting to see it in print, somebody else articulating what Oxfam was doing. And a lot of times we were doing it very unconsciously, the things we were doing. And suddenly, oh, yeah, I guess there was a strategy behind what we were doing here. That's useful to have somebody else tell us that we were doing something useful.

But I think what Oxfam's role, for the most part, in the Brazil case -- I mean, I don't want to talk too much about it, or we can talk more in questions and answers if you want to.

But the main thing I want to say is that, just like in U.S. courtrooms, a lot of the case is litigated outside of the courtroom. What's in the briefs is important, what happens in the courtroom is important. But a lot of cases are tried in the media or in the public. Especially if you accept that dispute settlement mechanism itself is somewhat weak, one of the most important aspects of cases is the ability to project and advertise and broadcast issues, and hopefully invoke other actors and other processes to take action on those issues -- rather than the case itself driving them.

And in that way, Oxfam was a huge broadcaster, or echoer, it did a lot of PR, trying to make the case for the Brazilians, but really on behalf of a lot of other developing countries, about U.S. farm subsidies, and particularly on cotton.

And that role of sort of the outside-of-the-courtroom atmospherics I think is important, and really, I think, an important contribution that Chad is making to the discussion about disputes.

I think the proposal for the institute for assessing WTO compliance is really interesting, and it does identify an important gap in

our knowledge base and ongoing monitoring and so forth. And to some extent, compliance with WTO commitments is a proxy for positive integration and actions by countries. They've made commitments, and if they're not keeping them, they're not behaving in a responsible way vis-à-vis their trading partners and other actors.

One thing I like about it is that it would create an ongoing mechanism for talking about interconnectedness, and that the actions of one country have implications for other countries. And the bigger your country, the bigger your economic market, the bigger your political market, the more policy measures taken in those countries -- think of the United States -- have very big impacts on other countries. And having an ongoing mechanism for having that discussion, for making observations and analysis of that would be a really useful thing.

Too much of policy is domestic, and doesn't take on the international implications. And I'm thinking especially of things like farm policy in this country, which have very big implications when the U.S. is such a big exporter, and yet the international implications of our farm policies are rarely taken on board, or only marginally taken our board in our debate on these domestic policies -- which I think are really international policies. So I really like that.

I think there's a lot of questions about how you would implement and institute that, and there's a lot of debate about that kind of analysis. And looking at farm subsidies, or the cotton case, you have very different analyses and protestations about whether the United States is in compliance or not, whether the United States subsidies have impacts on other countries or not.

So I think the analytical rigor, or, I guess, the analytical scheme, for it would be very disputed. And so that's, I think, a problem in the proposal. And maybe you have comments on how you would resolve that, whether the institute would have credibility. It certainly wouldn't have credibility with all parties. How you manage that I think would be an interesting thing to comment on.

And my last comment is just to thank Chad, and Brookings, and this group for staying with the WTO and these processes, and continuing to invest in them. Because I think we're at a moment in history when there's real challenges to multilateralism, and to multilateral institutions. It's not to say they're going away or disappearing, but we're in a period of dramatic geopolitical and economic change.

And institutions like the WTO will have to change, but also there's some risks involved. And you see new fora for debate emerging. The G8 is becoming the G20. And some of these are welcome, but

there's a real, I think, question about the institutions and platforms by which negotiations and integration will go forward.

And at Oxfam, we really have a strong interest in more inclusive institutions like the WTO, which is a pretty close facsimile of all of the countries of the world, and reasonably good -- although I don't want to overstate the case -- in taking on board non-state actors into the discussion. Whereas other proposals I don't think are nearly as good, and so need to be questioned and challenged about whether they're the right venue.

So I appreciate the investment in the WTO -- make it better rather than abandoning it or denigrating it -- as an institution.

And lastly, to say that in the WTO dispute -- I mentioned that it's scary. I think it's recognized as being one of the stronger mechanisms in international institutions. And as we negotiate big international agreements around climate change and others, it's important to learn from what's in the WTO. There's lots of efforts to try to stick things, other things, into the WTO dispute mechanism -- the idea, because it has areal teeth, maybe we can make it relevant to other issues, while, likewise, taking lessons from dispute mechanisms in the WTO for other important issues of global governance and action. So I think it's very timely to be thinking about this and talking about it in that context.

So I think that's all.

Thanks very much.

MR. BLUSTEIN: Kim?

MS. ELLIOTT: Well, thanks, Paul. And thanks to Brookings for hosting. And thanks to Chad for, I think, a really important and, as Paul said, really very useful book. I mean, there's just an amazing amount of information in this book. And I think it's really important in underscoring the role of enforcement in the WTO, and of the developing countries.

