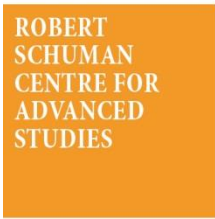




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Unilateral Liberalization within the GATT/WTO System

Joseph Michael Finger

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Abstract

Will the liberal international trading system be extended by building it into a global public good through the ceding of authority over trade control instruments to a supra-national authority? Or will we see a bottom-up process, propelled by the work of millions of entrepreneurs who partner up across borders, their efforts facilitated by cooperation through organizations such as the WTO? I argue that the latter interpretation is more descriptive of the extensive liberalization by developing countries in recent decades. The future international trading system will not be one of supra-national sovereignty, but one in which no national government imposes more than minimal restrictions on the freedom of its citizens to engage in economic transactions with citizens of other countries. (The world economy will not be made in the image of the European Union.) In support, I draw on recent research on liberalization in Latin America.

Keywords

Trade policy, WTO, political economy, global trading system.

The past is never dead. It's not even past.

William Faulkner

Introduction*

The “Motivational Framework” for the contributions to this volume begins by contrasting trade policy reforms in the 1980 and early 1990s with efforts toward further reform in the last decade or two.

- “whereas the action in the 1980s and early 1990s was mostly unilateral, with some countries ‘using’ trade agreements/GATT as a mechanism to lock in/motivate reforms,
- in the last 10 years or so ... more effort has been put into reforming through the mechanism of trade agreements (i.e., on a quid pro quo basis).”

The framework adjudges that while much had been achieved unilaterally, more recent attempts to liberalize through reciprocal negotiations “[have] not been very successful--certainly not in the WTO context [and] you can argue that regional deals have not done much better in generating significant liberalization.”

The framework then suggests that the overall theme of the volume could be something along the lines of "21st Century Trade Policy -- Back to the Past?"

The theme is indeed suggestive, my aim in this essay is to build on it in a particular way. I will elaborate the point that “unilateral reforms” – reforms not made by negotiation and acceptance of an international agreement – can be reasonably interpreted as part of the WTO system.

More broadly, I will call attention to national decision processes for trade policy, and to how the reformers that drive national liberalization use the WTO rules and procedures to advance “unilateral” liberalization. A liberal international trading system is one in which GATT/WTO principles of governance are incorporated into national management of trade policy. It is not one in which international rules are policed by a supra-national authority.

I will draw on recent research on Latin American trade reforms to illustrate these points.

“Unilateral” does not mean separate from the GATT/WTO system

Much of contemporary analysis has been in the frame of thought that Kyle Bagwell and Robert Staiger label “the political economy of trade reform.” One of the key premises of this approach, they point out, is that:

Most trade-policy decisions that governments face today arise in the context of a variety of international commitments that must be considered; hence, the study of commercial policy in international trade has in effect become the study of trade agreements, in which the GATT/WTO plays a central role. (2010, 224)¹

* An essay prepared for a volume of essays 21st Century Trade Policy: Back to the Past? edited by Bernard Hoekman and Ernesto Zedillo to honor Patrick Messerlin on the occasion of his retirement from Science Po, Paris.

¹ A broader social science explanation for this presumption might include the attractiveness/romance of studying international negotiations and the availability of Nash-Dixit bargaining models. Peter Bauer (another voice from the past) sometimes reminded development economists that “The poor are a gold mine!” Today he might say, “The WTO is a gold mine!”

Harry Johnson divided economists into three categories:

1. those who write theory papers,
2. those who write policy papers,
3. those who administer policy, i.e., work for the government.

To these three we should add a fourth:

Regarding the Latin American liberalization experiences my colleagues and I have studied over the past decade,² this statement is both descriptively incorrect and analytically misleading. Liberalization was not fashioned through the process of reciprocal bargaining but through national processes in which reform leaders were able to change the domestic political economy of trade policy so that it supported liberalization. How these reform leaders used international negotiations to support the reform process is an important part of the story.

