

Global Governance Institutional Bias, U.S. Forum-shifting Power, and the Future of the W.T.O: New Insights¹

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Abstract

In recent years, the subsequent failures of multilateral trade talks have led many analysts to believe that U.S. bilateralism would substitute for WTO multilateralism. This paper disputes this argument by shedding new light on the interaction between the world economic powers, particularly the U.S., and international organizations.

Using an analytical framework that draws upon Bathwater & Drahos' (2000) international forum-shifting theory, this paper argues that the interaction between the world economic powers and international economic organizations has been in a state of ebb and flow. Specifically, the fluctuation traces directly to the heterogeneous institutional makeup of global economic governance in terms of agenda-setting, rule-making, and rule-enforcement, and the U.S. superior capability of international forum-shifting.

This analysis suggests that the U.S. will shift its agenda to the multilateral venue that provides better payoffs in terms of agenda-setting, rule-making, and primarily, in terms of rule-enforcement. We further argue that in the area of trade and trade-related issues, WTO is the U.S. ideal negotiation fora.

Evidence to support our arguments is derived from a basic theoretical model and retrospective analysis of forum-shifting of intellectual property rights (IPR).

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"strong states use institutions, as they interpret laws, in ways that suit them"
-Kenneth Waltz³

1. Introduction

Although countries conflict over trade issues has been a constant reality of multilateral trade system, the character of the conflict in 1999 and 2003 World Trade Organization (WTO) Ministerial in Seattle and Cancun, respectively, appears to be significantly different and extraordinary. This comes as major developing countries from within WTO led by Brazil and India have grown in importance and were internally unified on several trade and trade-related issues and emerge as the major opposition to developed countries' positions (Sevilla, 2003). Most importantly, conflicts in Seattle and Cancun disrupted dramatically and ended without consensus. Similar scenarios occurred in Trade Negotiations Committee (TNC) meeting in Port-of-Spain, Trinidad and Tobago and the 8th summit of the Americas in Miami. The U.S. failed to pass its agenda in TNC meeting regarding Free Trade Area of the Americas (FTAA) due to a fierce opposition from Brazil, the largest economy in South America supported by Argentina, Venezuela and Mercosur countries. Later, the eighth summit of the Americas in Miami ended a day early with no comprehensive deal too as the U.S. and Brazil-led coalitions were at an impasse. The U.S. was forced to compromise to prevent another disastrous failure of trade talks.

The subsequent failure of the U.S. to achieve its desired agenda in trade talks in Seattle, Cancun, and then Miami has led many analysts to believe that the U.S. bilateralism would substitute for WTO multilateralism. Indeed, the statement of Zoellick (2003), U.S. Trade Representative, in the wake of Cancun failure makes the point:

For over two years, the U.S. has pushed to open markets globally, in our hemisphere, and with sub-regions or individual countries. As WTO members ponder the future, the U.S. will not wait: we will move towards free trade with can-do countries (p. 3).

³ Waltz (2000, p.24).

What further underpin this perception are the unilateralist and bilateralist tendency of the current U.S. administration of George W. Bush.

The U.S. Bilateralism impulse is undeniably taking place in variety of trade issues, and it will likely increase following the latest suspension of the Doha Round' multilateral trade negotiations of the WTO on July 24, 2006, but the likelihood of harming or substituting WTO multilateralism is unlikely.

The U.S., the world hegemonic power⁴, has been constantly pursuing, since the birth of the General Agreement on Tariffs and Trade (GATT), a multidimensional trade tactic that entails the use of a combination of institutional strategies: bilateralism, regionalism, and multilateralism, to achieve its economic and political ends. The proportional mix of strategies reflects the hegemon state goals at specific point in time. The relative emphasis that each tactic receives depends on the issue area and the political resources of each venue, and varies with the hegemon preferences and with the hegemon' domestic and international political and economical environment. At one extreme, the U.S. multilateralism impulse dominates its trade policy agenda. At some other time, the U.S. engages predominantly in regional trade agenda. For instance, soon after the end of the World War II, the U.S. strongly established and endorsed ambitious multilateral trade agenda and led the way in for subsequent series of multilateral trade negotiations for trade liberalization in a variety of trade issues (Goldstein, 1993; Chen & Liu, 1997; Ito & Krueger, 1997). Alternatively, in the 1980s and throughout the 1990s, the U.S. aggressively embraced regionalism (Bhagwati 1992; Frankel 1997; Mansfield & Milner, 1997). Since the adoption of free trade area (FTA) with Canada in 1989, the U.S. has been expanding its regional trade agenda to Mexico with the North American Free Trade Agreement (NAFTA) in 1993; Latin America with the Free Trade Area of the Americas (FTAA), Europe with the

⁴ The question of the U.S. hegemony is well documented in international relations literature (Gilpin, 1987; Keohane, 1984; Kindleberger, 1973; Krasner, 1976, 1983). There is no denying that the U.S. has been in several instances constrained nationally and internationally in its ability to attain its objectives. But it remains the world' most powerful state with unmatched potency and superiority in international system. Most importantly, and for the purpose of this paper, the U.S. is the only nation capable of exercising strategies of forum-shirting with any frequency (Braithwaite and Drahos, 2003).

proposed Trans Atlantic Free Trade Area (TAFTA), and Asia Pacific with the Asia-Pacific Economic Cooperation (APEC).

Although these multilateral options are available, the U.S. has never abandoned the bilateral or even the unilateral paths to achieve its foreign economic agenda. For instance, as the U.S. deficits worsened in 1980s, “[b]ilateral talks on tariff concessions and other market access issues became regular tasks of the USTR (U.S. Trade Representative)” (Chen & Liu, 1997, p. 4).

Yet within the framework of institutionalized cooperation, which is the focus of this paper, the U.S. pursued several institutional strategies to achieve desirable goals and agendas. U.S. institutional tactics include strategies such as forum-building, forum-expansion, forum-reform, forum-blocking⁵, forum-selection, and forum-shifting. For instance, the U.S. has played a prominent role in reforming and expanding the GATT to include the General Agreement on Trade in Services (GATS) and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), blocking the creation of the International Trade Organization (ITO), launching the WTO, withdrawing from the United Nations Educational, Scientific, and Cultural Organization (UNESCO), choosing the WTO to deal with electronic commerce, and shifting several issues from one venue to another.

Such dynamic in the U.S. foreign economic policy has been made possible by global governance institutional bias and the U.S. considered capabilities of international forum-shifting and international agenda-setting. Any full understanding of global trade policy must take account of these three variables.

