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**THE SOUTH IN THE GATT AND WTO REGIME:  
COOPERATION IN INTERNATIONAL TRADE**

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**This work has not been previously submitted in whole, or in part, for the award of any degree. It is my own work. Each significant contribution to, and quotations from the work, or works, of other people has been attributed, and has been cited and referenced.**

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## ABSTRACT

The World Trade Organization (WTO) has become the key international institution regulating intergovernmental relations with respect to trade. As the work of the WTO has become more significant and pervasive, its principles and processes have come under general and academic scrutiny. This subject will be tackled from a historical, present and prospective point of view. In this study the author approaches the regulation of international trade by looking at the historical context of the main institutions, and tests whether international relations are becoming more rule based. By using the tools of regime analysis, the nature of state cooperation can be analysed during the GATT period and the WTO period. This dissertation demonstrates the special needs of developing countries, also referred to as the South. Accordingly, a critical description and analysis of the special treatment afforded to developing countries in the GATT regime is provided as basis for comparison. In the final analysis this dissertation considers the nature of cooperation, the relevance the concept has to an international organisation and analyses various aspects of the WTO regime, in particular, the dispute settlement process. The quasi-judicial nature of the process of settling disputes, the author argues, is likely to be seen as one of the most important developments of international economic relations in the twentieth century. Recent developments, particularly the legal action brought by Brazil and African cotton producing countries against American agricultural subsidies, are examined in this context. Can the World Trade Organisation be an instrument of justice and development in the interests of Developing Countries, and can its dispute settlement mechanism help forward this agenda? This paper seeks to evaluate that challenge.

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## **CHAPTER 1**

### **International Economic Relations**

#### **1.1. General Introduction**

The dynamics of international political economy in the 20<sup>th</sup> Century can be understood by looking at two countervailing forces. On the one hand, the competitive relations among the capitalist First World (the North), on the other, the efforts of the countries of the Third World (the South) to develop their economies. Despite the importance placed on political independence and autonomy, the current reality is that states continue to engage each other in the international economy, and that this trend will continue. These relations in the political economy are thus characterised by both competition and cooperation.

At the level of international institutions, which is the focus of this study, these dynamics can be seen in the creation, maintenance and development of the rules governing international trade. Doing so raises some questions of interest. Do common principles, such as justice or fairness underlie these institutions? Are these rules inherently unfair to countries of the South? If so, how, if at all, do these states advance their interests and effect desired change? More specifically, why and how do changes to the institution influence the competitive and cooperative behaviour of its members? These and other questions have been considered from various theoretical perspectives.<sup>1</sup> The current tensions in international trade negotiations — drawing attention from ambassadors to activists across the world — suggest that the existing institutions are at a crossroads. Essentially, the questions raised are about the need or desirability of multilateral decision-making to deal with global problems, not just in trade but also in a number of related

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<sup>1</sup> As discussed in the review of the literature in Chapter 2, the study of international trade relations has been looked at in a number of disciplines including law, economics and politics and this has enriched the scope of analysis. Based on ethical and moral grounds, the normative argument for the rights of human beings is that these should be first and foremost in international politics. Ideas such as human rights reinforce the principles of international law as embodied by international organizations like the United Nations, and in the broad scope of its aims and activities.

areas including, labour, competition, investment, intellectual property and the environment.

### *Why focus on the South?*

The South potentially can be the engine for growth. As noted by the United Nations Conference on Trade and Development (UNCTAD), “A new geography of trade is emerging and reshaping the global economic landscape, and the South is gradually moving from the periphery of global trade to the centre.”<sup>2</sup> Over the next few decades, the economic growth generated by the large developing countries could become a much larger force in the world economy than is currently considered.<sup>3</sup> In turn, regional neighbours could benefit from growth opportunities and lead to geopolitical shifts. The converse, that slower growing countries risk being left behind, is not unlikely, but South-South cooperation could become a strategy for dynamism, particularly in trade. The economic progress of the ‘middle powers’, and their leadership in multilateral international relations, will be critical to how the world economy evolves. This inquiry, therefore, aims for a clear understanding of multilateral relations in the institutions governing international trade by placing deliberate emphasis on these states of the South. How have they defined and pursued their interests? How have they been influenced or constrained by international institutions?

### *Why focus on Institutions?*

International institutions have come to exist in all areas of international relations – economic, social and political.<sup>4</sup> Since 1995, trade relations between states have been governed under the agreements instituting the World Trade Organization (WTO). There are 149 countries representing about 95% of world trade. The original basis for the WTO is the General Agreement on Tariffs and Trade, or GATT, first signed in 1947, but progressively amended by trade diplomats through various negotiation rounds. It is widely asserted that states with larger economies have had a greater hand in directing

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<sup>2</sup> UNCTAD, Trade and Development Board, Fifty-first session, Geneva 4-15 October 2004.

<sup>3</sup> Brazil, Russia, India, and China are widely seen as key.

<sup>4</sup> James Rosenau, “Organizational proliferation in a Changing World,” in *Issues in Global Governance* (UN Commission on Global Governance, 1995).

these proceedings, and, unsurprisingly, according to their own estimation of national interests and political and economic objectives.

The most important economic objective of the GATT/WTO agreements is removing barriers to trade, such as tariffs, so that all states may enjoy the benefits of free trade. According to classical economic theory, aggregate welfare is maximized as states specialize in goods and services where their production is most efficient, as determined by an open market, and where they hold a comparative advantage. The free market is the most effective means for organizing economic relation as the price mechanism operates to ensure mutual gain.<sup>5</sup> The international trade regime is therefore one of liberal free trade. On the basis of economic principle therefore, the WTO is a continuation of the GATT regime. There are however a number of areas where the WTO differs substantially from the GATT. Primarily, these are to do with the extent to which the trade system has moved away from being a power-based system to one that is law-based.<sup>6</sup> Such an evolution towards a rule of law, if indeed this is the case, is a significant expansion for the regime governing international trade. This study aims to explore these differences and their affect. The focus is on the dispute resolution mechanisms put in place in order to accommodate and resolve conflicts.

## **1.2. The Research Question**

Virtually all countries now engage each other multilaterally and consider the beneficial potential of international trade as key to their domestic development. What is less clear is whether economic relations between states with equal sovereignty can be regulated by international law or whether power politics will continue to determine winners and losers.

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<sup>5</sup> Theoretical conclusions about the benefits of free trade are not empirically tested. In the series of political negotiations about trade barriers, the starting premise has been that reducing these barriers is a cost for which states therefore need compensation from others. This runs counter to the purely economic argument that removing barriers to trade is beneficial regardless of the actions of others.

<sup>6</sup> Meinhard Hilf, "Power, Rules and Principles – Which Orientation for WTO/GATT Law?" *Journal of International Economic Law* (2001): 111-134.

Comparing the GATT and the WTO and examining the effects of the 'legalization' of international trade raises some interesting questions for political scientists.<sup>7</sup> This inquiry asks: Do the changes to the institutions governing trade present those states considered economically weak and historically exploited, with new foreign policy choices? Two aspects are considered here: First, the 'Agenda-setting' capability of states. Second, the use of formalised dispute settlement procedures. In this context, this study considers whether the creation of the WTO has led to more effective multilateral cooperation on trade issues between states of the South, than was the case during GATT. If this is so, does this indicate a significant change in the type of choices, decisions and behaviour states engage in, in their international trade relations?

### 1.3. Concepts

*Cooperation* between political actors has proved to be as elusive to realize as to analyse in international relations. Robert Keohane, a major theoretician in the field of international political economy frankly admits "no sensible person would choose it as a topic of investigation on the grounds that its puzzles could readily be 'solved'".<sup>8</sup> Partly, this is because policymakers view cooperation less as an end in itself than a means to other objectives. For our purposes, it is necessary to identify what kinds of behaviour counts as cooperation. The first assumption is that of rationality - each actor's behaviour is directed toward some goal, though this need not be identical. The second dimension is that of self-interest - each actor helps other actors realize their goals in the anticipation of achieving its own ends. In contrast, conflict implies behaviour where states seek actively to reduce the gains of others, often, but not always, acting unilaterally. Cooperation however, should not be viewed as the absence of conflict. As Keohane argues, "Without the spectre of conflict, there is no need to cooperate."<sup>9</sup>

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<sup>7</sup> One is a conceptual question about the emphasis on the anarchy-order dichotomy in the international system as a fundamental concept. Another whether this heralds a supranational or an "imperial state" in the making, as some suggest. What are the implications for our understanding of concepts such as state sovereignty and autonomy? See, for example B. S. Chimni, "International Institutions Today: An Imperial Global State in the Making," *European Journal of International Law*, 15:1 (2004): 1-37.

<sup>8</sup> Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: New Jersey, 1984) p.10.

<sup>9</sup> Keohane, 1984: 54.

This observation is particularly applicable to international trade. In the international political economy, trade relations are cooperative and conflictual. Historically states have sought to damage each other's economies to gain resources for themselves by waging war and manipulating foreign trade. But even the most power-oriented states recognize the potential advantage from mutual restraint in the common interest. When the costs outweigh the benefits, governments engage in international negotiations in order to limit potential conflict.

International cooperation in trade relations has in most instances been under the protection of one state, the *hegemon*. Such a state meets two conditions: it is both "powerful enough to maintain the essential rules governing interstate relations, and willing to do so"<sup>10</sup> While the theory of hegemonic stability is not the focus of this study, an understanding of the cooperative political economy under American leadership is crucial when examining the emergence of the liberal trade regime.

The concept of *regime* is understood as more than merely the prevailing order or system, because it also implies prescribed behaviour. John G. Ruggie, in introducing the concept, identified this dimension and is a useful starting point.<sup>11</sup> Stephen Krasner's definition extends the institutional aspect, and is therefore helpful in the context of this study<sup>12</sup>. Krasner defines a regime as "implicit or explicit principles, norms, rules and decision making procedures around which actors' expectation converge in any given area of international relations."<sup>13</sup> Regimes therefore are examples of cooperative behaviour, and also facilitate cooperation.<sup>14</sup> In the area of international trade, the multilateral agreements

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<sup>10</sup> Robert Keohane, and Joseph S. Nye. *Power and Interdependence*, 2nd ed. (Glenview, IL: Scott, Foresman, 1977/1989) p.44. Keohane (1984) argues cooperation can continue after hegemony.

<sup>11</sup> John G. Ruggie, "International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order," in Stephen D. Krasner, ed., *International Regimes* (Ithaca, NY: Cornell University Press, 1983).

<sup>12</sup> This, and other critical views of regime theory, primarily that of Susan Strange (1982) are considered in detail below in 2.3.2.

<sup>13</sup> Stephen D. Krasner, "International Regimes," *International Organization*, 36:2 (1982).

<sup>14</sup> Stephen Haggard and Beth Simmons, "Theories of International Regimes," *International Organization* 41:3 (1987). The authors argue that regimes may unintentionally contribute to instability, citing the collapse of Bretton Woods exchange markets.

of the GATT treaty and the WTO constitute the norms and principles, and at the same time also the international organizations of the trade regime. This paper focuses on investigating the evolution of the norms and rules of trade relations over time; the concept of international regime provides the basis of comparison to explore continuity and change in the political economy.<sup>15</sup>

#### **1.4. Theory**

The WTO will be read in the light of international relations theory pertaining to international regimes. Of course, a regime — whether understood as a set of rules, or rights and duties of states — is not sufficient in explaining state behaviour primarily because it does not properly account for the extent to which state behaviour is, in fact, rule governed. This is a central theme of the theoretical debate in international relations and merits further explanation. A simplified version of the debate is based on the antagonism between Realist and Idealist traditions. The realist view is that institutions are merely reflections of state power and interests. Powerful states create, and often choose to ignore international rules. In contrast, the liberal view is that institutions have an independent role in resolving collective action problems. International organizations based on international law thus both limit and empower states. The theoretical context of this study centres on how the realist (power) and liberal (institutionalist) explanations explain the international trade regime.

One of the underlying notions is of the trade organisation as an area of interaction between member states rather than as an independent actor. The level of analysis therefore is the international or systemic level, rather than looking at domestic explanations for state behaviour. Changes at the system level, particularly in institutions governing the trade regime, are external constraints and motivators for state behaviour. How has state interaction evolved? How does state behaviour differ under GATT and WTO rules and how can one analyse these changes? The hypothesis offered is that the degree of institutionalisation in international trade can be measured as the move from

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<sup>15</sup> Keohane, 1984: 64.

being power-based to being rule-based. Actors can respond in different ways because of the changes in the institutional structure. With a move toward rule-based relations, governed by international law, the institutions governing trade give states in the South a new approach to cooperation and conflict in international trade relations. Such a view as presented here tests the null hypothesis from the Realist approach, which emphasises formal anarchy and therefore is concerned with ranking relative power as the independent variable, and the Structuralist one, where the behaviour of states is determined by the international economic system.

### **1.5. Scope, methodology and an outline of chapters**

The starting premise, based on observation of international trade negotiations is that there exists a discord between nations of the North and South. The basic argument is that while the institutions of international trade seek to promote economic growth and wealth creation, the distribution of advantages have accrued to an economic elite and excluded the majority of the South. In answering the question — whether the creation of the WTO has positively affected cooperation on trade issues compared to during the GATT period — a historical institutional perspective is appropriate.

*Chapter 2* begins by placing the debate within the theoretical context of International Relations, and after reviewing the relevant literature sets the parameters of this study more precisely within International Political Economy. Attention is given to studies on firstly, the nexus of the state and the market, secondly, the character of global interactions, and thirdly, the prospects for cooperation and development.

The starting point of the comparative aspect of the study is whether the international institutions affect the decisions states make. The options open to states participating in a regime are limited by the norms, principles and rules of the institutions to specific types of decisions and actions. As the trade relations (like most interstate relations) over time become more rule-based and more institutionalised, the expectation is that ‘weaker’ but equally sovereign states can and will use the provisions available to them. If this is the

case, it should be evident in areas of conflicting interests, therefore the need to look at dispute resolution and at one of the most contentious topics, agriculture trade.

More specifically, the power-based relations under GATT (1947-1994) are compared to the rule-based relations of the WTO (1995-2005). The norms, principles, rules and decision-making structures of each are compared. The historical approach is necessary to compare and understand the important changes to the regime over time. The North-South issues under GATT and under the WTO are also compared. The focus is not on diplomatic bargaining or negotiation but rather on outcomes. The analysis shows that states are constrained by the possible remedy institutions are able to offer. The GATT offered only limited remedy, so states of the South, through the Group of 77 (G77) bloc, looked outside GATT to UNCTAD and the UN, with variable success. The WTO dispute settlement system offers states a legal or quasi-judicial route (though international law has its limitations) that GATT did not. In the WTO regime there are modest but significant victories, and the case brought by Brazil against American subsidies on cotton production is used as an illustrative example.

The sections that follow review the creation of an international trading regime, by looking at the law and main institutional features of the General Agreement on Tariffs and Trade (GATT) in *Chapter 3* and, the World Trade Organization (WTO) in *Chapter 4*. In a comparative method, each chapter considers the relevant context of the international system, the actions and behaviour of developing countries, and evaluates in conclusion the efficacy of their cooperation. The final section, *Chapter 5*, advances arguments for analysing cooperation within and outside institutions and returns to the implications this has for theory.

## CHAPTER 2

### The Research Agenda of International Political Economy

#### **2.1. Theoretical Considerations**

Most writings on inter-state relations are rooted in a theoretical understanding of the international order. After surveying the main debates, contrasting between theories that seek to evaluate international order and those that emphasise international anarchy, the focus is on theories that consider the reciprocal influence of economic and political factors. The theoretical framework of political economy is then defined by looking at the state and economic development, and the debate on the nature of an international liberal economy. Throughout, but particularly in the final section, the issues of developing countries in the international political economy are explored via the literature. The study of international order and an international trade regime, are placed in terms of neoliberal institutionalism. In conclusion, recent studies from the perspective of international economic law are considered.

##### ***2.1.1. The international system of states: From Anarchy to Interdependence***

Broadly, in International Relations theory, two currents of thought are seen as traditions: the 'Realist stream' where power, the balance of power and state interest are considered as key organizing concepts; and the 'Idealist stream' that looks at institutions and their judicial-legal basis on the international sphere.<sup>16</sup>

Political realism is grounded on an emphasis on power politics with the sovereign state as principal actor.<sup>17</sup> Since there is no higher authority than the sovereign state, and states are in competition with one another, international politics is determined to be anarchic. Hans J. Morgenthau, an influential Realist, contends, "all history shows that nations active in

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<sup>16</sup> Hedley Bull looks at competing traditions: "the Hobbesian or realist tradition, which views international politics as a state of war; the Kantian or universalist tradition, which sees at work in international politics a political community of mankind" and adds a third, the Grotian tradition "which views international politics a staking place within an international society." Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London: Macmillan, 1977) p.23.

<sup>17</sup> The antecedents of the tradition are traced from Thucydides, Sun Tzu, Machiavelli, Hobbes and Clausewitz to twentieth century Realists such E.H. Carr (1939) and Morgenthau (1948).

international politics are continuously preparing for, actively involved in, or recovering from organized violence in the form of war.”<sup>18</sup> The realist assumption is of states as coherent actors, prepared to use military force in achieving power. States able to meet their basic needs, survival and independence, also may possess the ability to influence other states, and in pursuing their own interests bring a hierarchy to international relations. In contrast, Systemic realism — sometimes called structural realism or neo-realism — emphasizes the distribution of power among states within an international system as the principal determinant of state behaviour.<sup>19</sup>

The Realist primacy of the state means cooperation is explained as the convergence of self-interest, whether states enter a temporary alliance or accept a more permanent organization. Thus any international organization can only be as effective as the most powerful states permit them to be. Even if one were to accept the existence of anarchy as predominant, structural anarchy does not mean that international politics is characterized by conflict. States do cooperate with one another and do create rules and institutions in many areas.

The Idealist tradition is historically based on a belief in universal values, not the autonomous nation-state. The emphasis therefore is on internationalism. In the tradition of Immanuel Kant, as Hedley Bull explains, the nature of international politics lies in the “trans-national bonds that link the individual human beings who are the subjects or citizens of states”.<sup>20</sup> Liberal theory, for example, is based on the belief that the universal rights of the individual, such as human rights, have a higher status than the sovereignty of the nation-state.<sup>21</sup> For the Idealist school, the international system of states, particularly in the contemporary one, relations are based on cooperation, collective security and, increasingly, international law.<sup>22</sup>

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<sup>18</sup> Morgenthau (1967) quoted in Keohane and Nye (1977: 175)

<sup>19</sup> The main theoretical argument for the systemic version is Kenneth Waltz’s influential *Theory of International Politics* (1979). See also Robert Gilpin, *War and Change in International Politics* (Cambridge: Cambridge University Press, 1981).

<sup>20</sup> Bull, 1977: 24.

<sup>21</sup> Andrew Heywood, *Key Concepts in Politics* (Basingstoke: Palgrave Macmillan, 2001) p. 140.

<sup>22</sup> The work of Inis L. Claude (1964), and John Burton (1972) can be considered as examples.