The same applies to the application by Latin American governments of GATT/WTO rules. e.g., on antidumping and other trade remedies. These governments were not bargaining over the content of these rules. When the reforms were put in place all except Mexico were GATT contracting parties and hence had already accepted (and sometimes ignored) the international law obligations of those rules. They were using the rules – as they existed – as part of the national politics of closing down the plethora of ad hoc mechanisms that had accumulated and to restructure domestic policy-making institutions to ensure that the philosophies and interests that supported the ongoing reforms would have a voice in the management of pressures for protection that might arise in the future.³ How reform leaders used international rules to support the reform process is another important part of the story.

A principal conclusion from the Latin American studies is that trade policy reform has been at its core a national decision. To think simply of WTO as a forum at which Members “decide” to reduce trade restrictions or as a set of rules specifying what a Member can and cannot do overlooks a good deal of what makes the WTO system work.

Voices from the past

Another indication that the past is not yet past relates to two points, taken from two of my intellectual heroes of a prior generation. One of these is from Bela Balassa, who, in his path-breaking study of trade policy in developing countries, observed that “the existing system of protection in many developing countries can be described as the historical result of actions taken at different times and for different reasons. These actions have been in response to the particular circumstances of the situation, and have often been conditioned by the demands of special interest groups.” (1971, xv)

Starting from such an observation, “reform” is not a matter of substituting one textbook strategy for another – e.g., export-oriented development replaces an import substitution strategy. To presume that what is in place is a coherent strategy is to give away a major part of the case against it. As Balassa pointed out, policies in place often have no overall purpose or logic. Achieving coherence – meaning simply, discipline with respect to any overall strategy – is perhaps a greater challenge than choosing one strategy over another. The history of Argentina’s trade policies shows that Prebisch’s “dependencia” theory came after Juan Peron’s economic ‘policies’ were in place, not before. In the intuitionist perspective that I am finding more and more valuable, one of the old truths is that *Academic scribblers draw more from madmen in authority than vice versa.*

Had Balassa allowed the policy situations he sought to reform to call themselves “coherent strategies” he would have been giving up a key part of his argument.⁴

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4. those who staff funding agencies – to whose perceptions in the end we all succumb.

² Finger and Nogués 2006 covered Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico and Peru. A follow-up study, Baracat et al 2015, covered Peru and Argentina.

³ More generally, several Latin American governments attempted to move governance away from *cortoplacismo* toward a greater degree of *previsibilidad*; stability of expectations about the rules of the game and about agreed procedures for changing these. (Lowenthal 2011) Among regional leaders, Alejandro Foxley, Chile’s former Minister of Economy and of Foreign Affairs explains such a vision in his address to the Conference “Gobernabilidad y Desarrollo 2009”(Asunción, Paraguay, 2009), at <http://www.hacienda.gov.py/web-hacienda/pub003.pdf>.

⁴ A lesson from developing country experience may be that developing country (and developed country) governance cannot avoid corruption/capture of import substitution policy instruments. Free trade – as textbook economics – might be

The other point I draw from Robert E. Hudec. In much of his work Hudec framed the GATT/WTO agreements as commitment by participants to apply only approved methods of trade control, and to subject these controls to a long-term process of discipline through reciprocal negotiations.⁵ In the language of mathematical programming, Hudec's view might be thought of as the logical "dual" to the more familiar view of the GATT/WTO system as a process of negotiating trade disciplines.

How the GATT/WTO system supported the domestic politics of eliminating the plethora of restrictions that Latin American countries had accumulated was an important part of trade reform there. Most of these countries had in place instruments for a protection seeker to choose among, often administered by different ministries or sub-ministries. Adopting GATT-sanctioned trade remedies facilitated the closing down of these instruments; taking them on one-by-one would have been impossible.

"Locking in" is about domestic institutions

Hudec's perspective leads to one of the important conclusions of our studies in LA: For a country to use the modern value-chain economy as a vehicle for development, WTO rules and other policy disciplines must have operational content in national institutions. Recourse, say, to overcharge of a customs duty through the exporting country's rights under WTO tariff bindings would take years, and thus would be of no commercial value either to the exporting company or to the importing company. Likewise for misuse of other trade controls – those the GATT/WTO system allows and those it does not.