The organization of this paper is as follow. Section I briefly overviews the concepts of global governance bias, international agenda-setting and international forum-shifting. Section II examines the leading researches that have addressed the choice of law-making venues within the context of global economic governance. Section III provides alternative explanations of US choices of global policy venues.

⁵ Braithwaite and Drahos (2000) argue that “forum-blocking” is a strategy used by the powerful state to ensure that “an international organization does not become a forum for an agenda that threatens its interests” (p. 564).

Section V present the case of U.S. forum-shifting of international property rights standard-setting from the WIPO into the GATT/WTO during the 1986-94 Uruguay Round. Finally, I conclude with some comments on how forum-shifting and WTO multilateralism will be affected by the new changes in the world's political, economic, and social landscape.

2. The Core Concepts

2.1. Global governance institutional bias

It refers to the systematic variation between international organizations in terms of resources, structure, and procedures that tend to allow some issues in while repress others and encourage an outcome over another. We distinguish between three incidences of bias in global governance system: agenda-setting bias, rule-making bias, and rule-enforcement bias. Each of these biases, which will be discussed in detail later in this paper, corresponds to three interconnected institutional processes: agenda-setting, rule-making, and rule-enforcement.

2.2. International forum-shifting

It is the capacity (i) to shift an agenda from one organization to another, (ii) to abandon an organization or (iii) to pursue the same agenda in more than one organization (Braithwaite & Drahos, 2000, p. 564). We therefore distinguish between three incidences of forum-shifting: One arises when the hegemon uses existing organizations, another occurs when the hegemon choose to design an entirely new organization to shift the agenda at hand, and the third happens when the hegemon choose to withdraw from an organization without shifting the agenda to an alternative organization. In the latter case, the hegemon might choose to rejoin the organization when favorable conditions are met. For instance, the U.S. withdrew from the UNESCO in 1984, but rejoined the organization in 2003 after substantial institutional reforms were implemented.

2.3. International agenda-setting

It is the capacity to choose, redefine and control the terms of global trade agenda. The term “agenda” refers to “a general set of political controversies that will be viewed at any point in time as falling within the range of legitimate concerns meriting the attention of the polity” (Cobb & Elder, 1972, p. 14). At the heart of agenda-setting process lies four capabilities: (i) issue framing or the faculty of an actor to frame or define an issue from its own perspective and conceptual framework; (ii) issue linkage “which is a common negotiation strategy that involves combining multiple issues to change the balance of interests in favor of negotiated agreement” (Davis, 2004, p. 153); (iii) control of “agenda access points”, that is the “sites by or through which actors couple problem definition, policy alternatives, and global salience” (Livingston, 1992, p. 312); and (iv) issue control or the aptitude of an agenda setter to control the discourse of an agenda within specific organizational structure. According to Schattschneider (1960):

[A]ll forms of political organisation have a bias in favour of the exploitation of some kinds of conflict and the suppression of others because organization is the mobilization of bias. Some issues are organized into politics while others are organized out (p. 8).

International trade politics scholars have rarely capitalized on the interaction between those three variables to explain international trade negotiation outcomes. This paper is an attempt to fill this gap in the literature. It examines how variation in global governance system, in terms of constraints and expected payoffs, drive the hegemon forum-shifting behavior. While international organizations favor the U.S. in some cases, they also disfavor the U.S. in some other cases. Given such institutional bias, the U.S. engages in a search for the institutional negotiating arenas that would secure its economic agenda and guarantee its interests. Thus, the ultimate negotiation outcome is determined by the political resources of international regimes and is dependent upon the trade actors’ power to set their agenda and shift negotiations to

specific institutional decision-making arena that fit their needs. Consideration of international forum-shifting and the political resources of global economic forums can lead to hypotheses about the patterns of U.S. forum-shifting behavior and also the future of international trade regimes.

The few existing studies on forum-shifting and forum-selection usually focus on the agenda-setting and bargaining processes of international negotiations to explain forum-shifting or forum-selection behavior. Braithwaite and Drahos (2000) contend that international organizations regulatory framework, especially their voting and decision-making structure are the key factors behind forum-shifting. Davis (2003) argues that forum-selection decision depend on the political characteristics of the trade agenda. This paper extends the institutional analysis beyond agenda setting and rule-making (pre-agreement processes) to account for rule-enforcement mechanisms (post-agreement procedures) in explaining the hegemon forum-shifting decision. We argue that the most powerful state will shift its economic agenda to the international venue that provide better payoffs in terms of agenda-setting, rule-making, and, primarily, in terms of rule-enforcement. We further argue that in the area of trade and trade-relate issues WTO is the hegemon ideal negotiation fora.

3. Institutional Variables and Forum-Shifting: The Literature

3.1.Literature Review

The most impressive literature dealing with the issue of international forum-shifting is that of Braithwaite & Drahos (2000) and Davis (2003). Drawing on several case studies, Braithwaite and Drahos (2003) introduced the concept of forum shifting strategy, which is a form of power that “only the powerful and well-resource can use” (p.565).

Using the metaphor of a game, Braithwaite and Drahos (2003) consider the global governance system as an “incentive structure” or an ultimate playing field in which each state competes to win an edge over its rivals. One of the characteristics of the system is the diversity of its institutions. In this system, “each international organization has different rules by which it operates and so offers different games and

different payoffs.” (p. 565). In any game, states’ outcome payoffs are the “the rules and modes of operation of an organization (particularly its formal and informal norms on voting)” (p. 565). Strong game player with abundant resources, given the heterogeneous structure of the system, will select the game or the forum in which it has better prospect to yield the greater payoff. Although forum-shifting strategy would limit the actions of weaker players, it could still “give weak actors as well strong actors an opportunity to progress the same or different agendas, particularly where that forum, as in the case of WTO, allow actors to trade deals over a range of subject-matters” (p. 565).