Liberal democratic theorists maintain that there can be a harmony of interests among democratic states. Since the end of the Second World War, it is argued, there is evidence that the liberal world order based on shared common interest results in cooperation, which in turn leads to peace and development.<sup>23</sup> Three key points are worth expanding on.

Firstly, the acceptance and spread of democratic political systems reduces the influence of elite interests and authoritarianism, and as Woodrow Wilson argued was the best defence against war.<sup>24</sup> Secondly, the acceptance and codification of international law contributes to the peaceful settlement of disputes.<sup>25</sup> In looking at international institutions, this judicial legal emphasis is important and of relevance of to this thesis. Thirdly, and as explained below, the cost for states to resort to conflict is high, because the expansion of the international economy through trade has resulted in relations of economic interdependence. This connection between interdependence and international order deserves scrutiny. The Realist position, that in relative terms some states are more powerful than others, still holds. As does the view that it is under the aegis of the most dominant state that there is the necessary protection for international order.<sup>26</sup> The debate in the literature is assessed in section 2 under theories of hegemonic stability, comparing realist interpretations with a liberal institutionalist perspective.

It is particularly useful to consider the work of Keohane and Nye.<sup>27</sup> For the authors in 1967, the traditional approaches could not adequately explain the changes then occurring in world politics. Instead of state-state relations, they argued, there were multiple channels connecting societies called “transnational relations”. Instead of resort to force,

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<sup>23</sup> The point that even where common interests exist, cooperation often fails is noted.

<sup>24</sup> Wilson’s observation was that democracies do not fight each other.

<sup>25</sup> This is not only evidently true in international organizations like the United Nations, based on collective security to prevent war, but also in other areas where disputes may arise, such as demarcation of international waters. Keohane makes the observation that “Institutionalist writers have always stressed that cooperation can be fostered by institutions” (Keohane, 1984: 66).

<sup>26</sup> Indeed, such a situation existed under American predominance following the Second World War: the nuclear umbrella, the Marshall plan to Europe, and arguably, the economic links largely as a result of the dollarization of the world economy.

<sup>27</sup> Robert Keohane and Joseph Nye, *Power and Interdependence*, 2nd ed. (Glenview, IL: Scott, Foresman, 1977/1989). Also, Joseph S Nye and Robert O. Keohane, eds. *Transnational Relations and World Politics*. (Cambridge, MA: Harvard University Press, 1971).

nuclear deterrence made military action complex. Instead of a narrow definition of security, economic issues and their implication for domestic and foreign policy were central to definition of national interest. These characteristics of the changes in international politics were defined as “complex interdependence”. Keohane and Nye, writing more recently in 2000, consider the legitimacy of international institutions, particularly of the WTO, as a vital aspect of international political economy. Comparing the early and later work shows that “complex interdependence” was a challenge to the Realist paradigm but was also the basis for a new approach to international relations.<sup>28</sup>

### ***2.1.2. The International Political Economy***<sup>29</sup>

Benjamin Cohen’s survey of literature on the international political economy in 1990, looking at Robert Gilpin, David A. Lake, Richard Rosencrance, Helen Milner and John Conybrae, identified two broad sets of questions.<sup>30</sup> One set has to do with system management and the consequences of economic interdependence. The other set with actor behaviour, particularly government action as representative of sovereign nation states.<sup>31</sup> Recent work in the field of the politics of trade explores the link between domestic actors, particularly elites, and their influence on international policy.<sup>32</sup> Much of this is based on the work of James Rosenau on ‘linkage politics’ and also Robert Putnam’s model of two level games, which integrates domestic politics with international

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<sup>28</sup> As Peter Gourevitch put it to the American Political Science Association (APSA) it was “no less than the foundation for a new subfield, international political economy.” Accessed online at (<http://www.apsanet.org/PS/sept99/keohane.cfm>)

<sup>29</sup> The integration of the economic and the political was a transition in understanding world politics but begs the question of why their study was separate in the first place. Writing in the 1970s about the transformation of foreign policy, Edward L. Morse concluded, “The purely political and purely economic cannot be seen as empirically separable”. Edward L Morse, *Modernization and the transformation of International Relations* (New York: Free Press, 1976). Richard Cooper’s *The Economics of Interdependence* (1968) and Charles Kindleberger’s *Power and Money* (1970) made similar claims in economics. Such a claim in political science necessarily relies on the definition of complex interdependence and the innovation of Keohane and Nye’s early work.

<sup>30</sup> Benjamin J. Cohen, “The Political Economy of International Trade,” *International Organization* 44:2 (1990).

<sup>31</sup> Studies of organizational decision making, bureaucratic theories and misperception are in this category.

<sup>32</sup> See for example, Helen Milner, “International Theories of Cooperation among Nations,” *World Politics*, 44 (1992): 466-496.

relations theory. The determinants of international economic relations therefore are to be found within a spectrum of state interventionism and of global market forces.<sup>33</sup>

The common theme in the IPE literature explores the usefulness of distinctions between domestic and foreign as a result of interdependence. Morse makes an analytic distinction between foreign policy and domestic policy.<sup>34</sup> Foreign policy is oriented to some actual or potential sphere external to the jurisdiction of the state, while domestic policy is oriented to some sphere within the jurisdiction of the state. There is also a difference in the ends and means of each. Foreign policy goals represent the national interest as opposed to particular interests. While in foreign policy any means can be used to achieve the ends, domestic policy requires a level of legitimacy. Morse's principal observation is that as societies and states become more modernized there is economic and political integration, creating high levels of interdependence. The effect is a blurring of the domestic order with the international one.

Robert Gilpin (1981) is broadly in agreement.<sup>35</sup> He argues that the economic and foreign policies of a society reflect the national interest as defined by the dominant elite of that society. The elite is the governing political elite, but also includes the powerful groups that exert pressure within society. Writing in 1992, Gilpin ventured, "the clash between domestic autonomy and international norms has become of central importance."<sup>36</sup> In a later work, Gilpin considers the *purpose* of economic activity as a fundamental issue in the study of political economy since it determines the role of the market in the economy. Gilpin asks whether the purpose of economic activity is to benefit individual consumers, to promote social welfare goals, or to maximize national power?<sup>37</sup> This is similar to the view of Keohane, who sees the process as one of a "Trade off between the long-term

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<sup>33</sup> Susan Strange, *The Retreat of the State: The Diffusion of Power in the World Economy* (New York: Cambridge University Press, 1996).

<sup>34</sup> Morse, 1976.

<sup>35</sup> Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981)

<sup>36</sup> See Stephan *et al*, *The Scramble for Africa in the 21<sup>st</sup> century* (Cape Town: Stephan Phillips, 2006) p.225

<sup>37</sup> Robert Gilpin, *Global Political Economy: Understanding the International Economic Order* (Princeton: Princeton University Press, 2001).

pursuit of the interest of the state and the short-term partial economic interests of influential merchants, workers, manufacturers or farmers.”<sup>38</sup>

In every society, the goals of economic activities and the role of markets in achieving those goals are determined by political processes. Delving into the domestic political dimension too closely for the determinants of international action does however present some theoretical problems. The main one can be explained as the problem of ‘level of analysis’. Kenneth Waltz (1959) introduced the distinction of three levels of analysis: international-level (or systemic), domestic level and individual level explanations for state behaviour. As J. David Singer explains, if there is to be cumulative growth in the theory the different levels must be seen as mutually exclusive. More recently, two-level-games theorists focus primarily on integrating international and domestic levels, though are concerned with all three. Robert Putnam observes that “domestic politics and international relations are somehow entangled, but our theories have not yet sorted out the puzzling tangle.”<sup>39</sup>

Susan Strange considers precisely the ability to shape the system level of analysis in her approach to structural power. Structural power is defined as “the power to shape and determine the structures of the global political economy within which other states, their political institutions, their economic enterprises and (not least) their scientist and other professional people have to operate”<sup>40</sup> The international system thus is composed of four global structures of security, production, finance and knowledge. As Strange explains the consequences of structural change has implications for developing countries.<sup>41</sup>

Having thus considered the most relevant literature in IPE, this study limits the scope of the domestic dimension, placing the systemic explanations under scrutiny. The domestic dimension in the North where trade policy and agriculture policy have international repercussions is the starting point of the analysis. These policy aspects are less important

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<sup>38</sup> Keohane, 1984: 23.

<sup>39</sup> As cited by Stephan *et al*, p.224.

<sup>40</sup> Susan Strange, *States and Markets* (London: Pinter, 1988) pp. 24-25.

<sup>41</sup> Susan Strange and John M. Stopford. *Rival State, Rival Firms: Competition for world market shares* (New York: Cambridge University Press, 1992).

than the international level interaction where states over time attempt to shape the international system. The assumption that the rules of the international system work against the interests of the poor or least powerful must also be tested at the systemic level. In the historical analysis, regardless of variance in domestic actors, states of the developing world base their justifications on their rights as sovereign states and seek twin goals of economic development and political independence. The way in which they do so, it is argued, is by cooperation at the international level with similar states — states of the South.

As is explored below in terms of the production structure, it is increasingly difficult for states of the South to opt out of the international system. Does this mean that these states are unable to modernize and develop autonomously in their own best interest? The section that follows examines questions of state sovereignty and autonomy, by tracing the various paths of ‘development’. Both the theoretical context and state practice are considered.

## **2.2. IPE: theory and practice**

Theory on the direction of political and economic change rested on the assumptions of the course of ‘modernization’ and ‘development’ of the early European nation states. Initially academic studies in political development focussed on the western model as a universal model and were premised on a dichotomy between the ‘traditional’ and the ‘modern’.<sup>42</sup> The basic tenet of modernization theory is that societies undergo a universal process of development.<sup>43</sup>

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<sup>42</sup> Migdal (1983) surveys the principal contributions of Rostow (1960) Almond and Coleman (1960) Tilly (1975), Evans (1979), and Frank (1981) amongst others. Basically, as a country develops, the social structure becomes complex, new groups emerge and organize. Industrialization leads to urbanization, differentiation of the social structure, education, emergence of the middle class, attenuation of class cleavages, and eventually political participation.

<sup>43</sup> S.M. Lipset, in his influential 1960 book *Political Man*, argues a link between development and democracy and concludes that most poor countries were ruled by dictatorships, while all affluent countries had democratic regimes.

Ultimately, since it is a prerequisite for a socialist ideal, societies will develop to the capitalist mode of production stage.<sup>44</sup> This, in turn, will give rise to competing classes and to the political relations that lead to the revolutionary overthrow of capitalism.

These assumptions and conclusions of theories of international political economy need deeper analysis. Following Robert Gilpin's classification, the three major perspectives economic nationalism or Mercantilism, Marxism, and liberalism are considered.<sup>45</sup> These broad perspectives are a useful starting point. They not only offer a historical trajectory explaining the contemporary political economy but also advance the actions required to achieve economic development. Each is examined in turn.

### **2.2.1. Theoretical/ideological perspectives: Mercantilist, Liberal, and Marxist**

The mercantilist perspective explains the success of colonial powers, and hegemons like Great Britain and the USA, based on the premise that a strong national economy is a necessary basis for a powerful state.<sup>46</sup> From this Realist approach governments can (and indeed should) manipulate economic arrangements to maximize their own interests, even if doing so is at the expense of others. Understood in this way, the process of development is also that of nation building: economic nationalism builds economic power, security and independence, relative to other states.<sup>47</sup> Moreover, it is argued that there is a requirement for a state to protect itself from increasing competition. The bottom line is that there is a substantial developmental role for the state in the economy. From the 1960s onwards, influential development economists like Argentinean Raul Prebisch advised developing countries to pursue a protectionist path of

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<sup>44</sup> The historical idea of progress through capitalist development was initially widely accepted. Even the Marxist view of history, in which the material and economic conditions form the basis of social and political structures, is deterministic. (See, for example, Louis Althusser's writings of 1960s on structuralist Marxism.)

<sup>45</sup> Robert Gilpin, *The Political Economy of International Relations* (Princeton: Princeton University Press, 1987).

<sup>46</sup> George Sorenson, *The Transformation of the State: Beyond the Myth of Retreat* (London: Macmillan, 2004) p.13.

<sup>47</sup> Joseph Grieco and John Ikenberry, 'The Political Foundations of the World Economy' in *State Power and World Markets* (New York: WH Norton, 2003) pp. 99-105.

industrialisation, and in doing so, resist the liberal options of open markets and full integration into the world economy.<sup>48</sup>

The liberal approach emphasises a more limited role for the state in the economy. Whereas the mercantilist state sought to drive the process of economic growth, a liberal or free market would allow individual enterprises to locate economic activity where it would be most productive and profitable. The philosophical basis for this claim is that individual's exercising free will to exchange property, goods or services for something they value more, can only happen without state interference.<sup>49</sup> There is an important role for legitimate state authority in providing the legal framework, protecting property rights and enforcing contracts in the market. Rather than maintaining independence (or dominance) *vis a vis* other states, international market forces that tend towards integration are seen as the main drivers of development. Removing the barriers to the free movement of goods and allowing the principle of comparative advantage would not only generate absolute gains but also maximize total wealth.<sup>50</sup>

The Marxist critique — that capitalism generates and exacerbates inequality — influenced the Structuralist perspective. Radical theorists explained that the history of struggle for political self-determination was incomplete as long as economic dependence continued. This was a Marxist conception of an exploitative capitalist world order, where power and wealth were concentrated in the *core* while the *periphery* remained underdeveloped. Capitalism, the private ownership of the means of production, concentrates wealth in the hands of the efficient few and impoverishes the many. This is the case both in the

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<sup>48</sup> Such counsel to emerging states echoed that of the patriotic economic nationalism proposed 120 years earlier for European states like Germany, where Friedrich List argued (in 1841) in favour of tariff protections for domestic industry. Similarly, in the United States, though much earlier, Alexander Hamilton had argued for trade protection and government promotion of important sectors like manufacturing. New manufacturers (or infant industries) needed protection from competitive foreign rivals. According to Hamilton, for these industries "(t)o be enabled to contend with success, it is evident that the interference and aid of their own government are indispensable." Hamilton's Report on the Subject of Manufactures as quoted by David N. Balaam and Michael Veseth, *Introduction to International Political Economy* (New Jersey: Prentice Hall, 2001), p.30. See also Amit Bhaduri, "Nationalism and Economic Policy in the Era of Globalization" in Deepak Nayyar, ed., *Governing Globalization: Issues and Institutions* (Oxford: Oxford University Press, 2002) p.26.

<sup>49</sup> Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974) p.163.

<sup>50</sup> Robert Gilpin, *The Challenge of Global Capitalism: The World Economy in the 21<sup>st</sup> Century* (Princeton: Princeton University Press, 2000) pp. 88-93.

domestic economy, where classes are the relevant actors, and among states. As Lenin points out in *Imperialism*, by acquiring colonial territories the capitalist economies exploited resources through unequal exchange and also expanded a capitalist economy abroad. Since the result would be “uneven development”, the international system could only be stable for a short period of time.

Latin American studies on the effects of imperialism note a structural condition of dependence. Dependencia theory, for example the work of Andre Gunder Frank, argues that imperialism produced underdevelopment and dependence. As Theotonio dos Santos explains, the era of colonial dependence is succeeded by financial–industrial dependence and, as is the case currently, dependence on multinational corporations. The expansion of the capitalist system is accompanied by a widening of the social divide between those in power profiting from the new modes of production and exchange, and the mass of poor people who bear the brunt of the structural changes.

Both Realist and Dependency type approaches take power as the most important variable in the international system. It is through the relative measure of power that states are categorised variously as superpowers, or relegated as core and periphery.<sup>51</sup> Whether these labels are definitive or empirically accurate is of less importance here than the fact that the categorisation is central to the theoretical arguments. While the terms North and South have been employed as useful shorthand, both historically and in this study for developed and developing countries, no implications at the theoretical level are intended.<sup>52</sup> The developing countries, especially those with large economies as active exporters are considered as new middle powers and representative of the South for the purposes of this study. Examining the role of the most powerful, as considered by the three perspectives, is also useful.

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<sup>51</sup> Such typology is not without controversy. Edward Said’s *Orientalism* or Samuel Huntington’s Clash of Civilizations are two examples of the categorisation debate along broadly cultural or religious lines.

<sup>52</sup> The UN, World Bank and WTO distinguish between least developed countries, but also countries with specific characteristics, such as small island states. The least developed countries are a defined category and merit serious study though their specific problems are addressed well from the perspective of egalitarian justice. See For example Darrel Moellendorf, “The World Trade Organization and Egalitarian Justice”, *Metaphilosophy*, 36, 1 (January 2005).

### 2.2.2. *Hegemony*

Each of the theoretical perspectives deals with notions of power either as benign leadership or malevolent dominance and seek to explain the role of the most powerful, or hegemon, in the international system.

The *radical* critique of international economic relations is that, like imperialism<sup>53</sup>, it is a political project aimed at the global management of capital or, put another way, the “social reproduction of capitalism”.<sup>54</sup> The expansionist logic is that in order for national capitalism to survive it must continuously expand to exploit new markets and to maintain profits.<sup>55</sup> The USA, and the leading industrial powers are allied in an international capitalist class where global wealth is concentrated. Whether this is desirable can be considered as a normative question, but it is clear that the hegemonic state has sufficient power and opportunity to organize the world economy.<sup>56</sup>

*Realists* see the American dominance of the international system in terms of power politics and the mercantilist impulse of nation states. The rise of hegemony brings stability; however, this is followed by decline and eventual war as the balance of power shifts. However, since the world economy requires legitimacy there is the incentive not to act too coercively.<sup>57</sup> The dominant position, over which there is contestation between states and blocs of states, permits the hegemon to advance its interests through a number of means - including the mechanism of international institutions.<sup>58</sup>

From a *liberal* view the hegemon provides the international system with public goods of security and stability. In Kindleberger’s formulation the international liberal economy is the public good. Therefore the monetary and financial arrangements, and especially the

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<sup>53</sup> Lenin argued that the inevitable collapse of capitalism could be delayed through international expansion. (See Balaam and Veseth, 1996: 69)

<sup>54</sup> Roland Axtmann, “The State of the State: The Model of The modern State and its Contemporary Transformation,” *International Political Science Review* 25(3), (2004) p.274.

<sup>55</sup> David Held and Anthony McGrew, *Globalization/Anti-Globalization* (Oxford: Blackwell, 2002) p.4.

<sup>56</sup> According to Gilpin, the USA used its military, political, economic and ideological power to organize world markets, but also the power of access to its internal market. (See also Grieco and Ikenberry, 2003:110 -115).

<sup>57</sup> Grieco and Ikenberry, 2003: 115.