I had some similar reactions to Gawain, in terms of sort of wanting -- any time I read a book that I really like, then I want more. So, either for Chad in his next book, or for someone else, and some of the young folks in the audience doing Ph.D.s or something -- questions around similar things that Gawain raised in terms of, really, pushing more. To what degree is there under-enforcement and what the sources of that under-enforcement.

And so let me raise sort of four questions that came to my mind, and then make a few recommendations at the end that I think are complementary with what Chad recommended.

The first question that came to my mind about, you know, to what degree to we have -- is under-enforcement in the WTO a problem, is that there are a lot -- and Chad knows this well, having worked on the anti-

dumping and countervailing duty and safeguards data base, there are lots of legal exceptions in the WTO. And so, you know, sort of given the range of those legal exceptions that you just sort of have to accept and deal with, sort of, you know, how much under-enforcement is there really?

And connected to that, the second question -- in other words, that there are lots of ways to get around obligations. And maybe that's the core problem rather than under-enforcement and dispute settlement.

And sort of related to that, in terms of the data that he shows in the book of declining numbers of disputes being brought to the WTO, that strikes me as being a sort of a pattern we'd expect to see. On the one hand, you know, after a round you have a lot of new rules -- and Chad says this in the book, you know, you sort of (inaudible) the new system in the case of the WTO and the dispute settlement system starting in '95 and new rules, and so you want to test that system and sort of see. And you end up clarifying the rules as part of that process. And so as the rules get clarified, you'd expect there would be less need to bring more cases.

Secondly, you would hope, out of those cases, you're getting increased compliance, both where countries have tried to push the rules or evade the rules, or where they weren't clear, now you hope that more

countries are in compliance in more sectors. And so, again, less need for disputes to be brought through the process.

Now, having said that, I think when it comes to poorer developing countries, you would expect to see under-enforcement related to lack of capacity among that set of countries. But here again, I'd like to push a little bit more in terms of how much -- and particularly this issue of -- you know, and Chad, again, raises it in the book, you know, these things are costly, not only in political and diplomatic terms, potentially, and in system terms if there's sort of too much enforcement and you end up sort of putting too much pressure on the system, but there are also economic costs. And this is a big part of what Chad addresses in the book to bringing these cases.

And so you want to have some, you know, fairly reasonable expectation of success if you're going to invest the resources to do this. And I just wonder, in terms of kinds of cases that we might expect poorer developing countries to bring, sort of what kinds of violations would you be looking to see, and how likely would be a successful outcome?

And one area that -- because of my recent work, I've been looking at a lot, and that Chad doesn't discuss a whole lot in the book -- are sanitary and phytosanitary standards. I mean, these are -- on the one hand, there have been a few cases that have been successfully resolved

because they involved fairly blatant discrimination against imports. But a lot of the longstanding unresolved cases involve SPS issues. And so, you know, if that's a significant area of under-enforcement for developing countries, you know, is it a good investment of resources?

Similarly, he does address -- and, again, you know, there's so much in this book, I am not going to complain that he doesn't deal with everything. But the lack of retaliatory power as being something that, even if you win the case, can you get it actually implemented? And here again, I think it's, you know, it's important for developing countries to be able to bring these cases and to force the issues, but I do think, again, just in terms of investment of resources there is -- on the one hand, I think there is a lot of evidence that big and rich countries like the United States do comply even when it's a small developing country bringing the case, a lot of the time because they have an interest in the system. They recognize that if they don't comply, then the whole system's going to fall apart.

But then there are the politically sensitive cases, including some of these food-safety cases, where probably for lots of domestic political reasons it's going to be difficult to comply. So again -- and on top of that, or as Gawain pointed out, even in some cases where you have significant retaliatory power, but a politically sensitive issue with Brazil

cotton, or in a lot of U.S.-EU cases -- beef hormones, genetically modified organisms -- you know its, at the end of the day, is that for a poor country a useful way to expend resources or not?

And then, finally, in terms of sort of what are the cases that are relevant for the poorest countries, again going back to the Brazil cotton case, so what's the universe of cases for poorer countries where they can't free-ride on either another developed country, or a larger, more advanced developing country that may be able to bring these cases. So maybe one function for this information gathering is to somehow allow smaller, poorer countries to connect with their larger, you know, somewhat more advanced, with more capacity, other developing countries and get them to bring cases.

And then, finally, in terms of, you know, to the degree that there is, you know, a problem of under-enforcement, I sort of wonder, you know, how much it is an information problem. And Chad talks in the book a lot about, you know, the notifications that are required already by the WTO, the trade policy review mechanisms. These national reports that are already done by the U.S., by the EU, by Japan, maybe Canada, I can't remember, that are identifying the barriers that their exporters face in all countries around the world. And so I suspect that a lot of those barriers,

you know, would also apply to developing country exporters. So they could just -- and these are on the websites, so they can go and get these.