The Argentina case brings out the negative side of this point; it demonstrates that accepting GATT/WTO legal obligations does not lock them in as national policy.⁶

Argentina, in becoming a charter WTO Member in 1995, accepted all of the obligations of the Uruguay Round Agreements. Furthermore, under the Argentine constitution, such treaties are self-enacting, become part of the Argentine legal system.⁷ Even so, these international law obligations have not prevented the administrations of Presidents Néstor Kirchner and Cristina Kirchner from imposing a highly restrictive trade regime, primarily through a return to "off-the-books" restrictions applied through processes not sanctioned by the GATT/WTO system. They are the sort of ad hoc measures against which Balassa warned, many having no formal existence in Argentine law or regulation and no identifiable fingerprint in Argentine administrative records.

Baracat et. al. (2013) provide many examples, document such practices as far back as 2003. An example is that shipments of books were not released from customs until Argentine book companies presented the government with business plans showing how they would modify their product lines so that all books written or edited in Argentina could and would be printed in Argentina. A common

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imperfect, but it avoids this governance problem. This interpretation speaks against the value of 'policy space' as a policy argument. Balassa might interpret it as an argument for freedom to create the sort of mess he found prevalent in the 1970s, when he began his work. Winston Churchill might assert that free trade is the worst trade policy, except for the others that have been tried. (Since writing this I have found a similar expression in Martin Wolf's book on globalization, though Martin generalizes to "the market economy. (2004 xii))

⁵ e.g., in Hudec 2011, p. 119-120. Kennedy and Southwick (2002) provide a bibliography of Hudec's work.

⁶ I will not argue from this example that Members do not comply with WTO rules. Other evidence shows that they generally do. The case of Argentina does however suggest that the explanation for this compliance lies deeper than the simple weight of international law.

⁷ The GATT/WTO agreements are not self-enacting in all Members. For example, under the United States constitutional structure, "accepting" a new trade agreement involves Congress changing US law and regulations, e.g., those for applying technical standards or antidumping measures, to make them consistent with the new agreement. (Though the Congressional act is usually explicit that if there remain differences, US law comes first.) One should not presume that everybody else does just what the US does, other countries' constitutional structures do things differently. Jackson et al 1984 examine such differences.

element in the actions was that the eventual release of imports depended on reaching agreement with the government on commitments to countertrade, to substitute in the future domestic products for previously imported ones and sometimes to make investment in domestic facilities.⁸

Not until 2012 did a WTO Member (the EU, joined by several other Members) enter a complaint under the WTO dispute settlement process. The informality of Argentine practices and procedures complicated the WTO judicial process. As there was no journal record of the Argentine restrictions, the eventual Panel and Appellate Body investigations had to draw on information from news reports, and sometimes government press releases for evidence. Part of Argentina's response to the legal challenge was that the investigation presented no evidence from Argentine law or regulation that the practices in question existed.

The Panel and the Appellate Body reports were adopted in January 2015 – finding against Argentina. The WTO dispute settlement web page informs that the EU and Argentina have agreed that until 31 December 2015 would be a “reasonable period of time” for Argentina to bring its practices into conformity.”⁹

If Argentina by then does not satisfy the complaining Members that it has brought its practices into conformity, the dispute settlement process will take up the determination of appropriate retaliation. In sum, illegal import practices in place at least since 2003 are still in place as of this writing (August 2015) and will not be subject to WTO-authorized action until well into 2016.

Peru: Entering the global economy with confidence

When Lester Maddox was governor of Georgia (1967-1971) someone asked him for his views on prison reform. Governor Maddox replied, “If we are going to have better prisons, the first thing we will need is a better class of prisoner.”

Alberto Fujimori was president of Peru 1990-2000. When asked for his views on trade policy reform, President Fujimori replied, “If we are going to have better trade policy, the first thing we will need is a better class of trader.”

The above paragraph is a dramatization of an important point: exposure of domestic business people to the competition and opportunities of international markets will lead to economic advancement only if the local business community sees themselves up to it.

Alberto Fujimori became president of Peru in the context of one of the most severe economic and political crises of the country's history. Fujimori was not elected on a liberal platform, but during the election campaign of 1990 candidate Vargas Llosa's liberal message was no longer regarded as a rationalization for big business and became, instead, a legitimate argument in favor of the national interest. Fujimori's lack of political ties or debts, his practical way of perceiving things and the situation of emergency led him into the liberal path. (Webb et al 2006 elaborate)

President Fujimori drew extensively on the Asian example to build the political momentum of reform. As President, he paid strong attention to the relationships with the Pacific Basin economies. At his initiative the government used participation in APEC (Asia-Pacific Economic Cooperation) meetings to provide Peruvian business leaders opportunities to network with Asia business leaders. He took Peruvian business people to such meetings hoping they would come away thinking as boldly and as optimistically as the Asians they met.