Braithwaite and Drahos (2000) argue that only the U.S. has been applying such strategy to pursue its foreign policy agendas. Still, the attempts have not always been successful. In the 1980s, for instance, the U.S. successfully shifted intellectual property (IP) agenda out of the World Intellectual Property Organization (WIPO) into the GATT and later the WTO. However, the U.S. failed in two occasions to forum-shift labor standards from the ILO, first into the GATT/WTO. In the case of intellectual property, Braithwaite and Drahos (2000) argue that the different system of voting between WIPO and GATT/WTO played an important role on U.S. successful attempt to draw trade-related aspect of intellectual property under the jurisdiction first of the GATT and then the WTO. In the case of labor standards, Braithwaite and Drahos (2000) blamed U.S. failure to push labor standards under the umbrella of WTO on tripartite structure of the International Labor Organization (ILO). In this structure government, employers, and workers delegates participate directly in formulating ILO decision making through the Governing Body and the International Labor Conference. This structure, argued Braithwaite and Drahos (2000), “gave the ILO a bedrock legitimacy in the politics of international organizations, a legitimacy that enabled it to withstand the effects of forum-shifting in a way that UNCTAD could not” (p. 567).

Braithwaite and Drahos (2000) examine the key factors behind U.S. successful and failing attempts by analyzing several cases (see Table 1, *Summary of U.S. Forum-*

Shifting Cases, on p.10) where U.S. adopted forum-shifting strategy. The cases repeatedly revealed:

- the importance of multilateral cooperative arrangements to U.S. interests, particularly the WTO, still bilateralism remain an option when negotiations are totally deadlocked;
- the prospect of cooperation and better negotiation outcomes as a result of forum-shifting;
- the U.S. support of decision-making by consensus as illustrated by its constant attempts to focus its advocacy effort on WTO, where decisions are made by consensus (Braithwaite and Drahos, 2000, p. 565); and
- that the U.S. forum-shifting and advocacy effort has been principally oriented toward trade-related policies, especially environmental protection, labor rights, and intellectual property.

Davis (2003) examined forum-selection with respect to resolving trade disputes between states and achieving trade liberalization. Considering interest groups lobbying effort, Davis (2003) points out that the variation on international institutions system in term of bargaining resources, and number of participants and the level of their relationships, shape government's forum-selection behavior and negotiation outcome. She distinguishes between four levels of negotiations dealing with trade in the postwar era: GATT/WTO multilateral trade rounds, dispute settlement panels, especially that of GATT/WTO, regional trade associations, and bilateral negotiations. Davis (2003) suggested that the confluence of interest groups and government preferences draw politically sensitive trade topics and those subject to heavy lobbying effort into GATT/WTO multilateralism. Instead, less contentious trade issues are left to bilateral and regional negotiations.

3.2. Shortcomings of existing literature

Davis (2003) and Braithwaite and Drahos (2000) provided a meaningful, but yet incomplete, overview of the interaction between international institutions and state behavior. Braithwaite and Drahos (2000) demonstrated the potential of forum-shifting strategy by mainly focusing on the regulatory structures of global institutions especially the voting incentive and decision-making structure. However, they neglected other

features of global governance that shapes the U.S. forum-shifting behavior and made the WTO its favorable negotiation fora.

Table 1. Summary of U.S. Forum-Shifting Cases

Agenda	From	To	Outcome
Monetary crisis following 1971 suspension of dollar convertibility	G-10	IMF (C-20)	Success
TRIPs	UNCTAD ; WIPO	GATT; WTO	Success
The principle of deregulation for telecommunications	The International Telecommunication Union (ITU)	WTO (GATS)	Success
Labor Standards	ILO	WTO	Fail
Competition Code for Transnational Corporations (TNCs)	UNCTAD; UN Center on Transnational Corporations (UNCTC)	WTO ; OECD	Success (UNCTC was abolished under U.S. pressure)
Air Transport Regimes	The International Civil Aviation Organization	WTO	In Process
Sea Transport	UNCATD	The Consultative Shipping Group	Success (established a new forum)
Nuclear Safeguards	The International Atomic Energy Agency	The Nuclear Suppliers Group	Success (established a new forum)
Food Standards (the standards of the Codex Alimentarius Commission-Codex)	The Codex	WTO	Success
Regulation of pharmaceutical drugs	World Health Organization (WHO)	Bilateralism	Fail (U.S. failed to globalize U.S. standards)
Free Flow Principle	UNESCO	U.S. withdrew in 84	

Source: Adapted from Braithwaite and Drahos (2000).

The major shortcoming of Braithwaite and Drahos (2000) argument is that they believe that decision-making by consensus is favorable to the U.S. and is the main catalyst of U.S advocacy effort in GATT/WTO. In fact, the consensus practice, as many analysts argue, at least theoretically, is typically valuable to smaller and developing countries because each member is granted equal voting weight. Indeed, consensus “is of value to smaller countries as it enhances their negotiating leverage- especially if they are able to form a coalition-in the informal consultations and bargaining that precede decision-making” (Hoekman & Kostechi, 2001, p. 57). From this perspective, one might argue that the IMF and the World Bank, in which voting power is unequally distributed, are of greater value to the U.S. than the WTO. Consider, for instance, the WTO Seattle Ministerial in 1999, the U.S. failed to secure a consensus for its agenda particularly the inclusion of labor standards due to a fierce

opposition from a unified coalition of developing countries. This indicates that consensus is hard to reach especially in situations where interests are irreconcilable. As a result, the U.S. and other major economic power revert to alternative forms of consultations than full-membership negotiation to achieve consensus. This was seen in the “Green Room” consultations, which are held in exclusive and unofficial behind-the-scene meetings. These consultations usually involved a selected group of WTO members, especially major developed countries and influential developing countries. For instance, during the WTO ministerial meeting in Singapore, Charlene Barshefsky, U.S. trade representative, strongly defended the Green Room process. She said: "I reserve the right to use a more exclusive process to achieve a final outcome" (as cited in Elliot, 1999, p.3). Critics charge that these meetings are undemocratic and exclusionary and only serve the interests of developed countries.

