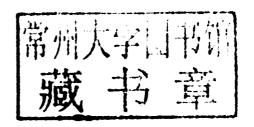


Developing Countries and the Multilateral Trade Regime

The Failure and Promise of the WTO's Development Mission

Donatella Alessandrini





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GATT

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Contents

	knowled _l ble of Ca		its	vii xv
			ION – THE FAILURE AND THE PROMISE OF THE AL TRADING REGIME	1
	I	The	'Science of Development' and 'Capitalist Imperialism'	4
	II	Dev	elopment as a 'Discourse' and Development as a 'Trap'	7
	III	Out	line of the Chapters	10
1	'CIVII	LISIN	TON WOODS CONFERENCE: TRADE AND THE G MISSION' IN THE POSTWAR INTERNATIONAL REGIME	14
	I	The	Mandate System and 'the Science of Development'	16
		A B	Freedom of Transit and Equitable Treatment: The First Regulatory Attempt at a World Trade Order and the Extension of Market Imperatives	20 22
	II		Bretton Woods Conference and the Postwar rnational Economic Order	23
		A B	Grounding 'Non-Discrimination' and 'Equal Treatment' in Trade Relations The Draft Charter and the London Conference: Of Rules and Exceptions	26 29
		C D E	The Free-Trade Contradictions of the Charter: Structuring the International Division of Labour The Investment Provisions: Protecting Capital Abroad The Outcome of the ITO Negotiations	31 34 36
	III	The	General Agreement on Tariffs and Trade (GATT)	37
	Conclusions			3.8

x Contents

2	GATT		NCE OF DEVELOPMENT AND THE	41
	GALL	NOI	NIVI	41
	I	The	Emergence of the Development Enterprise	43
		B C	The 'Professionalisation' and 'Institutionalisation' of Development Development Economics' 'Growth' and 'Progress' Development Economics' Normative Assumptions Reformist Dependency Theories and the Development Matrix: The Structuralist School of Thought	45 46 48 51
	II	The	GATT Development Mission	55
		В	The GATT First Review Session: Positing Developing Countries' Failure The Haberler Report and Committee III: Tracing Discrimination The GATT Part IV: Discharging Responsibility Enabling Non-Reciprocity A 'Differential and More Favourable Treatment'? Assessing the GATT's Flexibility	57 58 60 62 64 66
	Conc	lusion	s	68
3	THIN	KINC	LIBERAL TRANSFORMATION OF DEVELOPMENT G AND THE RENEWED MISSION OF THE TERAL TRADING REGIME	Γ 70
	I	The	Neo-Liberal Conversion of Development Thinking	71
		Α	Rational Choice-Based Approach	74
		B C	and Failing Institutional Arrangements Outward-Oriented Policies and Government Controls	76 77
	II	The	Neo-Liberal Transformation of the International ling Regime	80
		Α	The World Recession and the Restructuring of the	
		A B	International Economy Towards a Trade-Service-Investment Driven Market	82
		~	Integration: Enter the 'New Issues'	85
		C	Setting the Scene for the New Mandate	88
		D	Punta del Este: A Divisive Strategy	90

Contents	XI

	III	Developing Countries' Re-Alignment: Revisiting the Story	93	
		A From the Oil and Debt Crisis to the Structural	0.4	
		Adjustment Policies B The Challenge of Increasing Discrimination	94 97	
		C The Pressure Tactic:	21	
		Unilateralism/Bilateralism/Multilateralism	98	
	Concl	usions	100	
4		JRUGUAY ROUND AND THE CONSTRUCTION HE NEW CONSENSUS	103	
	I	Old and New Issues on the Negotiating Table, Corporate Activism and the Single Undertaking Approach	105	
	II	II The Rise of US Protectionism and the Consolidation of the Pressure Tactic		
	III	The Montreal/Geneva Mid-Term Review: Weakening the Opposition to a Broader Mandate	112	
	IV	Brussels Ministerial Meeting: Reintroducing Reciprocity	115	
	V	From Brussels to Marrakesh: Clinton's Aggressive Approach to Market Openness	119	
	VI	The Final Agreement: Towards an Equal Playing Field?	121	
		A The New Issues	121	
		B and the Same Old Ones	125	
	Concl	Conclusions		
5	THE V			
	TRANSNATIONAL CAPITAL AND THE REDUCTION OF DOMESTIC REGULATORY SPACE		130	
	I	Assessing the 'Trade Off': the Market Access Issues	132	
		A Agriculture	133	
		B Textiles and Clothing	134	
		C Safeguards and Anti-Dumping	135	
		D Implementation Costs	136	