You know, some of the NGO databases include the excellent work that Chad's doing with the anti-dumping and countervailing. So it made me think, well, you know, sort of two things that may be working in existing institutions is there some way to beef up? As Chad rightly points out in the book, there are these notification requirements at the WTO, in addition to the ones he focuses on with anti-dumping, countervail, subsidies. Agricultural subsidies, there's a separate notification. For SPS there's a notification of any change.

So is there anything we can do to beef up those notification requirements? Because, as he points out, they're often not complied with, at least on a timely basis.

So, you know, one of the things I recommended in my book on agriculture was to somehow make those things subject to the dispute settlement. Make them enforceable, the notification requirements. You could have some penalty -- now, this doesn't get to Chad's problem of sort of pre-litigation information but when you get to the litigation phase, if a country hasn't complied with its notification, maybe there's some penalty in terms of, you know, more of the balance of proving their case goes onto

the defendant country—or something. I don't know, we could think about ways to beef up those existing notification requirements, potentially.

And then maybe what we need is not a new institution, but a clearinghouse that actually, you know, a website that links to all of these various information sources that we already have. And then it seems to me that the information that's really needed is more of the legal variety. You know, is -- so you can identify that there's a problem here in terms of getting into a market. Is it really, given, again, all of the legal exceptions to WTO rules, you really need some up-front legal analysis of is it really a violation, and then the political analysis of, "And how likely is there to be compliance?"

So that, then, makes me wonder a little bit about the idea of having a separate institute for the assessment, that is separate from this Advisory Center on WTO law. If what you really need is some advice on whether or not a given problem is really, you know, illegal under WTO rules or not, maybe actually it needs to be more integrated.

But Chad brings up some good reasons why maybe that's not a good idea, but I'd like to maybe push him a little bit on the discussion on that.

And I'll end there.

Thanks.

MR. BLUSTEIN: Okay.

James Durling?

MR. DURLING: I'd also like to thank Brookings for hosting this event, and for Chad for writing a really interesting book. My only regret is that it didn't come out kind of on the eve of the summer so The Washington Post could list it as a must-take-to-the-beach book for summertime reading. There's not much of an opportunity for that now. But this is probably the one audience where people might actually take the book to the beach to read it.

I found the book really interesting. The only caveat I would open with -- and I find myself making this comment often when discussing economic analysis -- is I think it's really important to never underestimate the power of non-economic factors to influence decision-making.

I am struck, as I spend my time going from country to country, working with different countries that are either responding to or contemplating WTO actions, I am struck by how often a decision to go or not go is based on completely non-economic factors. A decision is made for face, because of the political implications. It doesn't matter whether there's going to be an economic consequence over any reasonable timeframe. Or, conversely, a case where the economic argument for

bringing an action is completely overwhelming, but there's some non-economic factor that ends up trumping it.

And I understand the limits of the methodology. And Chad couldn't resist the impulse to have -- you know, identify factors as sub-i, sub-j, sub-k. It kind of comes with the turf. But that was kind of the one, the one caveat.

More fundamentally, I agree with the basic premise of the book. And I found quite compelling his argument that one of the core issues to struggle with is how do you solve what he calls the "stage one problem?" How do you uncover viable cases that might be worth bringing?

And I think Chad analyzed the problem well. He identifies a lot of constructive ways to tackle it. I personally put myself in the camp of the more-pine-cones-are-probably-better camp, because I've also been struck, watching sort of cases unfold in the real world, how often the mere filing of a case, or the prosecution of the case, can actually lead to constructive change.

It is amazing how often there is a kind of a WTO-inconsistent policy in a country, where there are, in fact, people opposed to that policy in the country, but they lost an internal battle. And a WTO case, even at

the early stage, can sometimes completely shift that internal battle within the country about whether a particular policy is a good idea or not.

So even though at the end of the process it sometimes doesn't work, and there are some high-profile cases where people get all wrapped up in a tizzy about it. But if you actually scroll through all the data, all 400 cases, it's amazing how many cases actually lead to constructive outcomes in a way that never caused a brouhaha. It's just the quiet effect of exposing light on the problem and, in doing so, shifting the political dynamics.

I guess I would just offer three additional ways to try and tackle what Chad calls the "stage one problem."

One is, I think people and organizations working with developing countries could probably do a better job at helping developing countries organize their own resources more effectively. And I think there's a tendency in sort of, with those who are working with developing countries to try to create something new, because bureaucratically there's often an imperative to do something new that you can then talk about.

But oftentimes, smaller incentives could have a really huge impact -- something as simple as creating an incentive for different ministries in a country to talk to each other. I've been struck by how often, as I go to a country somewhere else and talk about WTO issues, how

often I'll be in a room, either with lawyers or with economists, and they don't seem to talk to each other in foreign countries any more than we talk to each other here in the United States. So just an incentive to get different ministries to cooperate better.

An incentive to encourage —

MR. BLUSTEIN: Throw pine cones at each other.