In the case of global labor standards, Braithwaite and Drahos (2000) blamed the failure of U.S. forum-shifting attempt on ILO tripartite structure and voting rule⁶. They interpret the U.S. “failure” to draw global standards under the umbrella of WTO as a sign that, tripartism is an institutional safeguard against the use of forum-shifting. As a result, they suggest that “perhaps tripartism ought to become a constitutionalizing principle for international organizations” (Braithwaite and Draho, 2000, p. 573), and advocate that non-governmental organizations (NGOs) be granted an active participation in the decisions-making processes of international institutions. There are three major flaws to this claim. First, the U.S. forum-shifting drawbacks occurred not in the ILO, but in the WTO. In addition, the strong challenge to the U.S. position to use trade sanctions to enforce labor standards comes from a unified and adamant coalition of government representatives of developing countries, seeking comparative advantage through cheap labor. In addition, many NGOs and

⁶ Tripartism is a process of cooperation and social dialogue in which each member state is represented, at the International Labor Conference and the Governing Body, by an equal number of delegates, two from government, one from employer organizations, and the other from worker organizations. All votes are equal irrespective of the demographic weight of a member state and “voting rules are drafted in such a way that each group has the same number of votes even if they do not have the same number of representatives on the relevant committee (of the international labor conference)” (Braithwaite and Drahos, 2000, p.573).

international civil society organizations were supportive of the U.S. position. Second, forum-shifting is not an end in itself, but a strategy to force compliance⁷ with labor standards. It all comes to the outcome and the U.S. has partially achieved that objective when all members of the ILO adopted the Declaration on Fundamental Principles and Rights at Work in 1998. This declaration compels members to comply with the main core labor standards, irrespective of their ratification of the ILO fundamental Conventions. Third, although it is true that there is still no framework within WTO to enforce labor standards, the agenda-setting battle over labor standards between developed countries, led by the U.S., and developing countries might be far from over. Time is an important factor in multilateral trade negotiations and developing countries' success in the WTO could be short-lived.

It is important to note that agenda-setting is a long-term endeavor and so is forum-shifting. Consider, for example, the case of international property rights. The U.S. dissatisfaction with WIPO enforcement capacity of intellectual property led to a long term agenda-setting which began in early 1980s and culminated with the signing of the TRIPs in 1994. In the words of Charlene Barshefsky, the U.S. Trade Representative, following the 1996 WTO Singapore Ministerial (as cited in Khor, 1996):

[W]e must recognize that issues of workers' welfare and worker rights are absolutely part of the trade debate, whether we like it or not ideologically [...] When we have such an important subject, it will always remain an important subject in the WTO (p. 1).

Indeed, in 1999 WTO Ministerial, the U.S. challenged the 1996 Singapore declaration and was determined to incorporate the core labor standards in the WTO. In general, Braithwaite and Drahos (2000) overemphasize the role of rule-making and overlook two major dimensions of international negotiations that we argue shape forum-shifting behavior: international agenda-setting and rule-enforcement.

⁷ Many argues, however, that trade-labor linkage is an excuse for protectionism

Davis' (2003) approach major shortcoming is its failure to acknowledge alternative multilateral institutional structure beside the WTO. Davis (2003) implicitly assumes that negotiations of new agreement on a trade issue or trade-related issues such as agriculture and services fall under the jurisdiction of the GATT/WTO and regional and bilateral trade negotiations. Thus, limiting states choices of negotiation forum to these venues. We know from the prominent work of Braithwaite and Drahos (2000) and the historical accounts of international trade negotiations that this assumption is not valid. For instance, during the 1960s and the 1970s, there was a significant divide between the U.S. and developing countries over the proper forum to discuss, set, and monitor intellectual property rights. Many developing countries preferred the WIPO, while the U.S. preferred to bring the issue into the GATT multilateral round. In another example of North-South divide, the U.S., along with the European Union, preferred to bring the issue of monitoring global core labor standards out of the ILO into WTO. Developing countries oppose such attempts claiming that the ILO is the competent body to deal with labor standards. Also, in the 1990s, the U.S. along with other economic powers, selected several multilateral venues to discuss liberalization of investment regimes including the Organization for Economic Co-operation and Development (OECD), WTO, IMF and the World Bank. Also, in terms of trade dispute there are alternative dispute settlement institutions to the WTO dispute settlement system (Busch, 1999, p. 2). Busch (1999) cited several cases where venue members prefer to adjudicate their disputes before a preferential trade agreement (PTA) dispute settlement body such as NAFTA.

Another major shortcoming of Davis (2003) argument is that it overlooks the role of the enforcement bias in the choice of institutional structures to manage trade and trade-related issues. Although she acknowledges the significance of enforcement mechanisms to “address the fear of noncompliance” (Davis, 2003, p.3), she fails to account for the differences between multilateral institutions in terms of enforcement capacity. In the case of NAFTA, for instance, she claims that “there is strong equivalency between dispute resolution systems under the WTO and NAFTA with

many trade topics covered by both” (p. 2). Although, the WTO and NAFTA have some overlapping subject matters and most importantly overlapping jurisdiction, there are several instances of systematic legal differences between the two (Straight, 1995). In addition, WTO rule-enforcement procedures proved to be more efficient than NAFTA’s general dispute settlement mechanism to enforce international trade commitments (OECD, 2003, p. 1-2).

4. Institutional Variables and Forum-Shifting: Alternative Explanations

The existing literature on venue shifting mainly emphasizes the rule-making bias of the institutions and says relatively little about the agenda-setting and the rule-enforcement biases. International economic organizations vary widely not only on rule-making, but also on the prospect of agenda-setting and the extent of rule-enforcement.

We may view international negotiations as series of dynamic processes in which nation-states both cooperate and conflict; each process is subject to several institutional constraints that shape its outcome. Also, each process outcome is contingent upon the previous processes outcome. First, the agenda-setting processes in which nation-states compete to force issues, important to their interests, into the agenda of a specific international venue. Eventually, the final outcome will be either issue denial or issue setting. For instance, the U.S. has been successful in putting new issues such as intellectual property protection on the agenda of GATT/WTO. However, it failed to introduce social clauses into their agenda. The second process is negotiation in which nation-states bargain to win endorsement for their proposals on the settled issue. Ultimately, the negotiation terminates with compromised outcomes or a deadlock. The third process is enforcement which takes place once nation-states reach an agreement. Enforcement could be full or limited. When enforceability is limited, nation-states deviate from the final negotiation outcome. When there is full enforceability, there is full compliance with the original terms of the agreements.

Thus, the influence of institutional variables on nation-state actions stretches along three interconnected dimensions: agenda-setting, rule-making, and rule-

enforcement. One outcome is encouraged over another in a manner as to imply a bias. Although, for each nation-state the best venue is whichever yield the best payoff in terms of agenda-setting, rule-making, and rule enforcement, only the U.S., as indicated by Braithwaite and Drahos (2000), exercises venue-shifting in the global governance system with any frequency (p. 565).

We will start by looking at some of the most important features of agenda-setting, rule-making, and rule-enforcement that contribute to forum-shifting.

4.1. The Prospect of Agenda-Setting

4.1.1. Access Point

Although the hegemon wield great influence on which issues international organizations attention is focused, international organizations do have influence on the course, intensity, and outcome of the international agenda-setting process. Their complex institutional processes, norms, and rules, which vary from one type of venue to another, shape how economic policy stakeholders pursue their advocacy efforts and how they define and advance their agenda.