<sup>58</sup> Held and McGrew, 2002: 72-4.

institutions to regulate them, provide the stability for a liberal trading system. In the finance structure the hegemon stabilizes monetary relations by maintaining exchange rates, coordinating macroeconomic policies and ensuring liquidity. In the production structure a liberal free market is maintained and protectionism minimised. The underlying assumption is that capitalism is the only viable system, and the best way to extend the benefits of capitalism is through liberalized international trade. This system of global economic governance requires a dominant or hegemonic state to establish the structures of international organizations. In comparison to the British hegemony of the 19<sup>th</sup> Century, American hegemony entails a “much more systematic use of institutions and explicit multilateral rules to establish and maintain economic openness.”<sup>59</sup>

Maintaining multilateral agreements is still possible even when the hegemonic power is in decline, though much depends on the international regime that is created. The ability to establish rules can be considered as an indicator of strength or decline of state power in the international system. In Stephen Krasner’s view, the stability of the regime depends on how accurately it reflects the underlying power structure. When the international regime gives too much influence to the less powerful the result could be the collapse of the liberal economic regime.<sup>60</sup> John G. Ruggie’s work on regimes looks at norm creation via institutions as one way that the liberal economic order has endured post-hegemon in what is termed ‘embedded liberalism’. One aspect is the accountability of states as party to international treaties and organizations, which thus acquire law making and law enforcement roles. While the development of international regimes, and the institutions necessary to make and keep the rules, may be seen as eroding state sovereignty, embedded liberalism also suggests that market efficiency and social values can be reconciled domestically. There are also arguments, grounded in Kant’s cosmopolitan theory for the creation of a global order. This cosmopolitan or ‘cosmopolitical’ idea is discussed in the final section of this chapter. Before coming to that, the primacy of the nation state as a decision-making unit *vis a vis* the international order, particularly in economic development, must be considered.

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<sup>59</sup> Grieco and Ikenberry, 2003: 113.

<sup>60</sup> Craig N. Murphy, “What the Third World Wants: An Interpretation of the Development and Meaning of the New International Economic Order ideology,” *International Studies Quarterly*, 27:1 (1983) p. 59.

### ***2.2.3. Development Policy Consensus?***

With the discrediting of communist ideology, the relevance of Marxism declined and the influence of liberalism was predominant. Dependency theory gave way to discussion of economic development and growth strategies, promulgated by the institutions governing international economic relations. States achieving independence after the Second World War faced an ideological battle between free market capitalism and command economy socialism and, in the bipolar world of the Cold War, charged with ideological animosity, this was an economic as well as a political statement. Most of these newly independent states, like those who had achieved independence earlier, adopted policies that tended to be state-driven rather than market-led development strategies. From the mid-1980s, the relevance of these perspectives changed dramatically.

At the level of international institutions, which came to play an increasingly significant role, the argument for liberal, or rather neoliberal, development strategies was dominant.<sup>61</sup> The logic, on the one hand, was that as national economies became integrated, an economic crisis in one state now had potentially devastating consequences internationally. On the other hand, if a state were given support by international financial institutions, this would be a green light for foreign direct investment. Policy changes, like shifting to export-led growth strategies and scaling down the role of the state in the economy, were thus presented as necessary to development. The institution governing trade relations, the GATT, which like the World Bank and the IMF had initially been at the margins, expanded both in terms of membership and in the scope of area regulated. Particularly, the principle of free trade was trumpeted. Countries of the South, by seeing trade as an opportunity rather than a threat and opening their economies to imports and foreign investment, would, it was claimed, follow in the path to economic prosperity.

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<sup>61</sup> The World Bank's loans for development went to states accepting conditions of financial responsibility and macroeconomic management in line with neoliberal principles. The IMF's Structural Adjustment Programmes, for example, were part of a wider set of initiatives to deal with debt burdens and other problems of 'weak' economies.

Despite the claim for a neoliberal consensus, there was division between the developed North and developing South. The various policy recommendations, supported by the wealthy countries, came to be seen as a mantra for development and coalesced around the prescriptions of a 'Washington Consensus'.<sup>62</sup> These were prescriptions for reform not only for the transition of post-Communist economies, but also universally relevant for the countries of the South. As regards trade, there is scepticism about the net benefits of trade liberalization, and also on the distribution of those benefits within and between nations.<sup>63</sup>

Robert Gilpin argues that the international rules that govern international economic affairs cannot succeed unless supported by a strong political base.<sup>64</sup> The benefits of free trade in an open and integrated global economy are neither as extensive nor as irreversible as many assume. Global capitalism and economic globalization have rested and must continue to rest on a secure political foundation. In Gilpin's view, since the end of the Cold War, all the political elements that have supported an open global economy have considerably weakened. The ability and the willingness of the United States to lead has declined. Western Europe, and Japan have emphasized their own regional priorities. China as a new economic player is another major factor. The result is weakened political foundations of the global economy.

The theoretical origins of the main arguments described continue to be relevant in international political economy. Claims that state sovereignty is under challenge from interdependence and the increasing globalisation of economic life continue to be prominent, and will feature centrally in future. Today, the debate over economic development centres on the appropriate role for 'state' and 'market' in the development process.<sup>65</sup> Ngaire Woods, writing in 2000 points out how the increase in interdependence could be measured quantitatively (in production, distribution, consumption) but has also a

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<sup>62</sup> Benjamin Cohen, "Money in a Globalized World" in Ngaire Woods ed., *The Political Economy of Globalization* (London: Palgrave, 2000).

<sup>63</sup> Jan Aart Scholte, "Global Trade and Finance," in John Baylis and Steve Smith, eds., *The Globalization of World Politics* (New York: Oxford University Press, 2001) 519 – 539.

<sup>64</sup> Robert Gilpin, *The Challenge of Global Capitalism: The World Economy in the 21<sup>st</sup> Century* (Princeton: Princeton University Press, 2000).

<sup>65</sup> Dani Rodrik, ed. *In Search of Prosperity: Analytic Narratives on Economic Growth*. (Princeton University Press, 2003).

more fundamental *qualitative* aspect.<sup>66</sup> This relates to the change in how states and other institutional actors perceive their interests and pursue them. Changes in the thinking and modes of operation of major actors are seen to be as significant as the increase in economic activity.

#### **2.2.4. The 'nation state' and the 'international free market'**

As a feature of interdependence, the actions of one state — particularly a powerful one — will have some reaction on other states and on a plurality of non-state actors, whether they like it or not.<sup>67</sup> The impact may be symmetric or asymmetric, in other words create dominance or dependency. While an argument can be made for systemic forces (both economic and political) beyond the control of states, it can be accepted that states, following their own perceived best interests, chose to follow policies of economic liberalisation.<sup>68</sup>

In the late 1990s Jeffrey Sachs, writing about the most notable features of the “new world economy”, noted that economies that once were separated were now linked in a dense network of interactions.<sup>69</sup> What was a new feature, and which in many ways popularised the concept of globalisation, was the increased links between high- and low-income countries as poorer nations were integrated into a nascent global system. Economic globalisation can be seen as the integration of separate national economies, especially as functional organization transcends national borders.<sup>70</sup> In the realm of political economy this integration is visible in trade, finance and also in the growing number of linkages through treaties and institutions.<sup>71</sup>

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<sup>66</sup> Ngairé Woods, “The Political Economy of Globalization” in Ngairé Woods ed. *The Political Economy of Globalization* (London: Palgrave, 2000) 1 – 19.

<sup>67</sup> The degree of interdependence depends on a number of factors, particularly communications technology. See, for example, Bruce Russett and Harvey Starr, *World Politics: The Menu for Choice* (New York: WH Freeman, 1992) p.439.

<sup>68</sup> Robert Schrire, “Globalisation: The Political Dynamics,” *South African Journal of Economic and Management Sciences* 4: 3, (September 2001) 449 – 452.

<sup>69</sup> Jeffrey Sachs, “International Economics: Unlocking the Mysteries of Globalization,” *Foreign Policy* (Spring, 1998) p.98.

<sup>70</sup> Held and McGrew, 2002: 38.

<sup>71</sup> Jong-Il You, “The Bretton Woods Institutions: Evolution, Reform, and Change” in Deepak Nayyar ed. *Governing Globalization: Issues and Institutions* (Oxford: Oxford University Press, 2002) 209 – 238.

In terms of finance, a major feature is the integration into a global financial market, which in effect has made currencies substitutable. Susan Strange's conception was of the emergence of 'casino capitalism' where finance was detached from production. Speculative transactions have increased volatility and lead to the dangers of capital flight. Financial crises, based also on perceptions and the irrationality of the market, are no longer confined within domestic economies and often have serious political consequences, for instance Indonesia in 1998.<sup>72</sup> As Stephen Gill (1997) points out, it is an unregulated system since states no longer have authority to exercise accountability.<sup>73</sup> Bhaduri (2002) offers a view that takes into account the fact that states have in fact chosen to liberalise markets, since both developing and developed countries "have a strong compulsion to indulge market sentiments" whether rational or irrational.<sup>74</sup> An increasingly interdependent international political economy means that a country's economic prosperity depends on international trade – the openness of which has been determined by the actions of states<sup>75</sup>. Sachs' empirical evidence on the second half of the twentieth century shows that states that tried to 'go it alone', employing mercantilist policies like high trade barriers to protect industry from imports, grew much less rapidly than export-oriented economies that were more open and increasingly interdependent.<sup>76</sup> This has occurred within a general trend of an increasingly global liberal international economic system, underpinned – if not entirely created – by the dominance of the USA as an economic giant and as the hegemon.<sup>77</sup>

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<sup>72</sup> Deepak Nayyar, "Towards Global Governance," in Deepak Nayyar ed. *Governing Globalization: Issues and Institutions* (Oxford: Oxford University Press, 2002) p.6

<sup>73</sup> Gill takes issue primarily with "exotic financial instruments" like derivatives and looks at the world stock market crash of 1987. Stephen Gill, "Finance, Production and Panopticism: inequality, risk and resistance in an era of disciplinary neo-liberalism," in Stephen Gill ed. *Globalization, Democratization and Multilateralisms* (London: Macmillan, 1997) 51 – 76.

<sup>74</sup> Amit Bhaduri, "Nationalism and Economic Policy in the Era of Globalization" in Deepak Nayyar, ed., *Governing Globalization: Issues and Institutions* (Oxford: Oxford University Press, 2002) p.38.

<sup>75</sup> Central to the global economy is the role of multinational companies as a new type of actor. In the discussion here it is assumed that they seek to influence governments, whether home or host, and are subject to the law of states.

<sup>76</sup> Sachs, 1998: 99

<sup>77</sup> In looking at a number of perspectives on hegemony Balaam and Veseth (1996) see the hegemon as created "when the richest and most powerful nation within some sphere of the international political economy assumes responsibility for organizing a system of international political and economic relations." (Balaam and Veseth, 1996: 52)

The preceding section on IPE has looked at, firstly, the theoretical perspectives and their explanation of power and hegemony, and secondly, the international state-market relations. Claims that the economic realities of international market relations renders some states powerful and others weak in the international arena, are too narrow if the international is limited to economic forces. In Stiglitz's view, our understanding of the world is changing.<sup>78</sup> The question raised by the *qualitative* dimension deals with the logic of collective action and the global public good. Accordingly, there is a change to how the world becomes united, and therefore the process of globalisation must be considered with the problem of 'world order' in the most general sense. The next section further explores how economic interdependence has led to cooperation, and to the creation of regimes.

## **2.3. Neoliberal institutionalism**

### **2.3.1. *International cooperation***

International organizations in and of themselves are not politically neutral and depend both on prevailing norms and the inclusion of the most important players. Looking at economic interdependence without considering the complex interdependence of these inter-state relations in an accepted system of international law would be an incomplete analysis. For this reason Keohane and Nye are a necessary basis for looking at liberal institutionalism.<sup>79</sup>

Collective action can also be considered from broadly Marxist and realist perspectives. Keohane explains that the Marxist paradigm cannot accommodate inter-state collective action since "mutual policy adjustments cannot possibly resolve the contradictions

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<sup>78</sup> Joseph E Stiglitz, "Globalization and the Logic of International Collective Action: Re-examining the Bretton Woods Institutions" in Deepak Nayyar ed., *Governing Globalization: Issues and Institutions* (Oxford: Oxford University Press, 2002) p.239.

<sup>79</sup> John Ruggie is also a seminal author. Aside from the work on regimes see also John. G. Ruggie, *Constructing the World Polity: Essays on international institutionalisation*. (London: Routledge, 1998).

besetting the system because they are attributable to capitalism rather than to problems of coordination among egoistic actors lacking common government.”<sup>80</sup>

From a realist perspective the balance of power theory holds that cooperative endeavours such as political-military alliances necessarily form in self-help systems. The anarchic structure of the international system forces states to rely on themselves to ensure their survival. Unlike hierarchically organized domestic societies, nothing prevents the use of force to achieve objectives or breaking contracts to exploit others. For realists, international organizations, laws, norms, and regimes simply reflect the interests of the strongest states in the system. As Keohane explains, the realist view is of a self-help system where “(a)cts of cooperation are accounted for on the grounds that mutual interests are sufficient to enable states to overcome their suspicions of one another.”<sup>81</sup> These institutions, the result of an interstate bargain in which powerful states gain the acceptance of small states’ to abide by the rules of supranational institutions, therefore constrain the weak but not the powerful. Small states agree to accept this because they at least have a voice in the institution, the “voice opportunities” thesis, and influence they would lack if the larger states resorted to simple coercion.

As noted, an important shift in the theoretical focus occurred as Keohane and others postulated that interdependence creates an interest in cooperation. The increase in economic and other forms of interdependence should increase the probability of cooperation among states. Simply put cooperation emerges from common interests and institutions facilitate cooperation. Neo-liberals see supranationalism as a pooling of sovereignty to better achieve common goals and consider realist claims for conflict overstated.<sup>82</sup> Institutions are described by neo-liberals as “persistent and connected sets of rules (formal or informal) that prescribe behavioral roles, constrain activity, and shape

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<sup>80</sup> Keohane dismisses the marxist paradigm since “Any success in internationalising capital poses grave threats to socialist aspirations” (Keohane, 1984: 55).

<sup>81</sup> Keohane, 1984: 62

<sup>82</sup> Robert. O. Keohane, “Global Governance and Accountability,” in David Held and Mathias Koenig–Archibugi, eds., *Taming Globalization: Frontiers of Governance* (Cambridge, Polity Press, 2003) 130-159.

expectations.”<sup>83</sup> For Institutionalists cooperation is essential in a world of economic interdependence, and therefore argue that shared economic interests create a demand for international institutions.<sup>84</sup> Not just formal organizations but more broadly as “recognized patterns of practice around which expectations converge.”<sup>85</sup>

### 2.3.2. Regimes

In the international system much of the cooperation takes place within international regimes. Stephen Krasner defined a regime as “implicit or explicit principles, norms, rules and decision making procedures around which actors’ expectation converge in any given area of international relations.”<sup>86</sup> The convergence of expectations implies that regimes facilitate cooperation by establishing standards of behaviour.<sup>87</sup> When all states expect the other participants to cooperate, the probability of sustaining cooperation increases.

The realist view, that regimes simply reflect the distribution of power in the international system, means that powerful states create regimes to serve their interests and those regimes have no independent power over states. Thus regimes are intervening variables between the independent variable (power) and the observed outcome (cooperation). In response neo-liberals or liberal institutionalists argue that realists neglect the degree to which countries share interests and the iterative nature of state relations.<sup>88</sup> The structuralist

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<sup>83</sup> Robert O. Keohane. “International Institutions: Two Approaches,” *International Studies Quarterly* 32, 1988.

<sup>84</sup> Robert O. Keohane, and Lisa L. Martin “The Promise of Institutional Theory,” *International Security*, 20: 1 (Summer, 1995): 39-51. Robert Axelrod and Robert Keohane, “Achieving Cooperation Under Anarchy,” in Kenneth Oye, ed., *Cooperation Under Anarchy* (Princeton: Princeton University Press, 1986), pp. 226-254. Robert Keohane, “Neoliberal Institutionalism: A Perspective on World Politics,” in Keohane, *International Institutions and State Power: Essays in International Relations Theory* (Boulder: Westview, 1989), pp. 1-7.

<sup>85</sup> Oran Young, 1980: 377 as cited in Keohane, 1984: 8.

<sup>86</sup> Stephen, D. Krasner, ed., *International Regimes* (Ithaca, NY: Cornell University Press, 1983)

<sup>87</sup> Regimes also facilitate cooperation by providing information on the behaviour of others, and reducing the transaction costs of future agreements by formalising procedures and linking issues. As two level game analyses has shown, international regimes also increase the likelihood of cooperation by redirecting domestic hostility. See also, John G. Conklin, “From GATT to the World Trade Organization: Prospects for a Rule Integrity Regime” in C. Roe Goddard, John T Passé- Smith, and John G Conklin eds. *International Political Economy: State market Relations in the Changing Global Order* (Boulder: Lynne Rienner, 1996).

<sup>88</sup> Andrew Hurrell, “International society and the study of regimes: a reflective approach”, in Volker Rittberger, ed. *Regime Theory and International Relations* (Oxford, Oxford University Press, 1993) 49-72.

perspective of Susan Strange places less emphasis on the political system of territorial states arguing rather that the locus of power is to be found in the structure of the world economy and relations of production. The state-centeredness of regime theory makes it static and value-biased, and the result is an exaggeration of predictability and order.<sup>89</sup> Strange's recommendation is that "the dynamic character of the 'who-gets-what' of the international economy...is more likely to be captured by looking not at the regime that emerges on the surface but underneath, at the bargains on which it is based."<sup>90</sup> This is a valid point, and after briefly dwelling on the 'surface' of the trade regimes the following chapters attempt to analyse the nature of the bargains, particularly in the creation of the WTO.<sup>91</sup>

International trade is naturally an iterated relationship and by institutionalising the 'long shadow of the future' the regime encourages the development of a norm of reciprocity.<sup>92</sup> By institutionalising rules and norms regimes define what constitutes a defection and prescribe sanctions. Nevertheless regimes still lack the coercive power to force compliance and in this sense the international system remains anarchical and thus outside the realm of law.

## 2.4. International Economic Law

Thomas Franck, a legal scholar, characterises the realist thinking as accepting that disobedience to international "law" is the norm.<sup>93</sup> The question he poses is 'Why are rules obeyed or not?' and looks to the significance of *legitimacy* in international relations for the answer. For Franck, legitimacy is "a property of a rule or rule-making institution which itself exerts a pull toward compliance on those addressed normatively because

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<sup>89</sup> Susan Strange. "Cave! Hic dragones: a critique of regime analysis," *International Organization* 36:2, (1982).

<sup>90</sup> Strange, 1982: 354.

<sup>91</sup> I look primarily at bargains between states and do not go as deep as Strange recommends in looking at bargains between states and corporations, banks, labour unions or political groups.

<sup>92</sup> Robert O. Keohane, "Reciprocity in International Relations," *International Organization* 40-1 (Winter 1986): 1-27.

<sup>93</sup> Thomas M. Franck, *The Power of Legitimacy Among Nations* (New York: Oxford University Press, 1990) p. 7.

those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process.”<sup>94</sup> This perspective of international legal theory does not answer the political question posed by anarchy but is useful when looking at regimes and how they help create a specific legal order. This is particularly true in the trade regime, as Deborah Cass explains, “historically the development of international law itself runs parallel with the growth of international trade and commerce.”<sup>95</sup> The rule-based system of the WTO, and the principles and norms that underlie it, has become a fertile field for scholars of international economic law.