xii Contents

	II		eralisation Rhetoric and Practice: Opening Markets, tecting Capital	138
		A B	Investors' Rights in Historical Context The Changing Investment Climate of the 1980s and	139
			1990s: Securing Protection Abroad	142
		C D	The 'Modest' TRIMs Agreement The 'Flexible' General Agreement on Trade in	145
			Services (GATS)	149
		E	The 'Balanced' TRIPs Agreement	157
	Concl	usior	ns	163
6			RES AND PROMISES: THE MANY LIVES OF THE VELOPMENT ROUND	164
	I	The	Road to Doha: Reflecting on the UR Imbalances	165
	II	The	Doha Agenda	168
		A B	Principles and Objectives: Multilateralism, Free Trade, Development Work Programme: Towards a Softening of the WTO	168
		D	Work Programme: Towards a Softening of the WTO Neo-Liberal Agenda?	170
	III	III From Cancun to Geneva: Emerging Oppositions		
	IV	Rea	action to Cancun: Silencing Dissent	180
	V	GA	TS 'Flexibility': Rhetoric and Negotiating Practice	182
		A	The Safeguard Mechanism and Liberalisation of GATS Mode 4: An Uncertain Future	183
		В	Targeting Non-Discriminatory Domestic Regulation: GATS Article VI	185
		С	Enter Specific Commitments: The Request-Offer Approach	186
	VI	TR	IPs: Transfer of Technology v Investors' Rights	189
		A	Substantive TRIPs-plus Standards in Investment	
			Agreements	192
		В	Investor-to-State Dispute Resolution	193
		C	Expropriation	194

	Contents	XIII	
VII	From Hong Kong to Geneva: The Last Breath of the Doha Round?		
	A The July FrameworkB The Hong Kong Ministerial Declaration	198 199	
	C Suspension, Crisis, Resumption	201	
Conclusions			
CONCLU THE WT	USIONS – THE DEVELOPMENT MISSION OF O	205	
I	The First Perspective: The Reform of the International Trading System	207	
	A The GATS and the Financial CrisisB Addressing the Challenge, Strengthening the	210	
	Mindset	213	

The Second Perspective: The WTO and its Civilising

The WTO's Market-Access Mindset

The 'Political Rationality' of Development

217

220

224

228

243

II

III

IV

Index

Bibliography

Mission

Introduction

The Failure and the Promise of the Multilateral Trading Regime

This Conference will initiate the next stage in the development of the trading system, whose focus must be the fuller integration of the developing world ... we have a responsibility, as WTO members and as a Secretariat, to help [developing countries] build ... the capacity to participate fully in the work of the WTO and to derive maximum benefits from it.¹

N 2001, TRADE MINISTERS launched the fourth Ministerial Conference of the World Trade Organisation (WTO) in Qatar.² This event was to be of historic significance for developing countries as the international trading community undertook the first comprehensive effort to address the reasons for their difficulty to 'participate fully in the work of the WTO and to derive maximum benefits from it'.³ The establishment of the WTO in 1995 signalled a new era of multilateral trade relations. The precursor of the WTO, namely the General Agreement on Tariffs and Trade (GATT), had disciplined trade relations among states for over four decades. Since its outset, the GATT had had to confront the claims of its developing country members that its rules were unfavourable to their trade interests. As a result, several initiatives were undertaken between the 1950s and 1980s to take into account the specific problems developing countries faced within the multilateral trading regime.⁴

However, trade scholars have pointed out that the development-related trade activity of GATT resulted in an asymmetry of trade rules between developed and developing country members that did not address the source

¹ M Moore, Address by the Director-General at the Inaugural Session (9 November 2001) WTO Doc WT/MIN(01)/12.

² WTO, Doha Declaration (14 November 2001) WTO Doc WT/MIN(01)/DEC/1.

³ See above, text to n 1.

⁴ The nature of the challenges developing countries brought to the rules of GATT will be analysed in chs 1 and 2.

of the discrimination against the competitive exports of the latter.⁵ According to mainstream trade literature, whereas the asymmetry of rules provided the legal basis for such discrimination, its underlying rationale must be traced back to the erroneous economic assumptions about development and the resulting counter-productive legal claims advanced by developing countries.⁶ To put it succinctly, by relying on trade protection as opposed to trade liberalisation and insisting on unilateral measures on the developed countries' part, developing countries failed to obtain the elimination of the discrimination against their competitive exports and consequently to develop their economies by means of liberal trade.