MR. DURLING: -- well, if it's true -- or an incentive for a developing country to leave someone in a position long enough to actually learn the job. One of the problems with WTO issues is they're rather complicated. And I'm struck by how many countries -- developed and developing countries -- have internal policies of just rotating officials so fast that no one ever acquires the necessary expertise to really engage with these issues. So something as simple as incentivizing a country to say, "Pick some people who are interested in these issues, let them stay with these issues for a long enough period of time to really learn them."

Or also, find a way to incentivize countries to put as much energy into thinking through WTO issues as they currently are devoting to thinking of ways to use new trade remedies, to use WTO-consistent trade remedies, as a way of dealing with their trade-policy problems.

And I think this is a somewhat disturbing trend. As I travel around the world, I'm struck by how many countries have not only adopted

trade-remedy laws, but have started devoted more and more of their internal governmental resources to staffing and expanding this function. It's kind of a self-perpetuating cycle. You hire government officials to administer these laws. They need to have a job to do, so they basically go around and talk to industries and help them file cases, and encourage them to file cases. And so I think part of this proliferation of developing country use of trade remedies is a response to that.

But I think maybe the best example I can give you of how this has the potential, over time, to be a very worrisome trend is, just last week the government of China announced that it was going to pursue a countervailing duty case against imported automobiles from the United States. Now, they could have addressed U.S. subsidies to the auto industry by pursuing the WTO path -- right? There are WTO mechanisms for attacking subsidies in another country. But they didn't go down that path. They chose the path of filing a CVD case.

And I'm a bit worried that I think we're going to see more of that, and I'm not sure it's a particularly helpful trend. Any incentives to encourage people to use WTO mechanisms rather than trade-remedy mechanisms I think would be a good thing.

The other place where I think we could incentivize people is to incentivize the academic sector. Because I really think there's untapped potential there.

I've been struck, talking with young people, just how much interest there is in international economic issues, the WTO, how the WTO is evolving, the role of WTO in economic development. And if some of that energy could be channeled, it could really help fill some of this information gap.

You're beginning to see some prototypes of that. Some of you may have been getting e-mails from Simon Evenett on behalf of the Global Trade Alert. I think Simon has everyone's e-mail in his database, and so we all get these e-mails.

But it's a really interesting concept, the idea of a group of academics, policy wonks, policy-oriented practitioners, kind of sharing information and dumping it into an internet-based database to spread information about emerging trade barriers. And he even goes so far as to code them, kind of green, yellow, red, based on some very rough assessment of how WTO-consistent they may or may not be.

That, I think, has potential. And if the academics and the students who are interested in these issues kind of channeled their energy, and everyone was channeling in the same direction -- and if all the

countless papers that get written in classrooms, that often do pretty good analysis, if they weren't stuck on a piece of paper in sort of International Econ 101 at Georgetown University -- if that class paper somehow made its way internet, you start spreading that information, you could almost have a Wikipedia-type effect. If everyone interested in these issues took advantage of these emerging infrastructures, I think a lot of information could start spreading more rapidly.

And I think the third group that could be incentivized to play a more constructive role is the private sector, including private law firms. I don't disagree with the analysis. I think I might disagree with the characterization of it being "ambulance chasing." But there is, in fact, active discussion of this phenomenon in the private sector.

Chad correctly points out that a major disincentive is if you find the case, you don't get to bring it. And I can assure you that this happens. I've been personally involved in cases where discussion of a WTO violation, that kind of the case for bringing the dispute was made within a private law firm, and then the developing country passed it off to the Advisory Center. And that is a counterproductive incentive if you want the private sector to help development case for, "Yes, there's a violation that can be pursued."

You may wonder why would the private sector do this? And there really are a lot of non-financial motivations for why a private sector law firm might want to play a role in this process. Reputation effects, very important to law firms. Diversification. A very rational motive for a private law firm would be, "I've done lots of cases in this area, but I want to diversify my practice. I'll do one of these cases pro bono to get experience in an area that I don't currently have experience in."

The pro bono motivation is quite compelling. Lawyers generally believe they have an ethical obligation to provide legal services to those who can't afford them. And I don't think we've really tapped the potential to extend that idea to an international setting in a particular -- in a WTO context.

And, frankly, also just belief in the cause. You would be amazed at how many private practitioners there are out there who just really believe in free trade, believe in the WTO, and would welcome an opportunity to engage constructively. And, in fact, the way I can emphasize this point to you -- and it may be, it's either an encouraging thought or a scary thought, depending on whether you think pine cones are a good thing or a bad thing -- but I've had at least four different conversations with experienced WTO litigators who have been contemplating, playing with the idea, of basically turning their retirement

years into an opportunity to more aggressively do pro bono work on behalf of free-trade causes in the WTO system.