There are a number of international treaties under public international law to which states are party and international organizations of which they are members. The principle of equal sovereignty of states is central to this, in that they are competent signatories, but the question now is whether states have delegated their power to international institutions. As Cass explains, the WTO now includes within its “jurisdiction a raft of new issues which, to this point, had been entirely within the national legal domain.”<sup>96</sup> This is a development either welcomed by those supporting the creation of a binding legal economic order, or not welcomed by those seeing a threat to state sovereignty and autonomy. Among the latter there are also those who see the WTO as having executive, legislative and judicial branches, which erode the power of states and advance the interest of international capital.<sup>97</sup> What is clear is that there has been an evolution of the trade regime and the basis for this can be tracked in international law. John H. Jackson follows the development of trade rules and looks particularly to the process of dispute resolution as a substantial issue.<sup>98</sup> His conclusion is that there has been an evolution from a diplomacy-oriented GATT to a rule-oriented WTO. Others like Matthias Oesch, Robert Hilf, and Ernst-Ulrich Petersmann have come to similar conclusions in looking at dispute

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<sup>94</sup> Franck, 1990: 24

<sup>95</sup> Deborah Cass, *The Constitutionalization of the World Trade Organization* (Oxford: Oxford University Press, 2005) p.16.

<sup>96</sup> Cass, 2005: 5.

<sup>97</sup> B. S. Chimni, “International Institutions Today: An Imperial Global State in the Making,” *European Journal of International Law*, 15:1 (2004): 1-37.

<sup>98</sup> John Jackson, *The Jurisprudence of GATT and the WTO: Insights on Treaty Law and Economic Relations* (Cambridge: Cambridge University Press, 2000)

resolution from a European perspective.<sup>99</sup> Petersmann has gone a step further and made a strong link between human rights law and international economic law, placing a higher priority on a rights-based approach. Gregory Shaffer writes that states will continue taking disputes to WTO resolution but that there is also the likelihood of increased private interest being involved in initiating cases.<sup>100</sup> Shaffer looks at the US and EU as the main users of the dispute settlement system in the earlier years but concludes that the trend is now for developing countries, particularly Brazil, to take their cases to the WTO.

In summary, this chapter has reviewed the literature and assessed the key arguments and debates in international political economy. The starting point was the fundamental question about the nature of the international system of states, evaluating the realist and liberal emphasis on anarchy and order respectively. From this the different theoretical perspectives traced the role of the state, analysing the tensions between autonomy and interdependence, and leading to the view that the interaction of economic and political factors are a necessary area of contemporary study. The second section considered the large body of work on development by focusing on three approaches: liberal, mercantilist and Marxist. While different paths of economic development exist, with different domestic policy prescriptions, the focus of this study is on the creation of the international order and the literature on hegemony and institutions is relevant. The pervasiveness of an international economic order based on liberal ideology led to the focus on literature that examines the state and international institutions. The importance of the global nature of market relations was noted as a significant area of recent scholarship. Similarly, the problem of world order and the importance of institutions are crucial areas for future study. In the third section, the study of international order and an international trade regime was considered in terms of neoliberal institutionalism and, subsequently, new studies from the perspective of international law.

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<sup>99</sup> Matthias, Oesch. *Standards of review in WTO dispute resolution* (Oxford: Oxford University Press, 2003); Meinhard Hilf, "Power, Rules and Principles – Which Orientation for WTO/GATT Law?" *Journal of International Economic Law* (2001): 111-134; and, Ernst-Ulrich Petersmann, ed., *International trade law and the GATT/WTO dispute settlement system* (Boston: Kluwer Law International, 1997).

<sup>100</sup> Gregory Shaffer, *Defending Interests: Public-private partnerships in WTO litigation* (Washington: Brookings Institution Press, 2003).

International economic relations are multidisciplinary and can be approached in different ways.<sup>101</sup> This study provides a developing country perspective to the recent literature and follows the creation of trade rules from this perspective. By looking particularly at the context of dispute resolution this study hopes to contribute to others looking at issues of importance to countries of the South, and to those considering the development of the international trade regime. The important question to bear in mind is whether states will resist the waning of their autonomy by manipulating arrangements to maximise their own interests, or whether states will accept and formalise institutionalised co-operation. Exploring possible answers is the task of the next section.

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<sup>101</sup> For a multi-dimensional approach see the volume by Asif H. Qureshi, ed. *Perspectives in International Economic Law* (London: Kluwer Law International, 2002).

## CHAPTER 3

### International Trade under the GATT Regime

In this comparative study there are two areas under examination for which cooperation is required. Firstly, how countries of the South are able to set the agenda, secondly, how countries of the South can manage disputes within or outside the trade regime. This Chapter deals with these two areas under the GATT regime. Section 3.2. considers the North-South agenda from the perspective of developing countries in the early GATT Rounds, and the limited success of attempts to shape or reform GATT. This leads, in Section 3.3., to explanations of how these States pursued initiatives outside of the GATT, specifically through UNCTAD. Section 3.4. assesses the political and legal foundations for cooperation on matters of trade and development. The next section, Section 3.1 discusses briefly the important but ambivalent role of the hegemon before entering into the important detail of the GATT treaty and the regime it establishes.

#### **3.1. The ITO and the origin of the GATT**

##### ***3.1.1. Introduction – the three pillars of the post war world***

The major initiatives leading to the establishment of the GATT were taken by the United States during World War II, in cooperation with its allies – particularly the United Kingdom.<sup>102</sup> It was generally accepted that in the post-war order, rule-based multilateral institutions were needed to monitor and regulate economic relations among nations. Cooperation was chosen, partly due to the circumstances of war, but also because of the experience of the Great Depression and the pre-war economic situation.<sup>103</sup> President Roosevelt's Secretary of State Cordell Hull, looking at the breakdown of economic

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<sup>102</sup> In July 1945, Congress granted president Truman authority to conclude an agreement for reciprocal tariff reduction. See Peter van den Bossche, *The law and policy of the World Trade Organization: text, cases and materials* (Cambridge: Cambridge University Press, 2005) p.79.

<sup>103</sup> This was a time of protectionist trade – Britain entered into preferential arrangements with her dependencies, the US erected high tariff walls.

relations during the interwar years, concluded that “unhampered trade dovetailed with peace; high tariffs, trade barriers, and unfair economic competition, with war.”<sup>104</sup>

For an autonomous and rational state, the potential risks of a loss of autonomy in economic policy were weighed up against the benefits of cooperation with other states and participation in the multilateral institutions. Though free trade was the ideal, and to be reached eventually, the domestic experiences of the major powers suggested the need for an active role for the state. Free trade promoted peace *between* nations through interdependence and prosperity through comparative advantage.<sup>105</sup> Peace *within* nations was sought through high employment, education, and a social safety net provided by the welfare state.<sup>106</sup> There was wide agreement that national governments had an important role of domestic intervention in managing the stability of their own national economies. The compromise between economic nationalism and free trade liberalism, termed ‘embedded liberalism’, was formalised in the Bretton Woods institutions.<sup>107</sup>

The USA was instrumental in creating the International Bank for Reconstruction and Development (the World Bank) and the International Monetary Fund (IMF), in order to promote its own economic development, the reconstruction of Europe and a general expansion of world trade. The main discussions formalising these institutions, dominated by Harry Dexter White and John Maynard Keynes – the American and British representatives respectively – took place at Bretton Woods, New Hampshire in 1944.<sup>108</sup> This conference was devoted to addressing monetary and banking issues, and thus under the jurisdiction of ministers of finance – and thus to the exclusion of trade

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<sup>104</sup> Ethan B. Kapstein, “Distributing the Gains: Justice and International Trade,” *Journal of International Affairs*, 52:2 (1999) p. 538.

<sup>105</sup> The goal of free trade did not imply only multilateral options. The US, by the end of the war had entered into thirty-two bilateral agreements. (See Cass, 2005: 9)

<sup>106</sup> Ethan B. Kapstein, “Distributing the Gains: Justice and International Trade,” *Journal of International Affairs*, 52:2 (1999) p. 535-7.

<sup>107</sup> John G. Ruggie, “International Regimes, Transactions, and Change: embedded liberalism in the post-war economic order,” *International Organization* 36:2, (1982): 379-415. See also George Sorenson, *The Transformation of the State: Beyond the Myth of Retreat*. (London: Macmillan, 2004) p.40.

<sup>108</sup> Paul Johnson, *Modern Times* (London: Weidenfeld and Nicolson, 1996).

representatives.<sup>109</sup> At Bretton Woods, therefore, two pillars for international economic order came into existence, the IMF and the World Bank, but the third pillar envisaged, the International Trade Organization (ITO) did not.

### ***3.1.2. ITO and US domestic politics***

The idea for an international organization to develop and coordinate international trade had been discussed at Bretton Woods, but not finalized, and the multilateral discussions continued after the founding of the United Nations.<sup>110</sup> Multilateral trade discussions took place in the UN's Economic and Social Council (ECOSOC), which at its first meeting adopted a resolution calling for a conference to draft a Charter for an International Trade Organization. Negotiations over the ITO were held in New York and Geneva in 1947. The main objectives were (1) to draft an ITO charter, (2) prepare schedules for tariff reductions and (3) prepare a multilateral treaty containing general principles of trade, the General Agreement on Tariffs and Trade (GATT).

Progress was made on the tariff cuts and GATT, and A Protocol of Provisional Application was adopted so that the GATT reductions could come into effect immediately from 1 January 1948.<sup>111</sup> A final round of negotiations on the ITO charter was left for a further meeting in Havana later that year.<sup>112</sup> At the Havana Conference work on the ITO Charter was completed, and signed by the participating countries, but the Charter never came into effect. The support of the US was crucial, and, as the third pillar in the larger picture of the US-led initiative, expected. President Harry Truman submitted the ITO Charter to Congress for ratification, but a coalition of protectionist interests prevented its approval. The Republicans had won control of the Congress in the 1948 election, and by 1950 the Truman administration announced it would no longer seek

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<sup>109</sup> The conference did recognise the need for a comparable international institution for trade. (See John H. Jackson, *The World Trade Organization: Constitution and Jurisprudence* (Royal Institute of International Affairs, 1998) p.16.

<sup>110</sup> Article 55 of the Charter of the United Nations commits member states to cooperation on economic and social issues.

<sup>111</sup> Protocol of Provisional Application to the General Agreement on Tariffs and Trade, 30 October 1947, 55 U.N.T.S. 308. [GATT 1947]. Conflicting national laws could remain unaltered (the grandfather clause) and there was no need for Congress to ratify the Protocol.

<sup>112</sup> The Havana Conference was convened by the UN, through its Economic and Social Council (ECOSOC) as the International Conference on Trade and Employment.

congressional approval.<sup>113</sup> The non-participation of the United States, the world's leading economy and trading nation, meant the end of the ITO before it even started and left the GATT 1947 as the only existing multilateral international institution for regulating trade.

### **3.1.3. GATT as provisional arrangement**

The failure to adopt the ITO Charter meant that the intended international organization in trade, comparable to the World Bank and the IMF in finance, did not materialize, and that the GATT gradually began to fill this void – though originally it was only a provisional agreement. The ITO Charter had more extensive provisions – particularly on economic development.<sup>114</sup> Since these were not put into effect and since the protocol of application was provisional, domestic legislation that was inconsistent with the substantive obligations could be maintained.<sup>115</sup> According to GATT 1947, states were to meet regularly as a bargaining forum for trade concessions, with the view to reduce tariff barriers. The GATT was not conceived of as an international organization, with no secretariat or governance structure provided for, but as Kenneth Dam points out, it became the *de facto* international organization for international trade.<sup>116</sup> The history of GATT since may be seen as a process of structuring and formulating rules for a coherent system of multilateral trade.<sup>117</sup>

### **3.1.4. GATT norms – non-discrimination, liberalization, reciprocity, and safeguards**

The original GATT Treaty (referred to as GATT 1947) consists of three parts.

- Part 1, focuses on non-discrimination, or most-favoured-nation (MFN)
- Part 2, concerns the elimination of nontariff barriers (NTBs)

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<sup>113</sup> Without US approval the ITO would have proved unworkable and other states would have been reluctant to join – prior to the US decision only Australia and Liberia had formally ratified the treaty. See Marc Williams, *Third World Cooperation: the Group of 77 in UNCTAD* (New York: St. Martin's Press, 1991) p. 21.

<sup>114</sup> The ITO had also included a chapter on international commodity agreements (ICAs), which would have been of benefit to third world producers. Kevin Watkins, *Fixing the rules: North-South issues in international trade and the GATT Uruguay Round* (London: Catholic Institute for International Relations, 1992) p.22.

<sup>115</sup> William J. Davey, "Institutional Framework" in Patrick F. J. Macrory, Arthur E. Appleton and Michael G. Plummer, eds. *The World Trade Organization: Legal, Economic and Political Analysis* (New York: Springer, 2005) p.54.

<sup>116</sup> Kenneth W. Dam, *General Agreement on Tariffs and Trade: Law and International Economic Organization* (Chicago: University of Chicago Press, 1970) p.88.

<sup>117</sup> Hilf, 2001:14

- Part 3, deals with procedure and dispute resolution.

Since the treaty sought to coordinate state behaviour in international trade, it is useful to consider it in terms of a regime, as introduced in chapter 2. The four defining elements of a regime are: principles, norms, rules and decision-making procedures. This definition is based on Krasner's, who defines a regime as "implicit or explicit principles, norms, rules and decision making procedures around which actors' expectation converge in any given area of international relations."<sup>118</sup> The economic principles that underlie the regime have been noted, and emphasize the value of open, non-discriminatory economic transactions in maximizing global welfare. There are also principles that may place higher value on political, social or cultural prevailing beliefs. In this section though, the focus is on norms, since the principles themselves do not constitute specific legal or policy guidelines. This follows the line of analysis adopted by Finlayson and Zacher that "it is the *norms* that provide the foundation of the regime since they constitute the general obligations and rights that are a guide to states' behaviour in designing decision-making procedures and in formulating and implementing rules."<sup>119</sup> In brief, the basic norm of GATT requires States to move towards liberalization by reducing and eventually eliminating tariffs. The Rules are the more detailed prescriptions contained in specific agreements, while the decision-making procedures provide the ways for implementation.

Article I of GATT established the norm of *non-discrimination*, which give benefits to all contracting parties, each promising most favourable treatment. Since all states are legally equal – at least according to the legal principle of the sovereign equality of states – this meant equal treatment for all irrespective of any other factors, including the level of economic development.<sup>120</sup> This was also known as a Most Favoured Nation (MFN) clause, and can be seen as the cornerstone of GATT.<sup>121</sup> Under Article I: 1, "any

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<sup>118</sup> Krasner, 1983.

<sup>119</sup> Jock A. Finlayson and Mark W. Zacher, "The GATT and the regulation of trade barriers: Regime dynamics and functions" in Stephen, D. Krasner, ed., *International Regimes* (Ithaca, NY: Cornell University Press, 1983) p. 276.

<sup>120</sup> Rosalind H. Thomas, "Regional arrangements of developing countries and the World Trade Organisation from a law and policy perspective: The case of the Southern African Development Community" (Unpublished PhD Thesis, 2001) p. 72.

<sup>121</sup> Former Director General of GATT, Eric Wyndham-White as quoted in Finlayson and Zacher, 1983:278

advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.”<sup>122</sup> The importance given to this norm can be seen in the fact that unanimous consent is required for any amendment.

Under Article I:2 there is an important permanent exemption of significance for some developing countries, primarily the colonies and ex-colonies, in that they were to continue to enjoy the historical preferential access to the markets of which their economies were already part. These preferential agreements gave them better than MFN tariff rates and other advantages other states did not enjoy. For example, the Imperial Preference Scheme, established by Great Britain in 1932, maintained preferential arrangements such as duty-free imports between the United Kingdom and the Commonwealth and other colonial linkages. The Benelux and France had similar agreements with its dependent territories, and these were labelled the ‘grandfather clause preferences’ and are in Annex A-D of the GATT.<sup>123</sup>

Article III of GATT established the *national treatment* norm, and imposed an obligation of like treatment for domestic and imported goods. Non-discrimination thus applies also between an imported product and a like domestic product. What this means in practice is that once the applicable tariff is collected on imported products, no law or regulation should then affect competition in the domestic market.<sup>124</sup> Put simply, like products should be treated equally, irrespective of their origin. There are several exceptions, including on the provision of subsidies to domestic products and the arrangements making up regional free trade areas, but which had the effect of working against the interest of developing countries.<sup>125</sup>

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<sup>122</sup> Mitsuo Matsushita, Thomas J. Schoenbaum and Petros C. Mavroidis, *The World Trade Organization: Law, Practice, and Policy* (Oxford: Oxford University Press, 2003) pp.147-8.

<sup>123</sup> Raj Bhala, *Modern GATT law: a treatise on the General Agreement on Tariffs and Trade* (London: Sweet & Maxwell, 2005) pp. 74-84.

<sup>124</sup> Matsushita *et al*, 2003:156.

<sup>125</sup> As Das (2003) and others have pointed out, the infant industry protection argument can be so justified: “In a possible environment where the domestic product has to face competition from an imported product backed by the immense economic strength of the producer and exporter of a developed country, the former

The *reciprocity* norm was initially quite central to the process of bargaining, since a country benefiting from the lowering of another's trade barriers was expected to reciprocate. In the text of the agreement it is less clear cut what the expectation of reciprocity entails. In Article XXVIII bis, which was added in 1955, refers to negotiations conducted "on a reciprocal and mutually advantageous basis..."<sup>126</sup> In practice, since the rich countries also had the biggest markets and high volumes of trade they had the leverage to bargain for reciprocal concessions. The US, Japan and the European countries were the strongest adherents of reciprocity since they traded mainly with each other. As Bhagirath Das puts it, "If a country is not able to 'give', it does not 'get'" and thus reciprocity in the GATT is "a built in mechanism in the fundamentals of the system that will ensure an increase in disparity" among member states.<sup>127</sup> Part IV, providing for special and differential treatment, was added in 1965 and the reciprocity requirement for developing countries was waived.

Finlayson and Zacher see the various exceptions and "escape clauses" that waive rules in cases of economic difficulty as the "safeguard norm" of GATT.<sup>128</sup> These safeguard actions apply on a temporary basis, usually but not always as a result of some emergency or "exceptional circumstances" and allow exceptions to the basic rules:

- An exception for national security (Article XXI);
- An exception in cases of market disruption (Article XIX);
- Exceptions for quotas for balance-of-payment purposes (Articles XII, XIII, XIV, XV and later XVIII:B);
- An exception for customs unions and free trade areas (Article XXIV); and,
- Exceptions for developing countries (Article XVIII and Part IV, added in 1965).

This final point, on the exceptions for developing countries, grew in importance over time as more developing countries joined GATT and cooperated to seek special treatment

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naturally suffers a great disadvantage and handicap." Bhagirath Lal Das, *The WTO and the Multilateral trading System: Past, present and future*. (London: Zed Books, 2003) p.37

<sup>126</sup> Finlayson and Zacher, 1983: 287.

<sup>127</sup> Das, 2003: 65.

<sup>128</sup> Finlayson and Zacher, 1983: 290.

from developed countries in the trading regime. This gradual but significant change, how it came about and what its implications were, is the subject of the next section (3.2.). Before entering into that discussion it is first necessary to consider what arrangements GATT provided to deal with the resolution of disputes.