Thus, the entry into force of the WTO legal regime was supposed to have signalled the rational choice by developing countries to abandon their failing economic policies and legal strategies and embrace a rules-based multilateral trading system endowed with an effective enforcement mechanism. By adhering to the same set of rules and the economic rationale they embody, namely the unquestionable belief in the universal beneficial role of trade liberalisation, developing countries would finally be able to demand and enforce compliance with WTO rules so as to enjoy the benefits its legal regime is supposed to generate. However, soon after the entry into force of the WTO, it became apparent that the benefits of multilateral trade liberalisation had not materialised as far as developing countries were concerned.⁷ The failure of development within the WTO is imputed to the improper implementation of its rationale and, in particular, to the less than full liberalisation achieved with respect to the sectors of interest to developing countries.⁸

Hence, the Doha Round was meant to finally deliver the long-standing development promise of the multilateral trading regime. Its agenda, as Moore's words illustrate, was informed by three premises: the acceptance of the universal beneficial role trade liberalisation plays with respect to the promotion of development; the persistence of the difficulty developing countries face in fully participating in the multilateral trading regime; and the responsibility of the Organisation and its developed country members to assist them in their development enterprise. Yet, in July 2006, and then again in 2008, negotiations were suspended due to the irreconcilable

⁶ The various arguments advanced in this respect will be discussed in ch 3.

⁵ Hudec, for instance, has extensively scrutinised the limits of non-reciprocity and the so-called Differential and More Favourable Treatment developing countries have obtained within GATT. See R Hudec, *Developing Countries in the GATT Legal System* (London, Trade Policy Research Centre, 1987).

⁷ For a recent comprehensive study on the difficulties developing countries face within the WTO, see JE Stiglitz and A Charlton, *Fair Trade For All: How Trade Can Promote Development* (Oxford, Oxford University Press, 2005).

⁸ This contention is epitomised by the so-called agricultural issue which was at the centre of the controversy between developing and developed countries during the Doha Round.
9 See above, text to n 1.

differences between WTO members.¹⁰ The major issue of contention concerned, once again, the liberalisation of the sectors in which developing countries are supposed to be most competitive. As a result, the development promise of the WTO remains to be fulfilled.

This book is an attempt to go beyond the narrow preoccupation with the conclusion of the current Round and to explore the rationales behind the six-decades-long 'failure' of the development enterprise of the multilateral trading regime. This 'failure' can be viewed from two complementary perspectives. One is to take the development rationales of both the GATT and the WTO at their face value, namely without challenging the inherent normative assumptions about development they embody. From this angle, it will be shown that both the GATT's and the WTO's selective trade practice has violated the development principles they have purported to promote. One obvious conclusion from this perspective is that international efforts should continue in order to finally redress the imbalances of the multilateral trading regime. Indeed, this is the premise that underlies the current market access argument, according to which the WTO will deliver its development promise provided that its developed-country members open up their markets to developing countries' competitive exports.11

There is, however, another perspective from which to look at the relationship between the multilateral trading regime and development that problematises the former approach. Once the development rationales of the GATT and the WTO are no longer taken for granted and their inherent normative assumptions are called into question, the focus shifts away from attempts at reconciling trade liberalisation theory and practice. In their place, a different set of questions starts to emerge: how was the relationship between trade liberalisation and development made possible in the first place?; what has sustained it in the past six decades?; and how does it continue to hold such an authority today? The hypothesis advanced from this angle is that development has always occupied a central position within the multilateral trading regime. This is a position filled by a 'science of development' that articulates a mutual reinforcing relationship between a 'civilising mission' and the furtherance of the imperial interests of the

11 See eg P Lamy, 'WTO Doha Development Agenda: Building on the Uruguay Round towards a freer, fairer world trading system' (WTO News-DDA, 22 November 2006) www.wto.org/english/news_e/sppl_e/sppl50_e.htm.

¹⁰ See P Lamy, 'Talks Suspended. Today there are only Losers' (WTO News-DDA, 24 July 2006) www.wto.org/english/news_e/news06_e/mod06_summary_24july_e.htm. WTO, 'Day 9: Talks collapse despite progress on a list of issues' (WTO News-DDA, 29 July 2008) www.wto.org/english/news_e/news08_e/meet08_summary_29july_e.htm.