So it's interesting to think about this. The creation of WTO as a specialized area of law is really quite new. So we have a whole generation of young lawyers who have been learning these skills. When they kind of progress beyond their active work years, and are in semi-retirement or retirement, I wonder how many of these people who are playing with idea actually end up pursuing it. And to the extent there's an infrastructure within which they could work -- whether it's joining an existing NGO, or joining some new institute that may emerge from Chad's writing, this book and other books he may write -- I think there's a real opportunity there.

And so for those of us who think there is a constructive role for more WTO disputes, I think if we find ways to align kind of law firm incentives, academic incentives, and NGOs, and if everyone just finds a way to kind of work constructively on specific issues, I think there really is a lot of potential there.

Thanks.

MR. BLUSTEIN: Thank you very much.

Well, I think, I hope we can all agree that this discussion has really benefitted from having three very diverse sorts of experts comment on Chad's work.

I'm going to ask one question which hasn't gotten much attention in the discussion, although Kim raised it, and it is definitely addressed in Chad's book.

And it's sort of the -- I don't know, to the extent there are hot, sexy issues in this issue of whether WTO dispute settlement is fair to developing countries, I think the hot, sexy issue is, you know, what about letting the Antiguas and the Brazils of the world retaliate when the U.S. is balking at complying? You know, why not let them go out and sort of mass producing a whole bunch of copies of Disney films, or Merck Pharmaceuticals or, you know, the sort of intellectual property? You know, wouldn't that get the attention of people in Congress?

And, yes, okay, you know, if the U.S. doesn't want to comply with, or if Europe doesn't want to comply -- you know, and particularly with something like the, because of the political sensitivity involved in complying with the WTO ruling, well, okay, fine. But shouldn't there be some fairly severe consequences of that? And shouldn't we allow small countries that really can't effectively retaliate by shutting off their markets?

And, Chad, you and I had a really interesting discussion about this as I was trying to figure out what the heck I ought to say on the subject in my own book. And I guess my question to you is, could you just talk a little about what the pros and cons are. Because we did a very interesting discussion about that. And, as I say, you do touch on it in the book. And I know maybe now that you're at the World Bank you're not quite so allowed to get quite as enthusiastic as I do about the idea of Antigua going out and setting up a bunch of DVD duplicating machines to retaliate against the United States. But I'm very interested in your thoughts on it.

MR. BOWN: Such a good question.

So the way I think about this is, you can think about DVDs, but let's think about the other idea you raised, which is Merck -- right? So you might have a U.S.-based pharmaceutical that Antigua could produce.

So I should have said at the beginning that now that I'm an employee at the World Bank, that everything that I say now, here, is only my own opinion and does not reflect anybody else's opinion, any institution that I'm working for, or ever worked for, or ever will hope to work for. It's only my own opinion -- so that I don't into too much trouble.

But back to this case of Merck. I think one of the fundamental problems that you'll see is -- so suppose that happens, right,

where you have Antigua, which is -- this is what happened in this internet gambling case, they get authorized to essentially legally violate the TRIPS commitments, IP commitments. So they can -- let's suppose we allowed them to make pirated pharmaceutical product that, you know, are held by patent holders at Merck, or some other U.S.-based pharmaceutical.

Well, it's hard to convince the Novartis and the Roches and the Glaxos and all of the, you know, European-based pharmaceutical firms that had nothing to do with this web gambling dispute that their sales to all the other markets in the world, where now they're not going to be able to sell their, essentially, competing products, because everybody can buy, you know, the really cheap version of the Merck product -- why they should have to suffer as well from Antigua retaliating against the United States.

And I think that's where intellectual property rights retaliation is fundamentally different from tariff retaliation in the WTO system. It's worth pursuing, but I think it's going to run into difficulties for that third-party experience.

And in tariff retaliation -- so if Antigua is just going to raise -- it can't, because it's really small. But if it were big enough and could just raise tariffs on U.S. exports to Antigua, Europeans and all the rest of the world would love that. That's shutting out U.S. producers from their

market and creating a new market opportunity for them. So it has a sort of opposite third-country effect in, I think, ways that are fundamentally different.

So —

MR. BLUSTEIN: Could you get around that objection, though if you said -- to take the Antigua case, for example -- "Antigua is only allowed to see DVDs in the U.S. market." It's allowed to -- it isn't allowed to ship them to Europe and hope the European makers, and it's only allowed to ship DVDs or whatever the product is, of products of companies that are based in the U.S.

MR. BOWN: Well, I mean, I think you're still going to run into the same problem. So you're going to create a strong incentive to want to buy this new Antiguan pharmaceutical product, even within the U.S. market. And at the margin, there's going to be some consumers where, if it was a level playing field, they would have bought the European-produced stuff. And now everybody's going to switch to the cheaper Antiguan-produced. And so they're going to lose sales to the U.S. market. So it just sort of changes the incentives, the third-party effects in a major way.