### **3.1.5. Part 3 and dispute resolution**

State practice showed that, even if they did not lead directly to conflict, disputes between trading powers were not uncommon. GATT contained provisions relating to the settlement of disputes<sup>129</sup> but, as Deborah Cass explains, “judicial conflict resolution was far from the minds of the contracting parties” as GATT was more about bargaining for trade concessions than “legalized decision-making.”<sup>130</sup>

Article XXII, entitled ‘Consultation’ establishes the procedures for dispute resolution and emphasises that it is negotiation and diplomacy rather than litigation that is the GATT’s *modus operandi*. Article XXII, provides for consultation, where a contracting party can file a complaint with GATT and request formal bilateral consultation with the offending state. The complaining party can also exert multilateral ‘peer pressure’ by acting jointly in coalition with other states. Article XXIII, allows a contracting party to make a complaint and seek formal dispute settlement proceedings, and can request a Panel to be formed by the GATT. Originally all contracting parties could take part, but by the mid 1950s there were 3-5 members in the Panel of Experts and the procedure was later institutionalised.<sup>131</sup> The Panel received oral and written submissions *in camera*, and after deliberation presented its report and recommendations to the GATT Council.<sup>132</sup> This plenary of the contracting parties would adopt reports, but only by positive consensus. According to Stoll and Schorkopf this development had only limited effect since the contracting parties had the final decision and “this gave the losing party the opportunity not only to reject the Panel report as a whole, but also numerous possibilities to delay the

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<sup>129</sup> The GATT articles relating to the settlement of disputes are Article XXII and Article XXIII.

<sup>130</sup> Cass, 2005: 10.

<sup>131</sup> Codified in the 1979 Tokyo Round *Understanding on Dispute Settlement*.

<sup>132</sup> The GATT Council was created in 1960. (See Davey, 2005: 55)

ruling.”<sup>133</sup> The losing party was requested to comply with the recommendations of the report, but even if they chose to do so there was no way to measure compliance with the report. If the losing party refused the panel’s recommendations it could pay compensation to the winning party. If this failed then the GATT Council, again acting in consensus, would authorise the winning party proportional retaliation –usually by withdrawing GATT obligations owed to the losing party.

The main weakness of the GATT dispute resolution procedure is that Article XXII contains no “menacing enforcement mechanism.”<sup>134</sup> The threat of ‘retaliation’ was an empty threat; in practice only in one case did the contracting parties actually condone it.<sup>135</sup> The repeated use of the blocking veto, either to block the formation of a panel, the adoption of the report, or blocking the authority to retaliate was another weakness. It not only hampered GATT dispute resolution but also had ramifications outside of it. Particularly in the 1960s and 1970s it led to the criticism of GATT as politicised and ineffective when it came to settling disputes.<sup>136</sup> Clearly, the dispute settlement procedure was susceptible to political power.

### **3.1.6. Conclusion**

By way of summary, the treaty provisions outlined above, and their practical development through state practice over time, served to institutionalise the GATT. In reality states were, at best, inconsistent in observing these founding principles. Although GATT created contractual obligations, there was no machinery for enforcing obligations. The original provisions of a temporary arrangement were deficient to constitute a formal international organization. The birth defects of GATT also led to criticism in its functioning. One commentator identified “the less than transparent nature of the negotiating process” and rightly concluded that the “fairly secretive institution” was

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<sup>133</sup> Peter-Tobias Stoll, and Frank Schorkopf. *WTO: world economic order, world trade law* (Leiden: Martinus Nijhoff, 2006) p.72.

<sup>134</sup> Bhala, 2005: 1151.

<sup>135</sup> The Netherlands was allowed to retaliate on American restrictions on its dairy products by suspending concessions granted to American wheat. The retaliation was in any case ineffective and had little impact on the large American economy. Bhala, 2005: 1160.

<sup>136</sup> Cass, 2005: 11.

therefore dominated by the major powers to the exclusion of developing countries.<sup>137</sup> It is nevertheless still relevant to ask: What were the principal accomplishments of GATT? As an international treaty GATT served as the basis for eight rounds of multilateral trade talks, formalising trade negotiation as an alternative to potentially harmful trade wars. There was an in-built dynamic since new contracting parties benefited automatically from all previous discussions, giving momentum to the lowering of all barriers to trade. Judging GATT on its own modest merits from the liberal perspective, it was successful in the progressive reduction of tariffs and other barriers to trade on a worldwide basis.

*Table 1: GATT Rounds*

<i>Round</i>	<i>Location</i>	<i>Date</i>	<i>Countries</i>	<i>Approx. Tariff Concessions</i>
1	Geneva	1947	23	45 000
2	Annecy	1949	33	5 000
3	Torquay	1950-1	34	8 700
4	Geneva	1956	22	
5	Geneva 'Dillon Round'	1960-1	45	4 400
6	Geneva 'Kennedy Round'	1962-7	48	
7	Tokyo	1973-9	99	
8	Uruguay	1986-94	120+	

*Source: Jackson, 1999: 74; Bhala, 2005: 228-9.*

A controversial question still remains when evaluating GATT's accomplishments, and that is how it has fared in support of the economic development of poor countries. Given that a reduction in the barriers to trade is a stimulus to economic growth, and that according to liberal economic theory this should be of benefit to all, including developing countries, GATT has played a role in stimulating development through trade.

Nonetheless, it is difficult to claim with any certainty that such a role was the intention of those drafting the document. In fact, some have argued, that GATT did very little that was positive for the majority of poor countries, but locked them politically in a relationship of dependence. What follows, therefore, considers the political dynamics of

<sup>137</sup> G. K. Helleiner, "Developing Countries in Global Economic Governance and Negotiation Processes," in Deepak Nayyar ed. *Governing Globalization: Issues and Institutions* (Oxford: Oxford University Press, 2002) p. 316.

international trade by looking at developing countries and their efforts at reforming the GATT trade regime.

### **3.2. North South agenda: Colonial ties and the early GATT Rounds**

#### ***3.2.1 Developing countries***

Of the original 23 contracting parties to the GATT 1947, ten were 'developing countries', though the term itself was never defined in the GATT regime<sup>138</sup>. The original ten were Brazil, Burma, China, Ceylon, Chile, Cuba, India, Pakistan, Syria and Lebanon. China withdrew in 1949, as did Syria and Lebanon, but the Dominican Republic, Haiti, Nicaragua and Uruguay joined GATT at the Annecy Round.<sup>139</sup> There are various explanations, at different levels of analysis, of why, for the most part, developing countries were never major players. Three are considered here.

From the mercantilist view, where wealth equals power, as small economies these states were merely small powers in the international system. The low volume of their trade compared to the rest of the world relegated their importance to the economic periphery. From the US hegemonic position, the less developed countries could best advance their development by participating in the international multilateral, non-discriminatory, GATT regime, while at the same time complying domestically by introducing a system with the lowest possible tariff levels.

From the view of the nation state, the newly decolonised and other developing countries for the most part did not consider international trade as an essential part of their national economic strategies. The prevailing view was that the less developed countries, rather than engaging in the international market, required substantial state support and intervention in the domestic economy. Colonial administrations had introduced significant state participation in the economy, not only in infrastructure development but

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<sup>138</sup> The 23 founding members were: Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, United Kingdom and the United States.

<sup>139</sup> Matsushita *et al*, 2003: 374-5.

also in providing capital. Development theories of the 1950s considered these states as victims of “late-late” development and therefore emphasised inward-oriented development paths. In the context of competition with the economically powerful highly industrialized states, the path to economic development rested on a strategy of import substitution and trade protectionism.<sup>140</sup> The rationale for this view stressed that for those countries there was little to gain from exports and little to lose from excluding imports.<sup>141</sup> Among the more prominent development economists of the period, such as Albert Hirschman, Arthur Lewis, Gunnar Myrdal, Paul Rosenstein-Rodan and Max Singer, was the Argentine economist Raul Prebisch who had considerable influence on the policies of the developing countries. Prebisch played a key role at the Economic Commission for Latin America (ECLA) and the United Nations Commission for Trade and Development (UNCTAD).

A third view places prominence on the institutional context, suggesting that the technical rules of GATT further contributed to the grievances of developing countries.<sup>142</sup> For instance, GATT operated on the basis of major traders in commodities negotiating together, and then presenting the outcome for agreement to the rest. As there were few commodities where developing countries were the major suppliers, or indeed purchasers, they could not expect to approach negotiations from a position of strength when it came to international trade diplomacy. The power to set the agenda was also heavily against the developing countries’ interests. As discussed in detail in the previous section the dispute settlement mechanism was weak and largely ineffective.

*Table 2: Growth in Developing Country membership of GATT 1952-64*

<i>Date</i>	<i>Developing</i>	<i>TOTAL GATT members</i>
1952	13	33
1953	14	34
1955	14	35
1958	16	37

<sup>140</sup> The state played a very important role in the post-war development of Western Europe, including in Britain and in France.

<sup>141</sup> Gilpin, 2001: 306.

<sup>142</sup> Sheila Page and Michael Davenport. *World trade reform: Do developing countries gain or lose?* (London: Overseas Development Institute, 1994) p. 114.

1960	18	39
1961	20	43
1962	35	59
1964	40	64

*Source: Williams, 1991: 24.*

An important aspect, already discussed above under MFN treatment, has to do with the preferential arrangements that ex-colonies or dependent territories received from the old colonial countries and that meant that they received special and differential treatment. Their inclusion into GATT meant that in effect, they were exempt from strict adherence to trade liberalisation obligations. There are different ways to see this allowance. For the Americans, these exemptions as ‘grandfather rights’ were to the benefit of the UK and France in maintaining their spheres of influence. At the same time such arrangements were welcome by beneficiary developing countries in that they secured market access for their goods, for instance in the case of bananas from the West Indies sold in the UK.<sup>143</sup> Other developing countries on the contrary found such arrangements unfair.

The picture thus presented is one where international, domestic and institutional factors limited the capability and constrained the choices of developing countries. The developing countries’ signatory to GATT could exert little pressure multilaterally and not surprisingly, played only a small role initially. But as their numbers rose due to decolonisation, independence and the emergence of new nation states, this brought new dynamics to international trade negotiations. Developing countries began to assert themselves and sought ways to cooperate in the institutions governing international trade. The extent of their success is considered in the next section.

### **3.2.2. Reforms and the early GATT Rounds**

The major reform initiative of the early period focused on reviewing the General Agreement, while all the subsequent reform initiatives essentially centred on the

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<sup>143</sup> Gordon Myers, *Banana Wars: The Price of Free Trade* (London: Zed Books, 2004).

fundamental, though not explicit, question of what degree of policy autonomy Third World governments should have.<sup>144</sup>

The GATT Review Session (1954-55) recognized the importance of the argument for policies allowing infant industry protection in the developing countries. The suggested reforms led to the amendment of Article XVIII, entitled 'Governmental Assistance to Economic Development' by recognizing the right to use import restrictions and to raise tariffs in order to protect infant industries.<sup>145</sup>

Article XVIII was thus the principal provision dealing directly with the trading problems of developing countries. In effect, the new article served to bring some definition to the concept of a 'developing' country by applying it only to a country, "the economy of which can only support low standards of living and is in the early stages of development".<sup>146</sup> Article XVIII also reflected the predominance at the time of the import substitution approach to national economic development. This state centric view saw the formal political independence already achieved as a step towards meaningful economic independence.

The GATT ministerial meeting of 1957 focused on the issues of concern to developing countries: low export growth and fluctuating commodity prices. These were also part of an important study called the Haberler Report<sup>147</sup>, which concluded that the problems faced by the less developed countries were due to protectionist trade policies of developed countries. Increasingly, the structural nature of the world economy was seen as preventing rather than encouraging economic growth in these countries.

Following Haberler's recommendations, GATT Contracting Parties agreed to undertake a programme of action. Committee I was set up to encourage general tariff reductions, Committee II with examining the problems of international trade arising from agricultural

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<sup>144</sup> S.P. Shukla, "From the GATT to the WTO and Beyond," in Deepak Nayyar ed., *Governing Globalization Issues and Institutions* (Oxford: Oxford University Press, 2002) p. 256.

<sup>145</sup> Matsushita *et al*, 2003: 380.

<sup>146</sup> Dam, 1970: 227, and Williams, 1991: 24.

<sup>147</sup> Gottfreid Haberler *et al*, Contracting Parties to the GATT, Trends in International Trade (1958)

protection policies, and Committee III with looking at measures restricting the trade of the developing world. The problems identified then are similar to those of concern today. Committee III reported that the exports of developing countries faced high tariffs when trying to enter the markets of the developed world over a wide range of products: vegetable oils, coffee, tea, cocoa, cotton products, leather goods, and also manufactured products. In addition, these exports faced domestic taxes and levies that further restrained consumption. These internal taxes, however, were not seen as a violation of GATT, since there were no 'equivalent' domestic products in the developing world.<sup>148</sup>

The agriculture sector remained outside the realm of GATT regulation and the North exploited this 'agriculture gap'.<sup>149</sup> In 1955 the US blocked efforts to extend to agriculture GATT rules outlawing export subsidisation. The US was granted a waiver allowing it to impose import controls on agricultural products.<sup>150</sup> Similarly the EC maintained a Common Agricultural Policy (CAP) to insulate its market by offering price support, and, as supply began to outstrip demand, by giving export subsidies — resulting in agricultural produce being dumped on the world market. The exception of agricultural trade from GATT meant that the one area of importance to exporters from the South was not up for discussion.

Within the GATT negotiations themselves developing country participation was limited. The first five negotiating rounds focused on the reduction of tariffs. The fifth GATT round (1960-1), named after US Under-Secretary of State Douglas Dillon, who proposed the negotiations, dealt primarily with the inclusion of the European Economic Community (EEC) participating as a single entity<sup>151</sup>. At the Dillon Round, only Chile, Haiti, India, Israel, Nigeria, Pakistan and Peru participated. More significantly, of the 4400 tariff concessions only 160 reductions on duties were on items of interest to developing countries. As worldwide trade expanded at unprecedented rates and fuelled world economic growth, the developing nations' share of world trade declined. Between

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<sup>148</sup> GATT Basic Instruments, 7<sup>th</sup> Supplement, 1959.

<sup>149</sup> Joseph A. McMahon, *Agricultural trade, protectionism and the problems of development: a legal perspective* (Leicester: Leicester University Press, 1992).

<sup>150</sup> Watkins, 1992: 21.

<sup>151</sup> The six member EEC was formed in 1957

1953 and 1961, the developing nations' share of world trade declined by 22 per cent.<sup>152</sup> The divide between rich and poor nations was becoming more apparent.

### 3.3. UNCTAD and Development

#### 3.3.1. UNCTAD I and Special and Differential Treatment (Part IV)

Developed and developing countries could not see eye-to-eye because it was not clear where GATT was actually heading. This limited how far attempted reforms could go, and led to developing countries eventually looking outside of GATT to drive their South agenda. For the most part, developed countries viewed GATT as a passive organization where barriers to trade were reduced and negotiated on a *quid pro quo* basis. It would be optimistic to expect the developed countries to introduce substantial reforms by themselves. Historically, the strategy of developing countries within the trade regime has been to limit the reach of the norm of reciprocity by seeking 'differential and more favourable treatment'. Special and differential treatment (SDT) has included unilateral trade preferences from developed countries and various exemptions or deferrals.

The 1960s saw the accession to the General Agreement of newly independent countries. As a consequence of the Haberler Report, as well as other studies that were product specific, the developing countries began to find common ground and began to organise as a pressure group in GATT. They called for further and much more comprehensive change by introducing a resolution for an Action Programme.<sup>153</sup> This can also be understood in the wider political context of strengthened Third World solidarity.<sup>154</sup> Developing countries, concerned by their lack of benefits in international trade, called for a conference specifically devoted to tackling these problems and identifying appropriate international actions.

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<sup>152</sup> Williams, 1991: 28.

<sup>153</sup> Williams, 1991: 25.

<sup>154</sup> The Afro-Asian Conference at Bandung, Indonesia, in April 1955 had important repercussions. By 1960, with the entry of 18 new members, developing countries were in the majority in the UN General Assembly.

Political initiatives outside the GATT negotiations led to the expectation that significant progress in international trade favouring the least developed countries could be achieved. The first United Nations Conference on Trade and Development (UNCTAD) met in Geneva in 1964 and was institutionalised to meet every four years. A permanent secretariat, under Raul Prebisch was established. Over the next decade, the developing countries used UNCTAD as the principal vehicle to attempt to reform and restructure the world economy. This process brought into focus the sharp division between the states of the North and the South. Unsurprisingly, the first official statement of the Group of 77 (G-77), issued at the end of UNCTAD I, concentrated on formulating economic demands to the rich nations.<sup>155</sup>

What began as an isolated UN Conference became in the words of one observer “a permanent body commanding the allegiance of the entire less developed world”.<sup>156</sup> The response from the developed countries was mixed. The United States held fast in defending the traditional position of GATT, based on non-discrimination and a liberal world economic system. The French saw managed international markets with discriminatory trade arrangements (in accordance to the preferences of ex-colonial partners) as a solution to closing the ‘trade gap’. But, it was not principally an economic analysis that dominated UNCTAD and an ideological consensus along political lines quickly emerged. In the one country one vote system of the UN, the less developed countries, in solidarity as the G-77, posed potentially a very powerful bloc in international economic relations.

In 1965, in response to the emergence of UNCTAD and the solidarity of the G-77, the GATT Contracting Parties agreed to the addition of Part IV (on Trade and Development). The additional chapter to GATT required developed countries to give high priority to reducing their trade barriers to products from the developing countries.<sup>157</sup> The concept of Special and Differential Treatment (SDT) was introduced, stating

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<sup>155</sup> Morten Ougaard, “The Origins of the Second Cold War,” *New Left Review*, 147 (Sep-Oct 1984) p.68.

<sup>156</sup> Dam, 1970: 237.

<sup>157</sup> A Committee on Trade and Development was established to oversee the functioning of the new GATT provisions.

explicitly that the exports of developing countries should be given preferential access to markets of developed countries, and, that the developing countries participating in trade negotiations need not fully reciprocate the concessions they received. This principle was first widely discussed during the Kennedy Round, and as Part IV of GATT obligated developed countries to pursue trade policies taking into account the development needs of developing countries.

The important articles of Part IV are Articles XXXVI, XXXVII and XXXVIII.<sup>158</sup> Article XXXVI, 'Principles and Objectives', containing the provision on reciprocity, referred to the need for improved market access for all LDC products and the need for price stabilization for primary products. Article XXXVII, 'Commitments', spelled these out though in a highly qualified form. Article XXXVIII, entitled 'Joint Action', was significant in establishing the legal framework for the Trade and Development Committee that, in the final analysis, provided the base for future progress.

Part IV recognized the need to provide 'more favourable and acceptable conditions of access' for developing countries' primary products, and increased access 'under favourable conditions' for processed and manufactured products of export interest to less-developed countries. Put directly, "The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of the less developed contracting parties."<sup>159</sup> But, and there's always a but, obligations in Part IV were not legally binding and remained on the basis of implementation on the quaintly named 'best-endeavour' effort.

Even as the Kennedy Round took place, the protectionist lobbies in the United States were increasingly powerful in shaping the trade agenda. As the world's largest trading power this had widespread effect. European countries, in establishing the European Economic Community (EEC), introduced various non-tariff barriers and other protections, strongly supported by politically powerful lobbies, especially in agriculture.