4 The Failure and the Promise of the Multilateral Trading Regime

major capitalist powers.¹² Therefore, the appreciation of the modality through which this imperial science has operated since decolonisation is crucial to understanding the rationale behind the six-decade-long 'failure' and 'promise' of development within the post-war multilateral trading regime.

I THE 'SCIENCE OF DEVELOPMENT' AND 'CAPITALIST IMPERIALISM'

The first argument of this book is that the development-related trade activity of both the GATT and the WTO can be best appreciated in light of the development framework established at the end of the colonial era. Taking the cue from Anghie's account of the Mandate System under the League of Nations, it will be shown that development has been constructed as a 'science' functioning on the basis of a universal economic rationality and a linear, consequential reading of history. This framework relies on three normative assumptions, namely: the establishment of an unquestionable dichotomy between advanced and backward societies; the reliance on a supposedly neutral economic rationality through which to bridge this gap; and the invocation of the help and expertise of the so-called advanced members of the international community and the specialised international economic and financial institutions in order to facilitate the development process. Despite the transformation of the means through which to achieve development, these three elements have consistently been deployed to order hierarchically different societal formations and consequently enforce economic, social and political reforms that have resulted in the wholesale transformation of so-called Third World societies.

In the field of international trade law and policy, the GATT and the WTO have contributed to the creation, consolidation and transformation of a development apparatus that links forms of knowledge about the so-called Third World with forms of power and intervention. This is to say that the representation of Third World societies in mainstream development theories has been crucial to both the GATT's and the WTO's development-related trade activity. In the immediate postwar period, development was defined in terms of rapid economic growth and underdevelopment in terms of a 'failure' by developing countries to pursue the adequate level of growth.¹³ GATT participated in the formation and

¹² The expression 'science of development' is borrowed from Anghie's work on the imperial legacy of the Mandate System within the current international financial institutions. See A Anghie, 'Time Present and Time Past: Globalisation, International Financial Institutions, and the Third World' (2000) 32 New York University Journal of International Law & Politics 243, 281.

¹³ The postwar development norm will be discussed in ch 2.

consolidation of this development norm by positing the failure of developing economies to trade as efficiently as the industrialised countries. 14 Consequently, it established the need for the former to follow the rational trade prescriptions of the latter, namely the liberalisation of trade in goods. With the WTO, the permanence of this failure is made to rest on the developing countries' adoption of the wrong economic policies and legal claims during the 1960s and 1970s and the policy prescriptions that follow are based on a market-based approach to development. As a result, developing countries are required to recognise the rationality of the market and subscribe to the WTO's neo-liberal rationale that extends well beyond trade in goods.15

Yet, as the history of the Doha Round shows, there is a profound contradiction between the development rhetoric and the actual practice of the major trading powers. The selective free-trade approach the Americans and the Europeans in particular have pursued within both the GATT and the WTO cannot be explained solely in terms of the 'failure' and 'promise' the development framework perpetuates.

Thus, the second interrelated argument concerns the modality through which the 'science of development' has operated since the end of the colonial period. In this respect, the claim is that the positioning of the development framework with its three normative assumptions as unquestionable has been crucial to the transformation of the imperial project that has taken place in the twentieth century. As Meiksins Wood puts it, 'to understand the "new imperialism"—indeed to determine whether it exists at all—requires us to understand the specificities of capitalist power and the nature of the relation between economic and "extra-economic" force in capitalism'. 16 She argues that 'capitalism is unique in its capacity to detach economic from extra-economic power, and that this, among other things, implies that the economic power of capital can reach far beyond the grasp of any existing, or conceivable, political or military power'. 17

Thus, whereas previous empires had operated through the employment of direct political and military coercion, the separation of political and economic power during decolonisation has allowed 'capitalist imperialism' to rule through the imposition of market imperatives. Yet for capitalism to operate without political and military intervention, its economic laws need to be extended and implanted everywhere, and this requires the 'extraeconomic' force supplied by the state. This work complements Meiksins

¹⁴ GATT, Twelfth Session of the Contracting Parties (1957) BISD 6th Supp (1958) 18.

¹⁵ The shift from the GATT focus on barriers to trade in goods, in particular tariffs, to the WTO focus on market integration which extends to services, investment and intellectual property will be analysed in chs 3, 4 and 5.

¹⁶ E Meiksins Wood, Empire of Capital (London, Verso, 2005) 5.

¹⁷ *Ibid*.