The outcome of international agenda setting depends on the issue proponents' preferences and agenda building strategies that, in turn, depend on which venue is targeted for agenda-setting activities. Ultimately, the agenda is either denied or settled on that specific venue. Thus, some venues are more receptive than others in terms of agenda-setting.

4.1.2. Settling the Agenda for Negotiation

Once an issue is allowed access to the negotiation table of a particular venue, agenda stakeholders engage in another agenda-setting battle surrounding how the issue on the agenda will be negotiated. One approach is to negotiate the issue independently of all other issues in the agenda. This is called "issue-by-issue" or "one-by-one" negotiation. Another approach is to link the issue to other issues on the agenda and discuss all of them as one package in a single negotiation. This is called "issue linkage", "package deal" or "cross-sector linkage". But not all international economic venues support and sustain issue linkage. According to Davis (2004),

“[t]here are multiple venues for trade negotiations, and the institutional context influences the potential for effective issue linkage” (p. 154-155). She points out that while package negotiation structure has been sustained and formalized within the GATT/WTO framework since the Uruguay Round (UR), it is more difficult to maintain in other institutional contexts including bilateral and regional trade negotiations. Davis (2004) further argues that cross-sector linkage has been pursued as a strategy to overcome pressure from domestic interests and to advance trade liberalization (p. 154). Others argue that cross-sector linkage, particularly with trade, has been pursued as a mechanism for enforcement. For instance, the major trading powers attempted the debt-trade linkage (Bulow & Rogoff, 1989; Rose & Spiegel, 2004) and the labor-trade linkage (Brown, Deardorff, & Stern, 2002) to enforce government compliance with debt and labor contracts.

4.2. Dynamic of Rule-Making

4.2.1. Managerial Resources

In addition to their variation in terms of agenda-setting prospects, international economic venues differ in management and organizational resources. This encompasses the venue artificial and formal structure; its leadership and staff; its budget; its special internal and external arrangements such as special committees on a particular issue and the venue cooperation with other organizations; and so forth. For instance, in terms of governing bodies, the WTO is run by a General Council whose membership consists of all WTO members while the International Monetary Fund (IMF) or World Bank are managed by executive boards or interim and development committees (Blackhurst, 1998, p.7). Another instance of managerial difference between international venues is the process by which venue leadership is selected. While the selection process for the heads of the IMF and the World Bank is generally based on an informal agreement between Europeans and the U.S., the appointment of a WTO Director-General is much more formal (Adaba, Caliri, Foster, Hanfstaengl, & Schroeder, 2003, p.6).

4.2.2. Decision-making

Once an issue gets on the policy agenda of an international forum, it is finally open for bargaining and negotiation. Negotiation is a give-and-take process, which consists of a “sequence of actions in which two or more parties address demands and proposals to each other, whatever particular steps it may include in a given case” (Odell, 2000, p. 10). The parties involved in the negotiation will either look for mutually beneficial outcome or attempt to compel or manipulate the other side to abide by their bargaining position. Eventually, the negotiation outcome will be a win-lose, or a win-win, or even a lose-lose scenarios⁸.

Many institutional factors influence the negotiation outcome. These include decision-making rules (unanimity or majority); voting systems (one member-one vote, block voting, ...etc); membership (number of participants and criteria of participations); formal and informal channels of communication and deliberation that precede decision-making; bargaining power capabilities of the participants; openness to interests group pressures; coalitional bargaining between parties involved in the negotiation; the way issues are settled for negotiations (“issue-by-issue” or “package negotiation”); and so forth. These factors vary from one institutional context to another. As a result negotiation outcomes may vary triggering forum-shifting behavior.

4.3. Extent of Rule-Enforcement

International organizations also differ on their enforcement and compliance approaches as well as their capacity to enforce agreements. For instance what distinguishes WTO from other international economic organizations is its dispute settlement mechanism. As Hoekman and Kostecki (2001) indicated, “[t]he dispute resolution mechanism of the WTO is a unique feature of the institution [...] Most international organizations rely on diplomatic means to resolve disputes” (p. 74).

⁸ “Any notion of gain or loss implies some reference point, and negotiation analysts use two different reference points at different times. One is the value of the status quo prior to bargaining [...] By this definition an outcome can be described as win-win, if both parties come out better; win-lose, if one comes out better and one worse than before; lose-lose, if both parties come out worse; or zero-sum” (Odell, 2000, p. 39).

We might distinguish between two dimensions of enforcement at the institutional level: explicit and implicit enforcement mechanisms. The explicit form of enforcement directly relies on formal rules and procedures to ensure compliance. The implicit form engenders indirect deterrence mechanisms such as institutional cross-sector linkage. For instance the U.S. and other major economic powers attempt to connect non-trade issues such as debt, labor, and environment standards to trade as a mechanism of enforcement. If the contracting parties do not abide to the final agreements on non-trade issues, the other parties might threaten to impose trade sanctions within the legal framework of the trade venue. Such institutional trade-linkage tactic provides more legitimacy to nation-states to enforce compliance compared to the controversial application of unilateral coercive measures. The enforcement aspect of cross-sector linkage is exercised when issue “A” is used to reinforce agreements and contracts on issue “B”. “A” reinforces compliance by the threats of its tacit disciplines. To the extent that “A” reinforces and secures compliance with the terms of agreements of “B”, the cross-sector linkage between issue “A,” and issue “B” has enforcement and coercive power.

We have identified three key dimensions of international negotiations that we believe induces forum-shifting, that is agenda-setting, rule-making, and rule-enforcement. In each dimension the hegemon use its powerful resources to promote its goals within the stipulation of the institutional setting in which international negotiation occurs. However, in any international venue, the terms of agreements on any negotiation are merely documentations and a set of promises that could be broken unless they are reinforced. Therefore, we propose that out of all the various institutional variables, the most important of these are compliance and enforcement variables.

To illustrate the institutional effect of global governance institutional bias on U.S. institutional choices, we will examine, next, U.S. forum-shifting of international property rights standard-setting from the WIPO into the umbrella first of the GATT and then the WTO during the 1986-94 Uruguay Round.

5. The Case of Intellectual Property Rights

This particular non-trade issue fell initially under the jurisdiction of several multilateral agreements and under the umbrella of the UN specialized agencies (WIPO, UNESCO, and ILO). But, in the early 1980s, IPR ascended to higher levels of global attention and become the target of aggressive international agenda setting by the U.S. attempting to bring it onto the agenda of GATT/WTO, regional trade associations, and bilateral trade agreements, thus, expanding their mandate beyond trade.