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<sup>158</sup> Matsushita *et al*, 2003: 382.

<sup>159</sup> Dam, 1970: 238.

The Common Agricultural Policy (CAP) had the effect of protecting European farmers from competitive world prices. This affected not only agricultural exporters in the developed world but in an increasingly global economy, raising entry for products from the developing world. Countries in Europe also sought to gain advantage by continuing preferential arrangements with their former colonies. For example, in Britain through the Commonwealth Preference Area, and in the EEC – dominated by France – through the Yaounde Convention. These agreements had some positive implications for those who participated, and no doubt developing country producers desired to maintain their benefits, but in the bigger picture the overall effect was detrimental in that it led to states seeking preferential rather than multilateral negotiations.

### **3.3.2. UNCTAD II and Preferences**

The South's push for restructuring trade relations continued at UNCTAD II in New Delhi, India in 1968. Here developing countries were encouraged to expand manufactured and semi-manufactured exports by making such goods more competitive in developed country markets. The way to achieve this, it was argued, was through introducing tariff preferences. However, a system of preferences would be derogation from the Most Favoured Nation principle, a cornerstone of GATT 1947. Even though preferences would make the MFN principle seem more like an exception than a general rule of GATT, this was not necessarily a hurdle as this also had some support from the EEC (under the Brasseur Plan advocating selective preferences) and also from those African countries associated. The United States and the United Kingdom were more reluctant in supporting the UNCTAD proposal of introducing a Generalised System of Preferences (GSP) for manufactured exports, but a tentative consensus was achieved.<sup>160</sup>

The GSP gave unilateral trade concessions to the countries of the South. More specifically it was an agreement for temporary and non-reciprocal grants of preferences by developed countries to developing countries. Developed countries would each

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<sup>160</sup> In order to get around GATT's most-favoured-nation clause, a waiver was adopted. In the Tokyo Round, the Enabling Clause established a legal basis within GATT for extending GSP benefits. (On the GSP, and the Tokyo Round negotiations see Matsushita *et al*, 2003: 383)

determine their own system of preferences, specifying the goods and margins of preference. Since the concessions were mainly on manufactured goods, those countries that stood to benefit were the newly industrialising countries, or NICs.<sup>161</sup> Just four countries – Hong Kong, South Korea, Taiwan and China – received 44% of GSP trade benefits.<sup>162</sup> In effect, low-income countries had no option but to become outward looking in their development policies if they were to benefit from preferences.

Other systems of preferences that were not multilateral were also in operation. The Lome Convention, for example, granted 68 African, Caribbean and Pacific (ACP) countries preferential links with the EEC, allowing market access to commodities, subject to criteria such as rule of origin and other quotas, and only if the trade posed no threat to the already heavily protected European agricultural sector. Unsurprisingly, despite the Lome preferences, the ACP countries' share of imports to the EEC fell.

Special and Differential treatment in the GATT entailed<sup>163</sup>:

- Allowing the developing countries to use forms of protection from which developed countries are disbarred (e.g. protection for balance of payments or infant industry reasons);
- Preferential access to developed country markets in the form of the Generalized System of Preferences (GSP);
- A statement that developing countries need not offer reciprocal tariff reductions in tariff negotiations;
- Allowing developing countries to exempt themselves from many of the agreements on rules;

As it was adopted, SDT was seen as a welcome breakthrough in North-South relations. Nevertheless, certain analysts suggested that the concessions by the North were not at all altruistic, but given for strategic reasons, particularly in order to limit Soviet influence in

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<sup>161</sup> Alasdair MacBean, and P.N. Snowden, *International Institutions in Trade and Finance* (London: Allen and Unwin, 1981) p.104.

<sup>162</sup> Watkins, 1992: 34.

<sup>163</sup> N. L. McCulloch, Alan Winters and X. Cicera, *Trade Liberalization and Poverty: A Handbook* (London: DFID, 2001) p.167.

the Cold War geopolitical struggle for the South. Others argued that the South was given a 'free ride' with little damage done to the liberal regime precisely because these states were of such marginal significance.<sup>164</sup> Analysts have pointed to other consequences for the trade regime, because "by implying that trade liberalization was bad for developing countries, SDT legitimised the argument for avoiding it, and left developing countries...outside the liberalization dynamic of the world system. They undertook little liberalization of their own, and because they offered so little, they obtained very little liberalization from developed countries for the commodities in which they were interested."<sup>165</sup>

In summary, developing countries negotiated to seek preferential treatment and to expand their rights to deviate from the GATT rules. The provision of Article XVIII was used to protect their domestic industries and internal markets from imports. Developing countries extended tariff preferences for access to markets and were able to deviate from the obligation to grant reciprocity.<sup>166</sup>

Seeking special treatment had unforeseen consequences. On the question of preferences, clearly only a handful of already industrializing states stood to benefit. Those states that already enjoyed selective preferential arrangements — often based on colonial structures — were reluctant to give up these preferences for a generalized system. In conclusion, "preferences have not proven to be very effective as an instrument of development. They often came laden with restrictions, product exclusions and administrative rules that prevented beneficiaries from using them fully. Even when effective, they diverted trade away from equally poor but excluded developing countries."<sup>167</sup> The net effect was a division along Latin American, Asian and African lines that tested the unity of the G77. This aspect of the South alliance will be considered in the next section.

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<sup>164</sup> Watkins, 1992: 33.

<sup>165</sup> McCulloch *et al*, 2001: 167-8.

<sup>166</sup> Diana Tussie, *The less developed countries and the world trading system: A challenge to the GATT* (New York: St. Martin's Press, 1987) p.138.

<sup>167</sup> Bernard Hoekman, *Developing Countries and the Political Economy of the Trading System* (Helsinki: United Nations University Press World Institute for Development Economic Research, 2002) p. 30.

### 3.4. New International Economic Order and the G77

Historically considered, and with few exceptions, the rich nations of the eighteenth century comprised the rich nations of the end of the twentieth.<sup>168</sup> European states pursued their ultimate ends of wealth and power through empire building with the purpose of dominating international trade relations.<sup>169</sup> By 1914, Europe and its colonies and former colonies together covered nearly 85% of the world's surface.<sup>170</sup> Since, the colonies have won *political* independence and become recognised as sovereign states in their own right. Throughout the developing world, many consider *economic* independence as a necessary dimension of the struggle for liberation. In the early 1970s it appeared that the South could mount their best effort and push for the redistribution of global economic power. The history of that effort is traced here.

The development of an international trade regime under the GATT was a gradual process but developing countries were never in the driving seat at these negotiations. The promise that participation in multilateral decision-making held was that these institutions accepted the principles of equal and non-discriminatory treatment of all states. Many of the arrangements that could be considered as victories, as noted above, were not successful in changing the regime orientation but merely codified or extended some of the preferential treatments some of the developing countries already enjoyed. The dispute resolution system was never a mechanism for effective change and the immediate focus was principally on tariff reduction negotiations rather than on the wider ends of development. The 'GATT stage' as it were, was an insignificant platform on which the countries of the South could cooperate in advancing their interest and their development compared to that of the larger context of international politics and the UN's General

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<sup>168</sup> Gilpin, 1987: 264.

<sup>169</sup> Jacob Viner's often-cited dictum states that 'wealth and power are each proper and ultimate ends of national policy'.

<sup>170</sup> Denis Richards, *An Illustrated History of Modern Europe, 1789-1974* (London: Longman, 1977) p. 212.

Assembly.<sup>171</sup> Developing countries used this majority and cooperated to effect change conceiving a 'New International Economic Order'.<sup>172</sup>

As Milan Bujalic recounts, the question of permanent sovereignty over natural resources was first raised in 1952, by Chile, and passed in a UN resolution only ten years later. The UN debate on the drafting of international covenants on human rights also dealt with the question, resolving to have a covenant for civil and political rights and another for economic, social and cultural rights. Action in other forums also strengthened the growth of political solidarity. The Afro-Asian Conference at Bandung, Indonesia, in April 1955 had important repercussions. First among these was the continued unity of the Afro-Asian voting bloc in the UN system, and which led to the formation of the Group of 77. The creation of UNCTAD in 1964, as noted above, provided a forum for the G77 to formulate its economic demands and served to highlight the divisions between North and South.

The prevailing view in the South was that existing economic order was working in the favour of the developed countries of the North. In the early 1950s the developing countries accounted for 32% of world trade, by 1972 this had been reduced to 17%.<sup>173</sup> Protective tariffs and non-tariff barriers in the developed countries impeded exporters of primary commodities, and attempts to mobilize domestic development in the South were not as successful as strategies of 'national capitalist' development had forecast.

There were also cleavages within the South. Preferential systems, such as that of the Yaounde Convention and of the Commonwealth, were enjoyed by some and to the detriment of others. Even within these preferential agreements there were also regional and size differences. For example, Senegal, Cameroon and Cote d'Ivoire accounted for about 60% of preferential EEC imports.<sup>174</sup> On the one hand these preference holders,

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<sup>171</sup> At the international political level the circumstances were also changing: by 1960, with the entry of 18 new members, developing countries were in the majority in the UN General Assembly.

<sup>172</sup> Declaration on the Establishment of a New International Economic Order – Resolution 3201 of 1 May 1974. See also, Jagdish N. Bhagwati, ed. *The New International Economic Order: The North South Debate* (Cambridge, MA: MIT Press, 1977).

<sup>173</sup> Kamal Hossain, "Introduction" in Kamal Hossain ed. *Legal Aspects of the New International Economic Order* (London: Frances Pinter, 1980) p. 2.

<sup>174</sup> The figures relate to 1965.

mainly the EEC African associates, but also countries of the Commonwealth Caribbean, were unlikely to give up their advantages. On the other hand countries such as Brazil, Argentina and Chile wanted existing schemes abolished before a new one was introduced. Part of their reasoning was that the existing preference arrangements continued the exploitative colonial structures. There were also more pragmatic views. For example, India was willing to forego its existing advantage in the Commonwealth system for better access in the generalised system of preferences. These contending views were thrashed out at meetings of the G77 in preparation for the UNCTAD conferences, particularly in Algiers in 1967, where agreement in principle was found and formulated as the Algiers Charter.<sup>175</sup> The G77 was able to secure a compromise position and build the solidarity of the South. The strategy of the G77 “was based on the assumption that concessions could only be wrested from the rich countries through collective action by developing countries.”<sup>176</sup> The implication was that this necessary collective action would be through UNCTAD rather than GATT. The North, in UNCTAD called Group B, was reluctant to accept UNCTAD as a proper negotiating forum and sought to restrict its scope.

The Non-Aligned Movement was also a forum outside of the GATT for cooperation in setting the economic agenda of the South. Preparatory meetings were also held to coordinate a common position to be advanced in UNCTAD, but the results of UNCTAD II and UNCTAD III in 1972 were a disappointment for the South.<sup>177</sup> By the time of the Algiers Declaration of 1973, at the fourth Non-Aligned summit meeting held in Algeria, the programme for a New International Economic Order was taking shape: “The heads of state or government recommend the establishment of effective solidarity organizations for the defense of the raw material producing countries such as the Organization of Petroleum Exporting Countries...to recover natural resources and ensure increasingly substantial export earnings.”<sup>178</sup> There was support for a unified South and harsh

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<sup>175</sup> Ougaard, 1984: 68.

<sup>176</sup> Watkins, 1991: 121.

<sup>177</sup> Ougaard, 1984: 68.

<sup>178</sup> As cited by Walden F. Bello, *Deglobalization: Ideas for a new world economy* (London: Zed Books, 2004) p. 41.

condemnation of the North, its multinational companies and its control of the economic order.<sup>179</sup>

The North-South confrontation played out at the UN Special Session on development in 1974, convened at the request of the South. Two declarations on the Establishment of a New International Economic Order were adopted.<sup>180</sup> By December 1974 the Charter of Economic Rights and Duties of States<sup>181</sup> was also adopted by the General Assembly as “an effective instrument towards the establishment of a new system of international economic relations based on equity, sovereign equality, and interdependence of interests of developed and developing countries.”<sup>182</sup> The Charter passed with 120 in favour, 6 against with 10 abstentions, showing clearly the balance of voting power enjoyed by the states of the South.<sup>183</sup>

Appeal to various economic rights and duties of states were abstract enough to meet with wide approval. Importantly, the right of states to permanent sovereignty over their natural resources went in tandem with the right of governments to choose their own economic, political, social and cultural systems without outside interference, also articulated in the Charter. The large majority of countries saw the Charter as introducing legal norms for development on a just and equitable basis.

The essential norms of the NIEO reflected the assumption that Third World development should be the primary system goal. It went further than other international norms in that, based on the notion of *equity*, claims to special treatment for developing countries were necessary in order to have a just international economic order.<sup>184</sup> The creation of an international social welfare system and the acceptance of the idea of international social

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<sup>179</sup> Some of the most prominent leaders at Algiers included; Tito, Gandhi, Sadat, Senghor, Sihanouk, Nyere, Bourguiba, Makarios, Castro, Khaddaffi, Kaunda, Gowon, Mobuto, Bandaranaike, Faisal, Assad, Haile Selassi, Houphouet-Boigny. (Ougaard, 1984: 68)

<sup>180</sup> Declaration on the Establishment of a New International Economic Order UNGA Res (3201), May 1 1974 – and the Programme of Action thereof (3202).

<sup>181</sup> UNGA Resolution 3281 (XXIX), December 1974.

<sup>182</sup> As quoted by Hossain, 1980: 5.

<sup>183</sup> The six votes against were Belgium, Denmark, Federal Republic of Germany, Luxembourg, the United Kingdom and the United States.

<sup>184</sup> Nawaz, 1980, p116.

justice were also imperative.<sup>185</sup> The NIEO envisaged that equity applied not only to distribution but in fact justified the alteration of existing rules and the establishment of restrictions on entities like multinational companies, because the existing legal framework was unjust.

Interestingly, president Alvarez of Mexico who had taken much of the initiative on the Charter emphasised the legal aspect that was missing from the contemporary order of the GATT regime. More precisely he had wanted the Charter to be an instrument that could serve as a firm legal footing for the international economy. In his words: “*We must strengthen the precarious legal foundations of the international economy. A just order and a stable world will not be possible until we create obligations and rights which protect the weaker States. Let us take economic co-operation out of the realm of goodwill and put into the realm of law.*”<sup>186</sup> This ‘realm of law’ is significant in that the institutions governing trade today are more legalistic than the Mexican President likely imagined, while at the same time international trade relations are still unjust.

### ***Analysis***

How can the G77 and the economic vision of a NIEO be assessed? In evaluating this question the first response is that it demonstrated the capacity for diplomatic cooperation by States of the South, especially within the UN system where they used their numerical superiority to effect. The disparities in wealth between the rich and poor were brought to world attention. Significantly, this was also an example of the weakness of the United Nations in that, aside from the passing of Declarations and the naming of various Development Decades, the NIEO envisioned never materialized. The appeals to economic rights and duties of states and the importance of a development orientation to international trade are noble ideas now accepted as largely non-controversial. Even at the time the principle of equity was not a subject of contention. UNCTAD had formalised the special and differential treatment that countries of the South enjoyed, though, as is clear from the cleavages that emerge in the G77, not by all countries. But, given the value

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<sup>185</sup> Robert L. Rothstein, “Regime-Creation by a Coalition of the Weak: lessons from the NIEO and the Integrated Programme for Commodities,” *International Studies Quarterly*, 28:3 (September 1984) p.311.

<sup>186</sup> As quoted by Bulajic, 1980: 50

attached to unity, the G77 could present a common face and solidarity in agreement on general principles. As Rothstein points out the South's demand for the fundamental restructuring of the world economy left little room for genuine bargaining.<sup>187</sup> Given the political nature of the G77, the success of a moderate, reformist approach to international economic relations was unlikely. As a result any attempt at North South negotiation was likely to be only an exchange of rhetoric. The situation in 1974 and 1975, according to Amuzegar was one where "the international economic community was badly wracked by discord, and engulfed in mutual distrust, bitterness and frustrations."<sup>188</sup>

Turning to theory, from a mercantilist or realist approach, it is accepted that a state rationally seeks to increase their wealth and power. The NIEO can thus be assessed as a rational act aimed at aggrandizing either the state, or those who keep the government in power.<sup>189</sup> The list of developing country demands for a new economic order, and the political bloc driving it, are thus an example of traditional alliance among countries seizing new opportunities for material and political advantage, particularly through international organisations. The analysis suggests that the North therefore likely perceived in the NIEO a threat to their interests. The structural view, of which dependency theory had the greatest influence on developing countries at the time, saw a world economic system in need of new institutions since the imbalance between core and periphery was too deep-rooted to reform. The structure of inequality of the world economy unified the South, and the NIEO emphasised the norm of Third World development as the key norm.<sup>190</sup> In the final analysis the NIEO was not entirely coherent — adding together virtually all demands made by the developing countries in the previous two decades.<sup>191</sup> The NIEO demands for such an overhaul were too radical to lead to realistic or practical solutions.

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<sup>187</sup> Rothstein, 1984: 326.

<sup>188</sup> Jahangir Amuzegar, "A Requiem for the North-South Conference," *Foreign Affairs* 56(1), (October 1977) p. 140.

<sup>189</sup> Murphy: 1983, 56

<sup>190</sup> Rothstein, 1984: 313.

<sup>191</sup> Rothstein, 1984: 310-1

The assumption that the interests of the North were homogenous was also a miscalculation, as was the expectation that given the range of divergent interests the South could enjoy solidarity indefinitely. A balance between their unity and their national objectives was difficult to maintain. Over time and across issues different states of the G77 shifted their calculations of self-interest. The danger was that the North could cause a split in the South, particularly where cleavages that could be exploited already existed. Even on issues where a unified view was strong, such as in commodities, disagreement ensued. A case in point was the discussions on international commodity agreements and the Integrated Program for Commodities (IPC). Countries that potentially were the largest beneficiaries of the IPC preferred to maintain their dominant positions, such as Brazil in coffee and Malaysia in tin, rather than being locked into a negotiation position of G77 unity. The US was also prepared to support some agreements, such as with Brazil on coffee, for 'foreign policy' reasons.<sup>192</sup> The North-South preference system also split unity by giving particular gains. For example, the Lome Convention between the EEC and 46 African, Pacific and Caribbean states concluded in 1975.<sup>193</sup> The North South debate had by the end of the 1970s ended in stalemate. By September 1980<sup>194</sup> North and South failed to arrive at even an agenda for further negotiations. The attempt to establish a New International Economic Order failed.<sup>195</sup>

### 3.5. Conclusion

The economic gains made in world trade during the time of the GATT were significant: between 1948 and 1997 world trade expanded from \$124 billion to \$10,772 billion.<sup>196</sup> The countries of the South argued, using dependency theory, that the international economic structure created before the 1960s promoted the interests of industrialised countries and relegated poor countries to the periphery. From the perspective of multilateralism the GATT instrument was incomplete and as a treaty had

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<sup>192</sup> Michael W. Doyle, "Stalemate in the North-South Debate: Strategies and the New International Economic Order," *World Politics* 35:3 (April 1983) p. 446.

<sup>193</sup> Doyle, 1983: 431.