⁸ Baracat et. al. (2015) analyze these as the output of the “informal sector of government,” the WTO Panel and Appellate Body reports on the Argentina cases label them “unwritten measures.”

⁹ At https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds438_e.htm Accessed August 12 2015.

Alejandro Toledo, who in 2001 replaced Fujimori as president (Valentín Paniagua served seven months as “President of Transition Government” after Fujimori fled Peru in 2000) was similarly taken up in the reforms. One astute Peruvian observed, “Toledo had not many alternatives. It was either push the correct/publicly-acclaimed green button or the disaster red button.”

Alan Garcia, in his first term as president, 1985-1990, had supported protectionist policies. Peruvian reforms had taken hold by the time he was elected a second time, in 2006. This time he voiced a buoyant attitude toward Peru in the global economy; an eagerness to “climb up on the wave of growth” and a confidence to “ride the tiger,” to deal with the United States in the legalistic terms that characterize US dealings on international trade, and to come out the better for it. Translated to English, the title of Garcia’s memoir (2011) is Against economic fear: believe in Peru.

Taking on this Asian attitude toward world markets was a departure for Peru from the reticence often observed in the Latin American business community. When reform began, Peru was a member of the Community of Andean Nations (CAN), whose economics included a plan for a negotiated division of which members would produce which products for the entire community; thus providing guarantees against competition from outside the CAN, or even from other CAN producers. (The plans – either to reduce intra-CAN restrictions or to divide the market – had been minimally implemented.) The original plan for Mercosur provided for a similar division of the market that Argentine and Brazilian producers would negotiate, but that part of the plan was thrown out by Domingo Cavallo during the reforms of the early 1990s. (Botto and Bianculli 2009, 107)

A similar point was made by Eleanor Hadley, an economist at the US Tariff Commission when I met her some years back. Ms. Hadley had been the only economist and the only woman on General McArthur’s civilian staff when he commanded the US occupation of Japan after World War II. According to her, the staff’s economic plan for Japan was in large part about agriculture. Recognizing however that Japan lacked sufficient fuel and minerals to be self-sufficient, the plan called for Japan to have an industry that would exchange simple manufactures with other Asian countries for the needed materials. When the plan was presented to the Japanese business community, the community objected strenuously. They saw themselves as capable to compete in any market in the world, insulted to be presumed competent only in the poor (at the time) markets of Asian.

In Peru, reform leaders drew on the Asian example for a general sense of what to do, but perhaps more important, to buoy Peruvian self-confidence that they could succeed as part of the global economy. It also provided a means to communicate to the public what the reforms—and their results—would be.

Trade negotiations to build domestic momentum for reform

Another way in which Peruvian leaders build enthusiasm for integrating Peru into the global economy was to initiate trade talks with the United States. The Andean Trade Preference Act (ATPA) was a unilateral action of the United States that offered Andean countries limited preferential access to the US market in exchange for cooperation on the US effort to suppress the drug trade. Peruvian participation had been initiated 1991, but the economic benefits had been minor. In 2001, when Peruvian participation was up for renegotiation, Peruvian leaders saw an opportunity. The US initiative for a Free Trade Area of the Americas (FTAA) was going nowhere, and the US Trade Representative, Robert Zoellick, responded favorably when Peru suggested the negotiation of a free trade agreement between the US and Peru.

Entering into negotiations with the United States gained attention in Peruvian politics far beyond Peruvian participation in WTO negotiations. As one Peruvian observed, “Large countries such as the United States, India and Brazil can use leadership in WTO negotiations as part of the management of their domestic politics of trade policy, but their doing so takes away the same opportunity for smaller countries.”

Peru has maintained this source of momentum by negotiating trade agreements with a number of additional countries, including Canada, Chile, China, Costa Rica, EFTA, the EU, Japan, Korea, Mexico, Panama and Singapore.