5.1. U.S. International Agenda-Setting

In the 1980s, international protection of intellectual property rights becomes high in U.S. foreign policy agenda (Benko, 1987). The prominence of the issue was triggered by several developments in the 1980s. This period brought several challenges to the global competitiveness of U.S. industries and was marked by the emergence of new economic powers that threaten U.S. competitive advantage in the production of intellectual goods (Benko, 1987; Sell, 2003). This was reflected in the erosion of U.S. share of the global high-tech market, which declined significantly and was largely bypassed by Japan (Guerrieri & Milana, 1991). Concurrent with these developments, the U.S. International Trade Commission (USITC) published a report in February 1988, which echoed a growing concern of U.S. companies from intellectual-property violations in foreign countries which they blame for worldwide losses of revenue that would range from \$43 billion to \$61 billion in 1986 (U.S. International Trade Commission [USITC], 1988, p. 145). This report also found that research-intensive industries and entertainment suffered the largest losses in worldwide revenue due to infringement of their IPR (USITC, 1988, p. 28). Eventually, these industries responded by launching a large scale lobbying campaigns to influence domestic and global policy-making of intellectual property rights⁹. They succeeded not only in bringing the issue of foreign protection of IPR to salience in U.S. domestic political

agenda, but also in pushing U.S. government to institutionalize the issue globally. Globally, they were able to form a powerful subsystem that includes government officials and industry leaders, notably from the U.S., European Community, and Japan (Drahos & Braithwaite, 2002). They also succeeded in persuading the U.S. government to institutionalize intellectual property as a trade issue (Matthews, 2002; Sell, 2003). Other powerful voices especially from the conservative think-tanks join the IP-based industry lobbying efforts and called on the U.S. government to set its new international agenda on intellectual property away from the WIPO and in the GATT (Drahos & Braithwaite, 2003).

Ultimately, the U.S. government moved aggressively to force compliance with intellectual property rights. Domestically, efforts were taken to institutionalize greater protection of intellectual property rights. The major development in this regard was the establishment of the Court of Appeals for the Federal Circuit (C.A.F.C.) in 1982 to hear complainants arising from violations of patents laws, the 1984 Trade and Tariff Act, the 1984 Trademark Counterfeiting Act, and the 1984 Patent Law Amendments Act. Globally, the U.S. pursued a myriad of strategies to force foreign countries, especially those with inadequate foreign protection of intellectual property, to institutionalize and accord protection to intellectual property rights. These include bilateral and multilateral negotiations with the prospect of unilateral trade retaliations to enforce compliance. Multilaterally, the administration of intellectual property rights fell, primarily, under the jurisdiction of the WIPO. In this multilateral context, U.S. strategy consisted of moving decision-making authority on intellectual property rights from the WIPO into the GATT. We should take a deeper look how global governance bias influences U.S. choice of global policy venues.

5.2. Agenda-Setting Bias

There are substantial differences between the WTO and WIPO, differences that may reflect to some extent U.S. choice to set its intellectual property agenda in GATT/WTO. Rather than exhausting all possible differences, we will concentrate on

⁹ For more on this issue, see Braithwaite and Drahos (2003) and May and Sell (2006)

three salient institutional features that contribute to forum-shifting: issue-framing, cross-sector issue linkage, and cross-sector trade-offs.

5.2.1. Issue Framing

The two institutions have different mission and serve relatively different purposes. Examination of the history of the WIPO reveals that economic and social development has, to a greater extent, shaped its mission to promote the protection of IP throughout the world. This is also reflected on its vision that “IP is an important tool for the economic, social and cultural development of all countries” (WIPO, 2006). On the other hand, the GATT, and its successor the WTO, were primarily driven by the neo-liberal free trade¹⁰ philosophy which emphasizes the promotion of international trade as a vehicle for growth. Concerns such as development and diffusion of knowledge were seemingly secondary. These differences between WTO and WIPO played an important part in the North-South conflict over the conceptualization of intellectual property rights and the choice of venue for negotiation. Clearly, the development objectives of the WIPO were at odds with the narrow agenda of the U.S. and other major industrialized countries which provide for the protection of their commercial self-interests without due regard of the developmental interests and public health concerns of developing countries. The developed countries, led by the U.S., conceptualize IP as a trade issue arguing that “that the failure to provide adequate intellectual property laws was tantamount to a barrier against free trade” (Halbert, 2005, p.2). Accordingly, they perceived the GATT as the legitimate venue to formulate and implement policies on intellectual property rights. Developing countries led by India, Chile, and Brazil disagreed. This was well manifested in India’s communication to the Negotiating Group on Trade-Related Aspects of Intellectual Property Rights on July 10, 1989¹¹:

¹⁰ It should be noted, however, that the GATT/WTO do allow some form of protectionism that contradict its basic tenet of free trade such as safeguard measures, anti-dumping and countervailing duties.

¹¹ MTN.GNG/NG11/W/37 - Standards and Principles Concerning the Availability, Scope and Use of Trade-Related Intellectual Property Rights - Communication from India (10 July 1989)

India is of the view that it is only the restrictive and anti-competitive practices of the owners of intellectual property rights that can be considered to be trade-related because they alone distort or impede international trade. [...] The essence of the system (of intellectual property protection) is its monopolistic and restrictive character; its purpose is not to "liberalise", but to confer exclusive rights on their owners (p.2).

In particular, these countries highlighted the need that “[a]ny principle or standard relating to intellectual property rights should be carefully tested against the touchstone of the socio-economic, developmental, technological and public interest needs of developing countries”¹². It is not surprising, then, that developing countries insisted that the “proper sphere for intellectual property standards is not GATT but the World Intellectual Property Organization.”¹³

5.2.2. Cross-Sector Issue Linkage

GATT and WIPO also differ with respect to the potential to link issue-areas. Betts (2006) cited several institutional dimensions, within an international regime, along which issue-linkage and issue- embeddedness may occur. These include norms, legal frameworks, mandates of organizations, and collaborative partnerships between organizations that could be mobilized or invoked to connect issue-areas (Betts, 2006, p.8-9). From this perspective, one might argue that the WIPO by virtue of its norms, UN mandates¹⁴, and collaborative partnerships with other UN specialized agencies connects intellectual property rights to development and transfer of knowledge. On

¹² *Id.*

¹³ MTN.GNG/NG11/W/61 - Communication from Chile (22 January 1990).