<sup>194</sup> The 11<sup>th</sup> Special Session of the United Nations.

<sup>195</sup> Rothstein, 1984: 307.

<sup>196</sup> Bello, 2004: 54.

no real enforcement mechanism for enforcing state obligations. The lack of a formal organization did not prevent regime creation as expectations converged on maximizing global welfare. The main preoccupation was removing barriers to trade, the norm of liberalization, but was applied selectively. The norm of reciprocity was relaxed, usually in benefit to developing countries. This special and differential treatment was a result of reforms in the early GATT rounds, leading to the amendment of Article XVIII on 'Governmental Assistance to Economic Development'. Colonial era ties also extended preferences. The successive GATT rounds were essentially negotiations to change rules and decision-making procedures.<sup>197</sup> As the number of developing countries signatory to GATT increased this did not translate into substantive change in the GATT agenda. As one observer puts it, "*Whatever the skills of negotiators from the South, for the most part they are like extras in the GATT stage: the show can't go on without them, but nobody is remotely interested in what they have to say.*"<sup>198</sup>

Developing countries also looked outside of GATT to influence international economic relations in the trade regime. In the 1970s especially, the G77 and NAM served as blocs of solidarity, and UNCTAD as a new forum for development and trade. Significantly, by using the meetings of the UN and the principles of law, the language of the debate turned into a legal one of rights and duties. Despite the failure of the NIEO the right to development has since been accepted as a norm guiding the trade regime. As Zakariya explained in 1980, "*The battle for economic self-determination and permanent sovereignty over natural resources was fought simultaneously...on two fronts: concrete political and economic action by some of the developing states individually or collectively, and the theoretical refinement of the underlying legal concepts and principles within the United Nations system.*"<sup>199</sup>

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<sup>197</sup> Geneva (1947), Annecy (1949), Torquay (1950), Geneva (1956), Dillon (1960-1), Kennedy (1962-7), Tokyo (1973-9) and Uruguay (1986-94).

<sup>198</sup> Watkins, 1992: 36.

<sup>199</sup> Zakariya, 1980: 210.

## CHAPTER 4

### International Trade under the WTO Regime

This Chapter deals with the two aspects of cooperation under the WTO regime: whether countries of the South are able to set the agenda, secondly, how these countries can manage disputes within or outside the trade regime. Section 4.3. looks at the Development Agenda, as expressed in the Doha Round of negotiations, while Section 4.2. considers specifically the North-South dynamic as it regards agricultural products and markets. The analysis comes together by balancing international development aims with the tensions that follow from national policy in the context of the WTO. Section 4.4. sets out the case study on cotton production and evaluates the prospects of the legal approach to dispute settlement under the WTO regime. The next section, Section 4.1. first deals briefly with political context before examining the WTO treaty and the regime it establishes.

#### **4.1. GATT Uruguay and the origin of the WTO**

##### ***4.1.1. Introduction – the post Cold War world***

While the trajectory of cooperative relations between states of the South formed one aspect of trade relations, the developed countries were also concerned with their own economic recovery following the oil crises of the 1970s, hyperinflation and rising unemployment, and at least by the early 1980s serious global recession.<sup>200</sup> The economic upheaval affected international investment and trade. GATT figures show world production and world export growth yearly at 6% and 8.5% over the period 1963-73, but fell to 2.5% and 3.5% between 1974-85.<sup>201</sup>

The US, the EC countries, and Japan nevertheless dominated world trade. No doubt this was partly due to the liberalization and tariff reductions under GATT. From 1950 to

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<sup>200</sup> The international monetary crisis of 1971 prompted the US to end the convertibility of the dollar into gold and abandon the fixed exchange rate system for currencies established at Bretton Woods.

<sup>201</sup> Gilbert R. Winham, "An Interpretative History of the Uruguay Round Negotiation" in Patrick F. J. Macrory, Arthur E. Appleton and Michael G. Plummer, eds., *The World Trade Organization: Legal, Economic and Political Analysis* (New York: Springer, 2005) p.10.

1975, merchandise trade among industrial countries grew at an average rate of 8% annually.<sup>202</sup> Despite their categorization as the developed North it would be mistaken to simply assume that this translated to automatic unity. Japan, and its neighbours the Newly Industrialized Countries (NICs) were able, through rapid technological advance, to dominate production. This led to calls, especially in the US, for protection against exports — either through tariffs or increasingly non-tariff barriers. Agreements for ‘Voluntary Export Restraints’ were reached, originally with Japan, allowing a new protectionism in the US. In Europe the enlargement of the European Community and its Common Market provided safeguards against manufactured imports, while the Common Agricultural Policy protected agricultural producers. In the face of economic interdependence, domestic interests became increasingly important in shaping strategic trade policies that were more akin to economic nationalism than liberal multilateralism.

A common factor, but one which had different affects on political actors, was the structural change in the world economy. An important aspect was the relative decline of agriculture trade, falling from almost half of total world merchandise trade in 1950 to about 14% by the mid-1980s.<sup>203</sup> This was matched by a corresponding rise in manufactures but especially in trade in services. Unprecedented developments in the hi-tech and computer industries, and the effect of this in the financial services sector, emerged as key engines of new economic growth, as was noted in the previous chapter. These areas were not regulated under the existing GATT, which dealt primarily with trade in manufactured goods, and it was claimed that the changing reality of an increasingly complex global trade was making GATT obsolete.<sup>204</sup> Sheila Page notes there were no important developing country interests addressed in the Tokyo Round (1973-1979), in fact, the GATT was hardly involved at all in the final stages as the EC and US

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<sup>202</sup> Bhala, 2005: 246.

<sup>203</sup> Winham, 2005: 10.

<sup>204</sup> Deepak Nayyar shows that as trade flows moved beyond the simple world of goods, so trade barriers moved beyond the simple world of tariffs. Deepak Nayyar, “Towards Global Governance,” in Deepak Nayyar ed. *Governing Globalization: Issues and Institutions* (Oxford: Oxford University Press, 2002) p. 10.

dominated.<sup>205</sup> As trade tensions increased, particularly over agricultural issues of interest to the developing world but also not covered by GATT, it seemed likely that the weaknesses of the multilateral trading regime would be entirely exposed unless a new round addressing new issues was launched.

#### **4.1.2. The Uruguay Round**

The eighth round of the GATT multilateral negotiations, the Uruguay Round, was launched in 1986 and concluded in 1994. By the time it was concluded it was considered the most significant round and the most comprehensive — extending the rules governing international trade to include intellectual property, trade in services and agriculture. Initially there were serious concerns meaning that it was four years between the failed ministerial meeting in Geneva in 1982 and the actual start of the new round.<sup>206</sup> One concern was that any new agreements would require better institutional mechanisms than GATT provided. Another concern was that the Tokyo Round had resulted in too many ‘side agreements’ binding only those that had accepted them, a problem of ‘GATT *a la carte*’, which negotiators sought to avoid as talks began in Uruguay.<sup>207</sup> All of the original GATT articles, member countries decided, would be open to review. A special negotiation on the ‘functioning of the GATT system’ (or FOGS) proposed a new “Multilateral Trade Organization” and later changed to the World Trade Organization. According to William Davey, there were no plans at the start of the Uruguay Round to create a new organization. As the negotiations continued the EC put forward a proposal in 1990 based on (i) the need for a proper legal basis for GATT; (ii) the desirability of a common institutional framework for the existing side agreements and (iii) the advantages of a single dispute settlement system.<sup>208</sup> The Marrakech Agreement Establishing the

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<sup>205</sup> Sheila Page “Developing Country participation in multilateral trade negotiations: Developing Country perspectives and negotiating framework” in Asif H. Qureshi, ed. *Perspectives in International Economic Law* (London: Kluwer Law International, 2002) p.115.

<sup>206</sup> Kemal Dervis points to conflicts on agriculture as the main cause. Kemal Dervis. *A Better Globalization: Legitimacy, Governance, and Reform* (The Center for Global Development, 2005) p.167.

<sup>207</sup> Matsushita *et al*, 2005: 6.

<sup>208</sup> William J. Davey, “Institutional Framework” in Patrick F. J. Macrory, Arthur E. Appleton and Michael G. Plummer, eds. *The World Trade Organization: Legal, Economic and Political Analysis* (New York: Springer, 2005) p.56. Davey, goes on to explain that the USA in 1991 saw a new organization as unnecessary and accepted the idea at the very end of the Uruguay Round negotiations.

World Trade Organization (WTO Agreement) formally replaced GATT 1947<sup>209</sup> and was opened for signature in April 1994. The WTO Agreement entered into force 1 January 1995. According to legal scholars not only is it at more than 25 000 pages the longest agreement ever concluded, it is also a global framework agreement creating a multi-layered legal system.<sup>210</sup>

#### **4.1.3. The WTO Regime**

Like the GATT, the WTO is the embodiment of a regime and has institutional foundations, though now explicitly set out, making the WTO a fully-fledged international organization. The functions of the WTO are contained in Article III: providing a forum for negotiations; to administer the Dispute Settlement Understanding (DSU); to administer the Trade Review Policy Mechanism; and to cooperate with the IMF and World Bank to achieve greater coherence in global economic policymaking.<sup>211</sup> The three main bodies of the WTO are the Ministerial Conference, which is the representative body meeting at least every two years (Article IV:1), the General Council as the executive body with representatives from all Members (Article IV:2), and the Secretariat in charge of administrative affairs under the guidance of the Director-General (Article VI).

The WTO differs in a number of important respects from the GATT but the basic norms remain the same: non-discrimination between countries (the most favoured nation treatment, MFN), non-discrimination between imported and domestic goods (the national treatment clause), and transparency. There are exceptions. On MFN, there are the preferential tariffs, as discussed above, but also provisions for regional arrangements. The exception for customs unions and free trade areas was allowed based on the premise that regional integrations will eventually lead to global free trade.<sup>212</sup> On National Treatment, domestic subsidies are permitted, though it is not clear whether subsidies provide a 'fair advantage' to developing countries, but an 'unfair advantage' to developed ones. The

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<sup>209</sup> The provisions of GATT 1947 continue in force as annexed to the WTO agreement.

<sup>210</sup> Petersmann, 1997: 11-13.

<sup>211</sup> Davey, 2005: 57-60.

<sup>212</sup> Horst Siebert, *The World Economy* (London: Routledge, 1999) p.272.

main aim however is the reduction of trade barriers and the basic principle, like that of the GATT regime, remains liberalization.

In contrast to the GATT of the Tokyo Round where countries could opt out on specific agreements, the WTO Agreement is a “single undertaking” – all the provisions apply to all members.<sup>213</sup> For this reason the WTO Agreement incorporates a whole package of Agreements included as Annexes.<sup>214</sup> The agreements are complex and the next section looks only at the major characteristics of the more significant ones, particularly the “new” subjects: services, intellectual property, dispute settlement, and agriculture. The unifying focus throughout is the relationship between North and South, which in Section 4.2. is considered in detail as it regards agriculture.

#### **4.1.4. The WTO Agreements**

- Annex 1 contains the obligations of GATT, as GATT 1994, and also includes the multilateral agreements such as the Agreement on Agriculture, the Agreement on Textiles and Clothing, and the Agreement on Trade Related Investment Measures.
- Annex 1B contains the General Agreement on Trade in Services (GATS)
- Annex 1C the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)
- Annex 2 the Understanding on Rules and Procedures Governing Settlement of Disputes (DSU)

#### **GATS**

The **General Agreement on Trade in Services (GATS)** is the framework agreement that in effect puts services under an international free trade regime. During the Uruguay Round the focus was primarily on financial services, basic telecommunications, maritime transport and audiovisual services.<sup>215</sup> The substance of the agreement deals with obligations such as the MFN requirement and national treatment clauses, and with the

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<sup>213</sup> Annex 4 contains the ‘plurilateral agreements’, which are in fact optional.

<sup>214</sup> Davey, 2005: 57.

<sup>215</sup> John H. Jackson, *The World Trading System: Law and policy of International Economic Relations* (Cambridge MA: MIT Press, 2000) p.310.

various exemptions. Again, there is flexibility for developing countries, but this does not mask that the inclusion of liberalisation of services as part of the WTO framework was a result of the insistence of major developed countries.<sup>216</sup>

### ***TRIPs***

The **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)** builds on previous intellectual property treaties and extends the minimum standard requirements to all members.<sup>217</sup> As with the other agreements there are the MFN and national treatment clauses, but also specific clauses on copyrights, trademarks, patents, industrial design, software and geographical indications. There is also a requirement for reform of administrative and legal systems to make effective their implementation. The early discussion on intellectual property, back in the 1980s, met with resistance from developing countries since they had little to gain and a lot to lose: they were unlikely to have new patents of their own and would have to pay for patents they were already accessing free.<sup>218</sup> The ‘theft’ of intellectual property — through counterfeiting, software piracy, and other means prompted extensive, and ultimately successful, lobbying by corporate and other groups. For example, the American pharmaceutical industry and software companies in particular pushed for protection of research. As Jagdish Bhagwati explains, these companies “muscle their way into the WTO and turned into a royalty-collection agency simply because the WTO can apply trade sanctions.”<sup>219</sup> In examining the balance between the patent protection of pharmaceutical companies and access to life-saving drugs in developing countries, Bhagwati concludes that the TRIPS should not be part of the WTO at all.

#### ***4.1.5. The WTO and Dispute Settlement***

WTO disputes are settled through the **Dispute Settlement Understanding (DSU)**.<sup>220</sup> The DSU has also been called the “crown jewel” in the WTO system.<sup>221</sup> This is

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<sup>216</sup> Das, 2003: 55.

<sup>217</sup> Das, 2003: 56. There is discretion for countries to provide for higher levels of protection.

<sup>218</sup> Jackson, 2000: 311.

<sup>219</sup> Jagdish N. Bhagwati, *In Defense of Globalization* (New York: Oxford University Press, 2004) p. 183.

<sup>220</sup> Officially the Understanding on Rules and Procedures Governing Settlement of Disputes, Annex 2 of the WTO Agreement.

<sup>221</sup> Bhala, 2005: 1149.

a legally prescribed and court-like or juridical procedure available only to WTO Member states. The process, each stage with specific deadlines, can be divided into three parts: consultation, Panel or Appellate procedure, and enforcement.

Firstly, under Article 4 of the DSU, the parties to the dispute are meant to sort out their differences bilaterally before engaging the WTO. This is the diplomatic or political dispute settlement stage. If unsuccessful, the formal juridical process begins by the complaining party taking their grievance to the Dispute Settlement Body (DSB), which is constituted of all members of the WTO, and requesting a Panel.

The DSB then establishes and mandates a Panel of three experts to give recommendations and report to the DSB. Either party can appeal the ruling to the Appellate Body — a bench of three drawn from a total of seven experts. This second decision-making level, Article 17, is one of the main improvements on the GATT system.<sup>222</sup> The right to appeal adds to the fairness of the dispute proceedings in the WTO. The DSB then “automatically” approves the Panel (or Appellate Body) report. The negative consensus rule applies — all members must oppose the findings of a dispute to block the adoption of the report. This is an improvement on the GATT system where veto procedures were often used to block rulings.

Once adopted by the DSB the recommendations and rulings of the Panel are binding. The respondent must then take corrective measures promptly and notify the DSB how it is complying, otherwise the complaining party is authorised by Article 22 to take retaliatory action and impose ‘trade sanctions’.<sup>223</sup> The WTO therefore is a legalistic body, but has limited power in that it relies on members for enforcement.<sup>224</sup> The legal order nevertheless binds and disciplines the foreign trade policy of individual Members. As Shaffer, writing in 2003, records, “All states, even the most powerful ones, have responded to WTO judgements by modifying domestic regulation and practices, or, in the

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<sup>222</sup> Stoll and Schorkopf, 2006: 78.

<sup>223</sup> Stoll and Schorkopf, 2006: 92.

<sup>224</sup> Bhagwati, 2004: 105.

few cases where domestic politics blocked modification, have accepted the resulting sanctions.”<sup>225</sup>

In conclusion, the settling of disputes under WTO law is considered “a central element in providing security and predictability to the multilateral trading system” and “essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members.”<sup>226</sup> International trading relations under the WTO have been governed increasingly through law. In the first eight years, 279 formal complaints were filed and 68 panel and Appellate body reports adopted. All countries, North and South, are initiating more legal complaints against one another.<sup>227</sup>

#### **4.1.6. Conclusion**

At face value, the achievements of the Uruguay Round, in comparison to previous efforts under GATT, are impressive. Liberalization widened to previously excluded areas such as agriculture and services. Institutional mechanisms were strengthened, creating a member driven organization operating by consensus. Most importantly an unprecedented binding dispute settlement system was introduced. The institutional problems of the GATT system were solved and a clear legal basis for the organization and its activities established.

However, it would be short-sighted to consider the various agreements without returning to the politics. Such an analysis indicates that developed countries benefit more from the WTO than developing countries. Sylvia Ostry<sup>228</sup> explains the “North-South grand bargain” that was struck to create the WTO: the developing countries would take on the new, but gradual, commitments on intellectual property protection and liberalizing trade in services, which largely favoured the developed countries, who in return would grant enhanced access to rich world markets for agricultural products and textiles and clothing.

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<sup>225</sup> Shaffer, 2003: 2-3.

<sup>226</sup> Article 3.1, 2 of the DSU

<sup>227</sup> Shaffer, 2003: 3.

<sup>228</sup> Sylvia Ostry was a former Canadian trade negotiator. Sylvia Ostry, “Trading for development: how to assist poor countries” in Mike Moore, ed., *Doha and Beyond: The future of the multilateral trading system* (New York: Cambridge University Press, 2004) p. 97.

So while GATS and TRIPS are now in effect, developing countries are left clamouring for the promised payoff. These are the seeds of the present North-South discontent<sup>229</sup>, as evidenced today in the stop-start dynamic of the most recent trade talks, the Doha Round.

## **4. 2. North South agenda: Agriculture, subsidies and markets**

### **4.2.1. Agriculture**

From the perspective of many countries of the South, but particularly that of the net agricultural exporters, various forms of protection for agricultural products had for too long escaped the discipline of the trade regime. Agriculture is by far the most heavily protected sector in international trade. The policy of countries of the North provided domestic support for their farmers and export subsidies for their produce; while keeping out Southern goods from their market with high tariffs and also non-tariff barriers. In the 1980s these divisions in agricultural trade were a source of considerable tension. According to OECD figures, “of the 82 disputes submitted to the dispute settlement process between 1980 and 1990, 60 percent concerned agriculture.”<sup>230</sup>

Agricultural trade is not just a North-South issue. Talks on agricultural trade reform have been dominated by the United States and Europe who accounted in the mid-1990s for about two thirds of world agricultural trade.<sup>231</sup> But agriculture is of far greater significance to countries of the South, where it accounts for on average two thirds of total employment and a quarter of their GDP.<sup>232</sup> Trade in agriculture is also important for the WTO in that it may actually be a make-or-break issue: firstly because agriculture has not gone through any significant liberalization before, and secondly because the promise of

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<sup>229</sup> The wider social context is crucially important. The rising tide of opposition from social movements from North and South to ‘globalization’, as characterized by the substantial benefits of liberalized trade going to the developed world, especially the corporations which are engaged in a ‘silent takeover’, while those living in poverty continue to bear the costs. See Noreena Hertz, *The Silent Takeover: Global Capitalism and the Death of Democracy* (London: Heinemann, 2001).