That's not to say that it couldn't happen, but the political will for that, I think, would be -- it's going to introduce a new dynamic into the WTO system that we haven't dealt with previously.

MR. BLUSTEIN: Okay. We have time for some questions. And I'll ask people to identify themselves.

MS. KRIEGER: Thank you. Two questions -- the first really relating to the whole question of standing before the WTO. An alternative might be to allow private lawyers to engage before the panels, which they now cannot do. It always have to be government representation. And that might -- I'd be interested in your reaction -- be a less costly way than setting up an entirely new venture to bring in more private expertise on some of the cases (inaudible). I don't know. I can think of arguments both ways.

But right now, the only people with standing are, of course, the governments themselves, so they have to have someone on their payroll who knows this stuff. Bringing in the private sector would be much easier if there was a way to do that.

Second question -- why think in terms of relation by DVDs and what have you? Why not, instead, think that if Brazil wins a case on cotton, the damages can be assessed so that there's a tariff on the part of

all the cotton producers against the United States, rather than just those who brought the suit.

Or, going further, all other countries against the United States when, indeed, there's something found where the U.S., or whomever, has been in violation. It seems to me that you could extend the (inaudible), because right now, Antigua, they can retaliate on everything, and put on tariffs on everything, it won't make a difference. But if, instead, when Antigua is found to be in the right on this, when all developing countries, or all countries other than the U.S. will retaliate, it would be a very different thing. You've just changed the nature of the penalty. You don't need to go into this other.

MR. BARFIELD: Claude Barfield, AEI.

First I'd like to say, as with Kimberly, it's going to be weeks before I can absorb all the information that was in the book -- I looked at it over the weekend and I thought, Jesus Christ, this is an assignment for the winter.

Having said that, let me push you a little bit on, basically, the fundamentals of your analysis, or the way you approached this problem was one of information generation. And I would argue that that is -- it's not flawed, but it has to, you have to add to this that this is a highly political and institutional change that you're suggesting.

There are all kinds of questions that come up. In some ways, when you describe the -- I'm talking about the new institution, you describe it, it seems as if it's collecting general information. But the more you look at it, the more the staff is going to be out not to be ambulance chasing, but at least to be gathering information that's very specific to a specific case. And they're going to be in bed, as it were, with a particular government. And the more they do that, the more you're going to get, it seems to me, reaction from other government.

Now, we've done this at a low level with the other legal institute, but this is a major change you're proposing in the way dispute settlement could be handled. And it gets all -- that raises all kinds of, you know, other questions about, you say it's independent, but independent from—I mean, who's going to be funding this? Is it going to be an independent institution from the WTO?

And the other thing that occurred to me was that you talk vaguely about developing countries, but we've spent a lot of time this morning talking about the Brazil sugar and cotton case. I do not think Brazil would be an example of a country that needs a lot of information gathering from others. And where do you cut the line off?

I mean, there are just all kinds of questions about how this works as a political institution. And it is a political institution, as well as an

-- and I would argue, even more than -- an information gathering institution.

MS. HEBEBRAND: Hi, Charlotte Hebebrand from International Food and Agricultural Trade Policy Council. Thanks for a very interesting discussion.

I want to echo something Kim said. I think the importance of monitoring is crucial. So we should think about that pillar of the WTO, and maybe not make such a distinction between information that developing countries versus developed countries need. Because, certainly, I think everybody needs a little bit more information when it comes to -- I mean, I'm most familiar with the ag field, so, you know, domestic support notifications, SDS notifications. I see there's a lot of room for improvement there that would really benefit all WTO members.

The question, of course, then is what's the role of the WTO versus, perhaps, other organizations. The OECD, of course, has played an important role in domestic support. Do we need to think about other organizations that can play that in the other areas?

A quick point on the legal analysis. I think it is very important to provide legal analysis to developing countries. But increasingly, I think it's the technical analysis that we need. You know, it's very difficult for a

lawyer to determine whether a risk assessment is scientifically sound or not.

So in your, in this new institution you envisage, I mean, it seems to me that the scope for technical expertise is huge, whether it's tox regulation or, again, sanitary/phytosanitary. Would it not make more sense to have sort of a standing committee of experts, and then if a case does arise, they could provide some technical assistance on a particular case. Because otherwise, it seems to me, the scope is huge.

And then lastly, let me just play devil's advocate for a little bit. And I don't fully believe this, but since we're talking about ambulance chasing, I do sometimes have the impression that some organizations in developed countries have tried very hard to get developing countries to bring cases.

Now, why is it that developing countries are not bringing more cases themselves? Or haven't, historically? Now, you could say it's that they lack the sort of trade-negotiating capacity to do that, and perhaps we should strengthen that rather than pursue individual cases. But maybe it's also that they have other problems, and maybe more burning problems, than bringing a case to the WTO.