¹⁴ Article 1 (Recognition) of the 1974 Agreement between the United Nations and the World Intellectual Property Organization states that:

The United Nations recognizes the World Intellectual Property Organization (hereinafter called the " Organization ") as a specialized agency and as being responsible for taking appropriate action in accordance with its basic instrument, treaties and agreements administered by it, inter *alia*, for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development, subject to the competence and responsibilities of the United Nations and its organs, particularly the United Nations Conference on Trade and Development, the United Nations Development Programme and the United Nations Industrial Development Organization, as well as of the United Nations Educational, Scientific and Cultural Organization and of other agencies within the United Nations system.

the other hand, the GATT by virtue of its principle of free trade is prone to issue-linkage that connects trade to any other issue-areas perceived to be trade-related such as intellectual property rights. There are also provisions in the GATT that could potentially justify this links. Consider for instance GATT Article XX: d (General Exceptions) which exceptionally provides for measures to protect patents, trade marks and copyrights. The U.S. frequently cited Article XX (d) in a number of GATT dispute settlement cases to justify the application of trade sanctions under Section 337 of the 1930 U.S. tariff Act against countries which were allegedly infringing U.S. patent law. In some instances, the GATT dispute system ruled in favor of the U.S.¹⁵. Evidently, the U.S. would prefer the GATT because the linkage between trade and intellectual property rights carries an implicit enforcement power or the threats to impose trade sanctions in response to violations of IPR.

5.2.3. Cross-Issue Trade-Offs

Whereas WIPO concentrates on IP issues, GATT has overtime broadened the scope of its responsibilities and mandates even beyond trade. While this allow, to some extents, cross-sector linkage, it also offers the opportunity to engage in cross-issue trade-offs as a bargaining tool. For instance, in the case of intellectual property rights, cross-sector tradeoffs might take place by offering concession on trade issues important to developing countries such agriculture and textile, in exchange for progress in TRIPs negotiations (Hoekman &Kostecki, 1995, p. 153).

5.3. Rule-Making Bias

In addition to their variation in terms of international agenda-setting prospects, the GATT and WIPO differ in size, resources, and decision-making procedures. This organizational duality was an important determinant of why the U.S. chooses the GATT as the intellectual property rights lawmaking venue.

¹⁵ See GATT Panel Report, United States – Imports of Certain Automotive Spring Assemblies, L/5333, adopted 26 May 1983, BISD 30S/

5.3.1. Size & Power Distribution

While the WIPO membership is open to all nation-states members of the UN, the GATT's membership during the Uruguay Round was limited to a smaller number of countries, "so the United States felt better able to use its clout at GATT" (Sell, 1998, p. 137). Overtime, the size gap between the two institutions has been lessening as more and more countries joined the GATT/WTO. Yet, the discrepancy in size between developing countries (majority) and advanced countries (minority), in both institutions, was not a strong determinant of IP agenda-setting and negotiation outcomes. In fact, it was power distribution and bargaining strategies which were of importance. For instance, during the Uruguay Round, the U.S.-led coalition of industrialized countries was much more effective and unified than the numerically superior developing countries front. In fact, developing countries block was disintegrating and many countries broke ranks due, primarily, to U.S. unilateral and bilateral pressures.

5.3.2. The Secretariat's Agenda

This is a probably an additional element that could have contributed to some extent to forum-shifting of intellectual property rights. Sell (2003) concluded from her interview with GATT personnel that the GATT secretariat was more than willing to serve the OECD agenda out of fear of being marginalized (p.20). On the other hand, WIPO secretariat was much more concerned with balancing the polarized positions between developing and developed countries regarding intellectual property rights. This was reflected in the WIPO secretariat's reluctance to "make a policy decision regarding WIPO's participation in the (GATT) negotiations" (Yambrusic, 1992, p.91). Eventually, the WIPO joined the GATT deliberations, probably, to prevent further marginalization.

5.3.3. Expertise

This is certainly one area that guaranteed "the survival" of the WIPO as an active international organization and accelerated its downfall in the enforcement of intellectual property rights. Whereas the GATT/WIPO has nearly no expertise in the

management of IPR, WIPO has enjoyed a strong reputation in that regard. Yet, in terms of enforcement the GATT enforcement machinery was much more effective than any enforcement at the WIPO (Helfer, 2004, May, 2007). It is not surprising, then, that the U.S. turned to WIPO for expertise that will guide the GATT/WTO in implementing the TRIPs agreement.¹⁶

5.3.4. Budget

While the GATT/WTO gets most of its financing from individual contributions made by its members in proportion to their shares of international trade, the WIPO derives most of its income from the IP services it provides to businesses. The GATT/WTO contribution formula has rendered their budget dependent to some extent on developed countries, especially the U.S. The WIPO income, however, “has allowed the WIPO to maintain some partial independence” (May, 2007, p. 37). Yet, the WIPO reliance on businesses as a source of income makes it vulnerable for their advocacy efforts (Sell, 2003, p21).

5.3.5. Decision-making structure

Interestingly both the WIPO and the GATT/WTO have equal voting structure that is based on “one-country, one-vote”. This structure should give, in principle, the numerically superior developing countries a voting power over developed countries. Yet, developing countries rarely use it to their advantage. In fact, both institutions have rarely recourse to voting. Instead they typically work on consensus-based approach to negotiations. In the GATT/WTO, consensus is usually sought via informal means which literally marginalize many developing countries (Toye & Toye, 2004, p. 292). Although informal and controversial, these consensus-building approaches are officially recognized and encouraged by the WTO¹⁷.

¹⁶ 4 International Trade Reporter, Current Reports (BNA) 1359 (Nov 4, 1987).

¹⁷ (World Trade Organization [WTO], 2007, p. 104-105)

Conversely, WIPO's consensus-building approaches are, relatively, more transparent and formal¹⁸. This gives developing countries some bargaining power in the WIPO.

5.3.6. NGOs Participation

Because GATT/WTO is considered contracts between governments, NGOs were not allowed to directly participate in the forum intergovernmental meetings and decision-making. On the contrary, WIPO offers a number of NGOs and intergovernmental organizations official observer status. The participation of NGOs would certainly have some influence on agenda-setting and negotiation outcomes and ultimately on U.S. forum-shifting behavior. The ILO's tripartite structure is illustrative of this fact¹⁹.