The influence of these negotiations on the content of Peru's reforms will be taken up below.

A New Trade Ministry Oriented toward the World

Within this environment Peruvian reform leaders were able to introduce major changes in the institutions for managing trade policy.

One of these was to close the existing trade ministry and to replace it with a new one, MINCETUR (Ministerio de Comercio Exterior y Turismo). The old ministry's identity and orientation had been that reflected in the CAN – a reticence toward the challenges and opportunities of world markets, an acceptance of collaboration among businesses as a form of economic organization. MINCETUR drew its orientation from the then ongoing negotiations with the United States. Its associations are with the parts of Peruvian society with an active interest in and confident attitude toward Peru's place in the world.¹⁰

Using Only GATT/WTO-Approved Methods of Trade Policy Management

An important and early part of trade policy reform was the installation of GATT/WTO-sanctioned trade remedies (safeguards, antidumping, countervailing duties) as the mechanisms through which the government would formalize management of domestic pressures for protection. Effective administration of the new laws and procedures would require more than technical expertise, it would also require independence from political power. Moreover, the culture of decision making would have to change from one in which decisions were based on long-standing relationships to one in which decisions were based on the facts of economic potential.

To this end, the government (in 1992, when Fujimori was president) created by law the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual, INDECOPI (translation: National Institute for the Defense of Competition and the Protection of Intellectual Property) INDECOPI's overall responsibility is to maintain a competitive market economy in Peru. Organizationally it is a collection of autonomous commissions that provide the functional and regulatory frameworks for competition policy, intellectual property, small business development and other parts of the infrastructure of a market economy. One of the commissions, the Antidumping and Countervailing Measures Commission, is responsible for antidumping and countervailing duty investigations and for the imposition of measures. This Commission is also the investigating authority for safeguard cases; the final decision on such cases being made by a multi-sector commission formed by several ministers.¹¹

Through INDECOPI, the government of Peru has introduced the procedural standards of the WTO into domestic decision-making. INDECOPI recognizes the rights and participation of interested parties, investigations and decisions follow previously specified procedures and criteria. Because trade remedies and competition policy are regulated through one umbrella agency the conflict that Patrick

¹⁰ An informative glimpse of Peru in the world is available at https://www.youtube.com/watch?v=qo_2vq8Gm_A&feature=iv&src_vid=fAqFJP4N4ME&annotation_id=annotation_141552. (Or simply do a Youtube or web search for "Peru Nebraska.")

¹¹ Webb, Camminati and León Thorne 2006 provide a description of INDECOPI's structure and functioning as well as of antidumping and safeguard procedures.

Messerlin has identified in the EU – import protection reinforcing the position of concentrated industries – has not arisen as a problem.¹²

Maintaining a Liberal, Rule-of-Law System in Peru

Peru has been one of the most successful countries at confining protectionist pressures within formal trade remedy mechanisms and in maintaining discipline over new restrictions. The most recent WTO Director General’s Report on trade measures (WTO 2015, the press release for which was titled “Increasing stockpile of trade-restrictive measures ‘a cause for concern.’”) reports no new restrictions by Peru. To the contrary, it lists a number of Peruvian liberalizations: elimination of import tariffs on 1,089 tariff lines, elimination of import clearance duties and termination of two antidumping measures.

A critical part of how Peru has sustained its reforms is how leaders there have insisted that all pressures for protection be channeled through INDECOPI. All the new controls that Peru has imposed since its 1990s reforms have been INDECOPI-administered antidumping or countervailing measures. (Global Trade Alert data, Baracat et al 2015 provide details). As of 30 June 2014 Peru had in place no countervailing duties and only 13 antidumping measures in force, as compared with 242 antidumping and 52 countervailing measures for the USA, 208 antidumping and 2 countervailing measures for India, 125 antidumping and 6 countervailing measures for China, 117 antidumping and 14 countervailing measures for the EU. (Source: WTO 2014a and WTO 2014b).