And then that leads me to a question about the role of NGOs. And I really commend Oxfam and Ideas for what they've done, but

I have been to Africa, I've been to West Africa, and I've heard very poor farmers, that have a lot of problems besides U.S. subsidies, say -- believe that this case will solve all of their problems. And it just leads me to think, you know, are we sort of raising unrealistic expectations, and are we not maybe in a situation where the funders of an organization like EDS might one day -- and I think they already have -- say, well, gosh, you know, this was really interesting, but we didn't get anywhere. So let's move on to a new topic.

MR. ORDEN: David Orden, from (inaudible) and Virginia Tech. Just two quick questions.

One, I haven't had a chance to read your book yet, but is there any sense in the book, if you take these 400 cases -- and I don't know how many have been solved, let's say 300 or something -- of what the economic stakes have been, and whether there's been any gain from the solution, just of these cases, let alone this -- I mean, we all recognize there's a spin-off effect, and a lot of things get resolve because of the possibility it will be -- okay.

But even if you just look at the cases themselves, do we have any sense of the cost-benefit? Because we've talked a lot, now, about the cost of bringing these cases, and we've talked a lot, several

examples, where not much has come from them after six or eight years, especially in agriculture.

But, more broadly, if you look at the cases, is there a positive net economic effect from this dimension of the WTO?

And my second question, or point, would be sort of like in the sense like Charlotte said, don't these things have to, in a certain sense, bubble up from the bottom up? Really? And if there are solid enough stakes involved, won't they bubble up from the bottom up?

MR. BLUSTEIN: Okay, Chad do you want to start attacking some of those. And if the panelists also want to weigh in. But I'd ask you to please be brief so that we can maybe get another round of -- there were still a couple of hands up, I'm sorry. I apologize for not getting to them.

MR. BOWN: So thanks all for -- again, to the panelists for the great comments, and also for your questions.

Claude, I agree with you completely that this is a very difficult political task for this entity to do this. I have some proposals in that particular chapter about ways in which one might do it. Certainly, government funding would be very difficult to allow this thing to achieve its mandate, which suggests, you know, Gates Foundation, essentially -- right? With the kind of scale of money that you would need, and

expertise, as Charlotte pointed out, that you would need to do this kind of thing on a repeat basis.

And, yeah, this thing wouldn't be for Brazil. I mean, they can do most of this themselves. But I agree, Charlotte, your point, this requires a lot of technical analysis. I hadn't thought all the way through the SPS and the scientific textual expertise that you need, but certainly it's more than just law -- right? You need economics to understand what's the size of the market there, is this worth pursuing? The politics involved. And then if you're getting into really technical areas of risk assessments, as well, you're going to need hard-core scientists involved, in which perhaps a standing committee of experts makes sense.

David, your question, the economic stakes. So, my own empirical work, I've looked at the question of, you know, what affects the patterns of countries that participate in this kind of stuff? And, not surprisingly, it's economic incentives. So do you have a big stake in the market and is there a potentially big payoff for you.

Now the ex post, you know, kind of program evaluation, cost-benefit, was this worth the effort at the end of the day? To my knowledge, nobody's done that. And it's certainly work that we need to do, and, you know, I could be doing also in my own empirical work.

And I also agree, you know, this needs to bubble from the bottom up. You know, part of it, that's how I came at this. My thought would be, since I really perceive this, looking at the systems, a major problem is information generation, getting more information out there.

All right, there is this question of you hear a lot of stories -- Jim pointed out, right? -- there are these domestic constraints, lack of communication between ministers, lack of communication between the trade ministry and the domestic industry about these types of issues.

Well, one way to help get around that is to just provide more information, get it out there into the public to allow some of civil society and the "supporting cast" to help create these bubble-up incentives to want to do more. And so that, I think, would be an additional set of spillovers and benefits from generation provision as well. It wouldn't just positively affect the exporters and the lawyers.

I think I'll stop there, and then allow the panelists to answer any of the other questions.

MR. DURLING: Yes, I would just -- Ann you asked should private parties have standing.

In the beginning it was a bigger problem than it is now, in that the diplomatic traditions of the WTO were such that a very large number of countries were even reluctant to allow private lawyers to help

them present their case. Pretty much, that has now changed. I would say, with very, very few exceptions, governments are now comfortable bringing in outside advisors to complement their expertise. So the capacity function has largely been addressed.

So we're left with the question, who should have the right to start the process? And there definitely are some advantages to letting private parties trigger the process. But I think that would be a very profound change in the system. Because, right now, the requirement that you at least have to convince some government -- any government in the world -- to put its name behind the cause. And the notion that you couldn't convince any government stakeholder to think this was a good enough case to get on board with, yet the private party could still initiate the case, I think would have really profound political implications.

So it's an interesting idea, but it would be a really, really earth-shattering change.

MR. BLUSTEIN: Yes?