5.4. Rule-Enforcement Bias

From the viewpoint of TRIPs negotiation, pre-TRIPs enforcement problems were the main catalyst of forum-shifting. The change in venue was facilitated by the differing in enforcement approaches and capacities between the WIPO and the GATT.

5.4.1. Enforcement & Review Mechanisms

WIPO has administered²⁰ a number of international agreements governing the protection of IP, specifically the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property. Yet, the U.S. was not a party of many of these agreements although they were intended to protect intellectual property rights, primarily because these agreements were at odds with U.S. domestic laws or interests (Benko, 1987, p. 5) and also because the U.S. was not fully satisfied with their enforcement capacity. In terms of enforcement, the U.S. was deeply apprehensive of the International Court of Justice and the infringer' countries courts which forms the basis of foreign protection of

¹⁸ In the last few years, however, the WIPO secretariat was criticized for its management practices including consensus-building approaches and allegations of bribery and corruption.

¹⁹ See Braithwaite and Drahos (2000, p.222-255)

intellectual property rights under the Paris Convention administered by the WIPO²¹. Consequently, the U.S. considered Section 337 “the only means of enforcement of United States patent rights against imports of products manufactured abroad by means of a process patented in the United States”²². Indeed, the U.S. held that Section 337 was legally justified under GATT Article XX: d (General Exceptions).

In contrast to the WIPO, the GATT enforcement mechanisms and dispute settlement procedures were a lot more effective and they would further get enhanced by the TRIPs agreement which promises robust review of countries’ implementation of IP laws and vigorous enforcement of intellectual property rules (Helfer, 2004, p. 22). Ultimately, the U.S. took advantage of cross-issue linkage between trade and IP and moved to activate and energize GATT/WTO enforcement and review machinery to ensure compliance with intellectual property rights on a global scale.

5.4.2. Standardization

This is another significant feature, highly relevant to enforcement, on which the WIPO and the GATT/WTO differ. Unlike the WIPO various conventions, the TRIPs agreement has been more effective in standardizing the various IP national laws.

6. Conclusion

Through this paper, we reviewed that the U.S. choice of institutional decision-making venue to pursue its TRIPs agenda depended to a large extent on what international regimes have to offer in terms of agenda-setting, rule-making, and rule-enforcement payoffs. At the outset, the GATT/WTO multilateralism triumphed over WIPO multilateralism and substituted U.S. unilateralism. U.S. Forum-shifting has extended GATT/WTO mandate to include TRIPs, but altered WIPO role in the management of intellectual property rights. Moreover, the TRIPs case demonstrates that U.S. pre-UR aggressive unilateralism was a punctual strategic choice and not a

²⁰ Assisted by other UN specialized agencies, specially the UNESCO the ILO, in the administration of the Geneva and the Rome Conventions.

²¹ See Hoekman & Kosteci (1995, p. 148) and GATT Panel Report, United States Section 337 of the Tariff Act of 1930, L/6439, adopted 7 November 1989, BISD 36S/345.

continual tendency in the sense that the U.S. used it, primarily, to multilateralize the protection of intellectual property rights. Indeed, once the issue was multilateralized, “the WTO put an end to aggressive unilateralism” (Wijkman, 2003, p.264). In addition, U.S. unilateralism lacked international legitimacy and was considered illegal by many members of the GATT including U.S. allies. This was apparent in 1987 dispute filed by the European Economic Community (EEC) against the U.S. concerning the application of Section 337 of the Tariff Act of 1930. The GATT Panel ruled in favor of the EEC, but the U.S. blocked the adoption of the Panel report. Shortly, though, the U.S. reconsidered its position and “decided that effective-resolution procedures were more important to U.S. trade interests than continuing blocking of Panel Report” (Yambrusic, 1992, p. 49-50).

What about bilateralism? The U.S. also has relied on bilateral (and regional) agreements to enforce compliance with intellectual property rights, especially when multilateral negotiations were progressing slowly or deadlocked. Although these agreements have shown some positive results in terms of enforcement of intellectual property rights, they were too limited in scope (number of countries; issues covered; enforcement mechanism; ...etc) to advance U.S. global IP agenda. Additionally, U.S. pre- and post-UR bilateralism has been largely intended to lay the ground for multilateral negotiations than surrogate it. According to Drahos (2003), “[b]ilateral agreements are also being drafted in ways to ensure that developing countries are integrated into multilateral IP regimes with maximum speed” (p.7).

Nevertheless, as we go forward in the 21 century, U.S. forum-shifting behavior will likely be shaped by the new changes in the world’s political, economic, and social landscape. In the pre-Uruguay Round, private interest groups and their subsystem dominated the global trade policy process relatively unchallenged. But the situation has changed ever since as new players start to challenge the traditional subsystem for influence in global economic governance. Those players include not only non-state actors, but also some nation-state governments opposed to the U.S. agenda. The

²² GATT Panel Report, United States Section 337 of the Tariff Act of 1930, L/6439, adopted 7 November 1989, BISD 36S/345.

collapse of multilateral trade negotiations in Seattle in 1999 and the Doha Round negotiations in 2006 illuminate these new trends. Whereas the U.S. forum-shifting of intellectual property rights in the 1980s was in response to well-coordinated lobbying efforts by private interest groups, U.S. forum-shifting attempts of social issues in the 1990s were primarily pushed forward by developed countries' social advocates. Again, WTO multilateralism was the target of strong U.S. advocacy efforts. Besides, these changes in the global policy process landscape are further complicated by the continuous dynamic in global economic governance biases. For instance, the agenda-setting, rule-making, and rule-enforcement biases in global IP governance that led to the triumph of WTO multilateralism in the 1980s are clearly not the same today. Nevertheless, the U.S. would certainly continue to exploit those biases and institutional diversity to pick the right venue for its global agenda. As Ikenberry (2003) astutely put it, the U.S., "is not rolling back its commitments to foundational multilateralism, but it is picking and choosing among the variety of multilateral agreements being negotiated today" (p. 538-539). In this context, the WTO, by virtue of its superior enforcement capacity, will continue to provide the most effective framework for US advocacy and forum-shifting efforts. In fact the centrality of enforcement to the U.S. is well captured by Charlene Barshefsky (1999) in her testimony before the Senate Finance Committee on WTO. She stated:

The rule of law has advanced, as the strong dispute settlement system created by the Uruguay Round has allowed us to improve enforcement of the trading rules significantly. Since the creation of the WTO, we have filed more cases than any other member, and have a very strong record of victories or favorable settlements in the cases we have filed (p.2).

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