

lawyer and theorist Joseph Weiler, as "part of the standard vocabulary of court watching".³

Trade scholars tend to attribute this pattern of evolution as being due to deepening "integration": as trade barriers fall, sharper price competition causes states to fall back on non-tariff measures to protect domestic commercial interests. Trade rules then necessarily reach "inside the border" to root out these measures. In so doing, these trade rules can start to affect even measures that were not erected for protectionist purposes—which are conceded, perhaps somewhat grudgingly in the case of the trade policy community, to be "legitimate": Sylvia Ostry's "system friction". However, many economists' paradigm allows them to interpret differences in domestic laws and practices as not being due to democratic choice but as mere departures from the most efficient way to organize society. If trade rules reach in and force tax regimes into line with the most efficient international regime, they would argue, so much the better.

In making such interpretations, trade scholars and economists more generally are simply echoing the well-rehearsed arguments established by the free traders critiquing the mercantilists. And if they are right, we are seeing not so much the convergence of law and economics in trade, but rather the passing of the torch from economists as the advocates of free trade to the lawyers—implicitly, the role that economics can play in establishing a liberal international trading order has largely been played or, put another way, there is little powder that economists have not spent. The remaining task is to ensure that the gains made by application of economic principles are not eroded and that the liberal trading order is not undermined, a task that falls essentially to the legal domain.

But I am not convinced that this interpretation is correct.

First, at the microeconomic level, the organization of society features an interplay between economics (especially in terms of the incentive structures which characterize a socioeco-

³ J.H.H. Weiler, "The Rule of Lawyers and the Ethos of Diplomats: Reflections on the Internal and External Legitimacy of WTO Dispute Settlement", 35(2) *Journal of World Trade* 2001, 191-207, 193.