Leaders interviewed by Baracat et al (2015) indicated that there have been pressures for off-the-books actions, some of them from powerful Peruvian interests. Saying “No. Go to INDECOPI,” has been in significant part an exercise in political courage by high officials.¹³

Again the records of Peru and Argentina provide a striking contrast. Argentina created agencies and instruments similar to those created in Peru, but this did not prevent the governments of Presidents Néstor Kirchner and Cristina Kirchner from reintroducing a protectionist regime through the application of informal measures. Using WTO-approved instruments of trade control is not the same as using only WTO-approved instruments.¹⁴

Two Visions of a Liberal International Trading System

Consider these alternative visions of a liberal international economic order:

- **Vision One**, in which authority over the instruments of trade control is ceded to a supra-national authority, examples being trade among the 50 states of the United States or among the 28 Member States of the European Union.
- **Vision Two**, in which no national government imposes more than minimal restrictions on the freedom of its citizens to engage in economic transactions with citizens of other countries.

¹² For example, in Messerlin 2001, Messerlin 1990, Bourgeois and Messerlin 1998, Hindley and Messerlin 1996.

¹³ Harberger 1993 also brings forward the importance of political courage in sustaining economic reforms.

¹⁴ A story (dramatized) from my own experience as the World Bank’s initial tabulator of trade restrictions imposed against developing countries’ exports. My telephone would ring, the caller would ask, “Is this Dr. Finger?”

“Yes, might I help you?”

“Are you the Dr. Finger who knows how the developed countries restrict imports?”

“Yes, I am.”

“Could you come and brief us on that? It never hurts to know another way to restrict imports.”

Consider as well these alternative views on how a liberal international trading system will continue to advance:

The challenge of deepening global trade liberalization had become much less of a traditional mercantilist undertaking and more a task of providing a global public good, with all the sovereignty issues and free-rider complications that such an endeavor entails.” (Zedillo 2007, p. 2)

The most likely way a global polity will be created is gradually and bottom-up, by the work of millions of entrepreneurs, financiers, and Facebook friends who partner up across borders. ... Leaders cannot abandon aspects of national sovereignty that their peoples treasure, but they can facilitate the transition to cooperation when the need is clear.” (Hufbauer and Suominen 2010, p.4)

The first is from Ernesto Zedillo, former President of Mexico who more recently has chaired the United Kingdom Department for International Development’s (DFID) *Global Trade and Financial Architecture Project* and has co-chaired the *International Task Force on Global Public Goods*.¹⁵ The second is from Gary C. Hufbauer and Kati Suominen’s recent book on globalization.

Zedillo, in a review, criticized Hufbauer and Suominen for “their vague as well as naïve proposition that changes to the governance of the global economy will happen bottom up within the system.” (Zedillo 558)

Vision Two and the Hufbauer-Suominen interpretation of how the liberal system is advanced see international cooperation not as a creator and enforcer of international law/rules, but as a means through which reform leaders can change the political economy of trade policy within their countries. The GATT/WTO system’s governance principles bring participation of interested parties and rule-of-law into the national determination of trade policies. Indeed, it is the mercantilist perspective – exports being the gains from trade and imports the costs – that creates the illusion of trade liberalization creating economic free riders and removing trade restrictions is a sacrifice of sovereignty to foreigners rather than of the liberty of citizens at home the choice of whom they deal with.

For many if not most (by numbers) of WTO’s Members the increasing incorporation of Hudec’s principle – use only of approved methods of trade control – into national trade politics will continue to offer better support for integrating their economies productively into the international economy than will reforms through reciprocal exchanges with other countries or through the creation of supra-national authority over trade policies. The Western European model of policy formation by creation of supra-national authority does not describe the economic histories of many of WTO’s Members.

Robert Wolfe recently pointed out that the Doha Round being dead does not mean that the WTO is dead. To think simply of the WTO as a negotiation to determine what a Member can and cannot do overlooks a good deal of what makes the WTO system work. After all, Robert Wolfe has reminded, the 1995 Agreement Establishing the World Trade Organization specifies its first function as facilitating the application and furthering the objectives of the WTO agreements (2015, 22). Peru’s experience shows that much of this is accomplished through domestic institutions rather than through WTO policing.

The spread of the value-chain economy makes Vision Two – no national government imposes more than minimal restrictions on the freedom of its citizens to engage in economic transactions with citizens of other countries – the more promising vision.

¹⁵ This Task Force was initiated by the governments of France and Sweden. The governments of Germany, the United Kingdom and Norway also provided funding.

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