SPEAKER: You haven't mentioned the objections of the countries of the south to all of, to the Doha round and other WTO functions.

Could you say a bit about how they relate to the things that you've talked about this morning?

MR. BLUSTEIN: Question over here?

MR. BAIRD: Hi. Quentin Baird.

My question, I guess, is connecting a couple of things here.

We heard a little bit about the notification obligations, as well, the sort of very technical and in-depth information that's necessary to make the decision to bring a dispute settlement case.

And I'm wondering if, when you're looking at these issues from a developing-country perspective, if they might not be on two sides of this at the same time -- thinking, on the one hand, "If we had more information about the measures that we were facing, we might be able to, you know, make the decision to bring a dispute." On the other hand, if the obligation to be transparent was universal, then we would have to be more transparent about the measures that we impose, and that might not be politically something that we wanted to do.

MR. BLUSTEIN: Okay?

MR. BOWN: So, the first question, on the perspective of the south -- so, you know, when I look at these set of issues, one of the difficulties is, it's difficult to figure out what the perspective of the south is. Because developing countries amongst them have quite divergent interests. You know, even when you come to Doha -- right?

So some of them are net food-importing countries, and perhaps the last thing they want is for the U.S. and the Europeans to get rid of agriculture subsidies, because that is going to mean that, you know, that the prices that they face for food are going to rise. Obviously others are agricultural exporters, and which they want the opposite. So it's difficult to, I guess, say that.

Now, there are competing proposals within the WTO for reforms to the dispute settlement process that the developing countries have put forward. And I describe some of those in the book. And some of them are a little bit at odds with what I've talked about in here. And I, frankly, don't quite understand them myself. Because I think of, you know, in some instances what they're asking for in terms of they are -- one of the proposals is a separate fund within the WTO to help cover the cost of litigation in the dispute settlement. To me, that seems like it's already being provided. And so I think, I'm not sure what the problem is. A lot of developing countries don't feel as though the existence of the Advisory Center sufficiently met their litigation cost needs. But it's not clear to me what it is that they propose would do that's better or different. So there's some just divergence there.

On Quentin's question, I agree completely. And I think, you know, one of the points of emphasis of this proposed information-

generating institute that I've proposed is, you know, we need to focus on under-analyzed areas of market access, and that includes within developing countries.

We know a lot about, already, what happens in the United States and in Europe. What we don't know is a lot of these other countries that aren't quite as transparent, and developing-country exporters, they also want to know about those countries.

So I agree, this may be a political difficulty. I think, you know, we shouldn't be surprised to see, going forward into the future, increasing numbers of disputes being filed against developing countries. We've seen that trend already in the data. And we shouldn't be surprised that, in fact, this is the, you know, Gawain's point on throwing pine cones is perhaps better than, the best way to put this. It's nice to have something that's so valuable that people want to fight over it.

So at some level, we shouldn't be discouraging disputes against, you know, being filed against developing -- especially when they're in the interests of exporters in other developing countries.

But, yeah, that's the critical trade-off, I think, that you've identified (inaudible).

MR. KRIPKE: Thinking about some of the obstacles to developing countries' becoming more engaged, there's a lot of discussion

here, there's one thing I've found confusing, and still don't really understand is why developing countries form blocs for negotiating purpose -- the G33, G20 and many others, but don't seem to do that in litigation.

And I thought there were several cases where there was a mutual interest of many different countries to bring cases. And it seems that it didn't happen. And I've talked to some litigators about it who say, oh, it's completely -- it will never happen. Countries have to have individual representation, they have to take separate cases.

And if you look at Brazil and Canada both taking separate cases against U.S. subsidies, I find that bizarre. Why wouldn't they get scale, and together, and bringing cases together. Those aren't, I mean, Brazil and Canada aren't the best examples of developing countries, but I don't understand why the dispute system doesn't seem to encourage collaboration between blocs.

So, to me, there's something structural going on but, like I say, I don't really understand it. But it seems to me that that would, if you could accomplish that, that might solve some of the problems of scale and cost, because it would be shared.

And also retaliation, because if you can group together a bunch of small countries, together they have some retaliatory power -- potentially, at least more than they do as individuals.

And the last thing I'll just say on the -- I think the IP dimension to retaliation is very intriguing. Of course, everyone's interested in it. And there are lot of complications, there's a lot of, I think, questions and ambiguity about the jurisprudence, and I think we're kind of undeveloped frontier that the Brazil case is bringing out some new, you know, jurisprudence in this area.

It is one area where you do begin to think about some leverage from even some pretty small players in the system. So therefore it has a lot of potential as a way to bring leverage. But there are so many questions about, I think that we need several more panels, and maybe another book on it.

MR. BLUSTEIN: Okay. Well, on that note, we are over time.

So I hope you'll join me in thanking Chad and the panelists for a very stimulating discussion.

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