<sup>230</sup> Melaku Geboye Desta, *The law of international trade in agricultural products: from GATT 1947 to the WTO agreement on agriculture* (The Hague: Kluwer Law International, 2002) p. 9.

<sup>231</sup> See Appendix 1 for exports of agricultural products in 1990, 2000 and 2005. The USA and the EU are dominant. Appendix 2 shows the ten biggest exporters as a percentage of the world total.

<sup>232</sup> Watkins, 1992: 41. However, as Appendix 3 shows, for many countries of the South agriculture trade has in the years 2000 to 2005 in fact *decreased* in importance as a share of their respective exports.

liberalized agricultural trade was one of the principal reasons why states of the South joined the WTO.<sup>233</sup>

The start of a new round, that would include rules governing agriculture trade, was delayed by years. The main cause of division at the 1982 Ministerial Meeting was the opposition of developing countries to a new negotiation that would include services and other new issues *before* there was progress on agriculture.<sup>234</sup> Once the negotiations began in 1986 as the Uruguay Round, agriculture was a major topic of discussion, and being addressed comprehensively for the first time. During the round the EC's Common Agricultural Policy became the 'gatekeeper' issue, holding up a successful conclusion of the negotiations.<sup>235</sup> A separate Agreement on Agriculture was eventually adopted, committing WTO members to liberalise the trade in agriculture. The broader context was the 'Grand Bargain' where the North received agreement on services and intellectual property (GATS and TRIPs), and in exchange the South were granted improved terms of entry to their agricultural markets, and end to textile and apparel quotas.<sup>236</sup> The details of the Agriculture Agreement are considered below.

### ***Agreement on Agriculture***

The Agreement on Agriculture aims 'to establish a fair and market-oriented agricultural trading system' by 'correcting and preventing restrictions and distortions in world agricultural markets'.<sup>237</sup> The Agreement on Agriculture introduces basic obligations on three pillars: Market Access, Domestic Support and Export Subsidies. In general terms, the commitments were designed to increase market access for agricultural products and to reduce domestic support (Article 6) and export subsidy expenditures (Article 9).<sup>238</sup> Special and Differential treatment was still to be given to developing countries (Article

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<sup>233</sup> Arvind Panagariya, 'Liberalizing Agriculture', *Foreign Affairs*, Special Edition, (December 2005)

<sup>234</sup> Winham, 2005: 6.

<sup>235</sup> Fred C. Bergsten, "Rescuing the Doha Round," *Foreign Affairs* Special Edition, (December 2005) p.22.

<sup>236</sup> The quota system was part of the 1974 Multi Fibre Agreement, the new one under the WTO the Agreement on Textiles and Clothing (ATC Agreement)

<sup>237</sup> *Agreement on Agriculture*, Preamble 2 and 3.

<sup>238</sup> Rajesh Aggarwal, 'Dynamics of agriculture negotiations in the World Trade Organization', *Journal of World Trade* 39:4, (August 2005) p. 741.

15).<sup>239</sup> They were to implement the agreement over a ten-year period (2004); developed countries in six (2000).

### **Market access**

In order to increase market access WTO members agree to do away with non-tariff barriers<sup>240</sup> ('converting' them to bound tariffs) and to begin to reduce existing tariffs – on average, 36% for developed countries<sup>241</sup> and 24% for developing countries. The financial value of export subsidies were to be reduced on average by 36% for developed countries and 24% for developing countries. Developing countries were granted special and differential treatment. Yet, they begin at a disadvantage. Unlike developed countries, only a few used non-tariff barriers to restrict market access, so their bound tariff levels are lower than developed countries. The high protection prevailing during the base period (1986-88) has meant only modest reductions.

*Table 3: Agricultural Tariff Reduction Commitments made during the Uruguay Round*

Tariff Reduction Commitments	Developed countries	Developing countries	Least Developed Countries
<i>Average cut for all agricultural products</i>	36 %	24 %	0
<i>Minimum cut per agricultural product</i>	15 %	10 %	0
<i>Period for phasing in the cuts</i>	6 years, 1995-2000	10 years, 1995-2004	N/a

Source: Matsushita et al, 2003: 136; Bhala, 2005: 257.

<sup>239</sup> Least Developed Countries were not required to undertake any reduction commitments.

<sup>240</sup> Non-tariff barriers "include quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state trading enterprises, voluntary export restraints and similar border measures other than ordinary customs duties" (Article 4.2 of Agreement on Agriculture)

<sup>241</sup> Between 1995 and 2000

### ***Domestic support: Amber, Blue and Green Boxes***

Under WTO rules<sup>242</sup>, domestic subsidies are identified by “Boxes”: green (permitted), amber (slow down — i.e., be reduced), and red (forbidden). The Agriculture Agreement has no Red Box but there is a Blue Box (an exemption from the rule that all subsidies linked to production must be reduced). There are also exemptions for developing countries (sometimes called an “S&D Box”).

Certain types of subsidies, listed in the various annexes, are exempt<sup>243</sup>:

- “Amber box” subsidies which are permissible but subject to limits;
- “Green box” subsidies such as for domestic food aid and research;
- “Blue box” subsidies aimed at encouraging production such as rural, and development programmes.

The ‘*Amber Box*’: For agriculture, all domestic support measures considered to distort production and trade (with some exceptions) fall into the Amber Box. The Agreement on Agriculture requires a reduction in the total value of these measures.

The ‘*Green Box*’: In order to qualify for the “Green Box”, a subsidy must not distort trade, or at most cause minimal distortion. These subsidies have to be government-funded and must not involve price support. One example is the subsidy given to environmental protection and regional development programmes. “Green box” subsidies, provided they comply and are decoupled from production levels or prices, are allowed without limits. They also include environmental protection and regional development programmes

The ‘*Blue Box*’: Phase 1: The Blue Box is an exemption from the general rule that all subsidies linked to production must be reduced or kept within defined minimal (“*de minimis*”) levels. It covers payments directly linked to acreage or animal numbers.<sup>244</sup>

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<sup>242</sup> [http://www.wto.org/english/tratop\\_e/agric\\_e/negs\\_bkgnd13\\_boxes\\_e.htm](http://www.wto.org/english/tratop_e/agric_e/negs_bkgnd13_boxes_e.htm)

<sup>243</sup> Matsushita *et al*, 2003: 136.

<sup>244</sup> At the moment, the Blue Box is a permanent provision of the agreement. Some countries want it scrapped because the payments are only partly decoupled from production, or they are proposing commitments to reduce the use of these subsidies. Others say the Blue Box is an important tool for supporting and reforming agriculture, and for achieving certain “non-trade” objectives.

Domestic support programmes affecting prices are to be reduced – by 20% for developed states and 13.3% for developing.<sup>245</sup>

*Table 4: Domestic Agricultural Support Reduction Commitments made during the Uruguay Round*

Domestic Agricultural Support Reduction Commitments	Developed countries	Developing countries	Least Developed Countries
<i>Aggregate Measure of Support</i>	20 %	13.3%	0
<i>Period for phasing in the cuts</i>	6 years, 1995-2000	10 years, 1995-2004	N/a

Source: Matsushita et al, 2003: 136.

### **Export Subsidies**

Article 9.1 sets out the categories of export subsidies subject to reduction commitments. The financial value of export subsidies are to be reduced on average by 36% for developed countries and 24% for developing countries. According to Panagariya's study in 2005 on liberalizing agriculture, only 25 WTO members reported having any export subsidies, and all applied only to a few commodities. The conclusion reached is that "they are no longer a major source of trade distortion, at least in aggregate."<sup>246</sup>

*Table 5: Export Subsidy Reduction Commitments made during the Uruguay Round*

Export Subsidy Reduction Commitments	Developed countries	Developing countries	Least Developed Countries
<i>Average reduction by value (Financial outlay)</i>	36 %	24%	0
<i>Average reduction by volume (subsidized quantities)</i>	21 %	14 %	N/a

Source: Matsushita et al, 2003: 136.

<sup>245</sup> Least Developed Countries are not included.

<sup>246</sup> Panagariya, 2005: 58.

Article 20 of the Agreement on Agriculture sets as “the long-term objective substantial progressive reductions in support and protection...” including the phasing out of all forms of export subsidies. That article also established a Committee on Agriculture to review the progress made and is seen as a built in mandate for reform.

There has been little action since the Agreement for further reforming agricultural trade. Significant progress is also hampered by the already high tariff rates that are the base rates for beginning future reductions. The reluctance to liberalize substantially has not only stalled trade talks on a number of occasions, but by sidelining a key issue of concern to the developing countries, threatens the credibility of the WTO regime. The dispute settlement mechanism that could be used to clarify the rules has been under-utilized. The Agreement on Agriculture also included a “peace clause” (Article 13) preventing states from initiating dispute settlement proceedings on agriculture for the first nine years, this ended in 2004. In the final section of this Chapter the implications of this legal route will be explored. The next section continues with agriculture trade and looks at the domestic and regional aspect of North South trade relations.

#### **4.2.2. Developed world –subsidies**

The United States and the EU are both major subsidizers of agriculture and provide considerable domestic support – the EU, more than the United States. Japan, Switzerland, Norway and South Korea also maintain high protection. The EU, with France as the biggest beneficiary, has been gradually reforming its Common Agriculture Policy. In 2002 a deal was struck between France and Germany to increase EU farm subsidies by 1% per year until 2013, from its base in 2006.<sup>247</sup> Nonetheless, Europe's farmers received a record €48.5bn (£33bn) in subsidies from the CAP in 2005, a jump of more than 11% year on year.<sup>248</sup> According to data from the European Commission, the CAP in 2005 was 46% of the EU's entire budget. The result of the commitment to the CAP on European trade policy is significant in that on holding to its position it squanders

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<sup>247</sup> ‘Schroder and Chirac in Farm Deal’ *Financial Times*, 6 November 2002.

<sup>248</sup> Heather Stewart, ‘Huge rise in subsidies for Europe's farmers’ *The Observer*, 24 September 2006.

its bargaining leverage. Put simply, because it has no comparative advantage in agriculture the EU has no substantive interest in agricultural reciprocity.<sup>249</sup>

The United States increased domestic support under its Farm Security and Rural Investment Act of 2002. Over the next ten years spending on commodity programmes would be \$19 billion a year.<sup>250</sup> The US is a *demandeur* of elimination of export subsidies given mainly by the EU but continues to use export support programmes, such as export credits, guarantees and insurance programmes. The US, although provider of considerable domestic support, has maintained an overall liberalizing posture in the negotiations by indicating its willingness to reduce its domestic support substantially provided that other subsidizers match its level of support and it got increased access for its products in all markets —both developed and developing. The EU is reluctant to eliminate export subsidies, but claims it's willing to reduce them.

The industrialized countries stress the multifunctionality of agriculture. Agriculture is not only about trade but plays a role in maintenance of rural communities, and allays concerns about food security and food safety, and animal welfare. The EU for example has linked the farm subsidy to issues such as sustainable development and protection of the environment. This group is in favour of slow and gradual process of reforms in agriculture sector. There is also some support from developing countries of the African, Caribbean and the Pacific (ACP) Group, which were dependent on the preferential schemes of access for their products mainly in the markets of EU.

*Table 6: Export Subsidies*

Export subsidies (1998)	
Total Amount by all WTO members	\$ 5.4 billion
-Of which EU	\$ 4.95 billion
-Of which Switzerland	\$ 292 million
-Of which the USA	\$ 147 million

Source: Panagariya, 2005: 59.

<sup>249</sup> Bhagwati, 2005: 11.

<sup>250</sup> Martin Wolf, 'Doha must weed out the world's farming subsidies' *Financial Times*, 6 November 2002.

#### **4.2.3. Developing world – market access**

In the words of former GATT Director-General Peter Sutherland, the domestic support for agriculture in the North “led to wasteful surpluses like the ‘butter mountains’ and ‘wine lakes’ ...”<sup>251</sup> The result has been that most developing countries have not been free to enjoy their comparative advantage in agriculture. As Sutherland goes on to say, these are wasteful surpluses “amidst the poverty, and sometimes famine, in the developing world whose farmers have been shut out of the world market by industrialized countries’ subsidies”.<sup>252</sup>

Many countries have not been able to diversify from their concentration on primary products, and have been bypassed by the technological advances that led to the spectacular export-led growth of the NICs. According to the UN Economic Commission for Africa, (UNECA) Africa has hardly benefited from the boom in manufactured exports.<sup>253</sup> In fact, Africa’s share in world merchandise exports fell from 6.3% in 1980 to 2.5% in 2000.

Some developing countries do not have substantial export interest in agriculture.<sup>254</sup> As in other states, agriculture goes beyond an activity that is purely governed by market rules because it involves a high proportion of the population and where problems of poverty alleviation, food security and livelihood security are very serious. Since these countries cannot match the domestic support given in some countries of the North, their position is also to demand substantial reduction in domestic support and export subsidies. In terms of reciprocity, they are conservative in undertaking tariff reductions of their own, but will join with others in demanding liberalization of domestic support and export subsidies.

On a final note it is worth considering that a more pragmatic approach to negotiations may be more useful than relying on a North–South dyad. Going beyond political solidarity to consider the identification of economic interest, for instance as producer

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<sup>251</sup> As quoted by Geboye Desta, 2002: 8.

<sup>252</sup> As quoted by Geboye Desta, 2002: 8.

<sup>253</sup> Accessed online [http://www.uneca.org/cfm/2004/ministerial\\_statement.htm](http://www.uneca.org/cfm/2004/ministerial_statement.htm) (24 May 2004)

<sup>254</sup> Not an organized group but countries with these positions include: India, Pakistan, Turkey, Zimbabwe, Nicaragua, Kenya, Nigeria, Dominican Republic, Honduras, El Salvador, Venezuela, Philippines, Indonesia

groups, may be a new dynamic in how states pursue their trade relations. For example, the Cairns Group<sup>255</sup> includes the major exporters of agricultural products — both developed and developing countries, and pursues aggressive liberalization.

#### **4.2.4. Conclusion**

In conclusion, the two opposing views in the North South debate can be summarised. Most developing countries, except for ones that import food, push the dismantling of farm subsidies in rich countries and further market access via agricultural tariff reduction. Developed countries of the North want to improve their own access to developing countries' markets for industrial goods and services, and are reluctant to first dismantle the protections they have historically maintained in their agricultural sector. The United States and the European Union, the key players, face even more formidable domestic obstacles to making essential concessions than they did in the past. In the Doha Round negotiations, the fundamental structure of the Agreement on Agriculture was not challenged. But neither was the framework for further liberalization followed. Without the apparent divisions in agriculture being faced, no progress can be expected. But the issue is more complex than a North-South analysis reveals and consensus has been building on the needs for development. In many ways liberalization in agriculture trade is the key if a development orientation for the WTO is to be achieved. The developing countries have kept the issue at the top of the current agenda.

### **4.3. The Doha Development Agenda**

#### **4.3.1. The WTO Ministerial Meeting in Doha, Qatar in November 2001**

The Doha Round of trade negotiations launched by ministers at Doha, Qatar, in November 2001 was geared specifically to address the concern of countries of the South and to help poor countries in what was labelled a new "Development Round."<sup>256</sup> The

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<sup>255</sup> A group of agriculture products exporting countries led by Australia and comprising Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, the Philippines, Thailand. The group was constituted at a meeting in Cairns, Australia during the Uruguay Round from which it derives its name.

<sup>256</sup> Lenore Sek, "World Trade Organization Negotiations: The Doha Development Agenda" Congressional Research Service, The Library of Congress (RL32060) 2004.

original deadline for completion was 31 December 2004. According to the World Bank, a successful Doha Round would raise global income by more than \$500 billion a year by 2015, over 60% going to poor countries and helping pull 144 million people out of poverty.<sup>257</sup>

Prioritising development concerns in trade negotiations, one of the main topics under the Doha Agenda has been the liberalization of agricultural trade, such as the reduction (or elimination) of farm tariffs and subsidies maintained by developed countries.<sup>258</sup> Industrial tariffs were to be reduced and the market in services opened up. Four new areas — competition, investment, transparency in government procurement, and trade facilitation (the ‘Singapore issues’) — were also to be negotiated.<sup>259</sup> These issues were of less concern to the countries of the South than the development and agriculture aspects of the reforms, which many felt had not advanced since the ‘Grand Bargain’ of the WTO. At the heart of the development agenda lies a continuation of the GATT provisions of Special and Differential treatment in favour of developing countries.

WTO Members could build consensus in Doha on broad principles, e.g., to reduce and eventually eliminate agricultural subsidies, but could not further agree on how these principles would be implemented and attained in subsequent negotiations. The chances of a successful outcome of the Round were largely seen as contingent upon a breakthrough in agriculture negotiations.

#### **4.3.2. The WTO Ministerial Conference in Cancún, Mexico in September 2003**

The breakthrough in agriculture negotiations did not materialize. Prior to the Cancún Ministerial Conference, at a mini-Ministerial meeting held on Canada in July 2003, the EU and the United States attempted to resolve their differences in their seemingly diametrically opposite positions, especially on market access. The EU and the

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<sup>257</sup> ‘The WTO under fire’ *Economist* 18 September 2003.

<sup>258</sup> Ross P. Buckley, ed. *The WTO and the Doha Round: the changing face of World Trade* (The Hague; London: Kluwer Law International, 2003). See also ASIL Insight, accessed online <http://www.asil.org/insights/2005/12/insights051229.html>

<sup>259</sup> ‘The WTO under fire’ *Economist* 18 September 2003.

US came out with their joint proposal on 13 August 2003.<sup>260</sup> The joint proposal was not received well by other Members, as it offered no real substance.<sup>261</sup> It showed no commitment to restricting domestic support for agriculture. As noted above, the US farm Security Act of 2002 and the EU's CAP negotiation earlier in 2003 had entrenched continued farm support.

### *The G-20 alliance*

As a reaction to EU-US proposal, which ignored the position of developing countries, a new alliance led by Brazil, China, India and South Africa formed on 20 August 2003 in run up to the Cancún Ministerial Meeting.<sup>262</sup> Many developing country Members of the agricultural exporting countries, the Cairns Group, and other developing countries which had expressed certain reservations on opening up of their own markets came together to make a counter proposal.<sup>263</sup> Celso Amorim, the Brazilian Trade Minister, said that it represented over half the world's population and over two-thirds of its farmers. The group comprised 23 developing countries at Cancun: Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Paraguay, Peru, Philippines, Pakistan, Thailand, South Africa and Venezuela.<sup>264</sup> This group was later named the G-20.

The negotiations on agriculture were largely viewed as a contest between the EU-US on one side and the G-20 alliance on the other.<sup>265</sup> Both the US and the EU held meetings with the G-20 separately but the discussions did not progress beyond reiteration of their respective positions. Thus, the conventional view is that the Ministerial Conference in Cancún collapsed mainly due to the irreconcilable differences between rich and poor

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<sup>260</sup> Accessed online [www.agradepolicy.org/output/resource/EC-US\\_joint\\_text\\_13\\_Aug\\_2003.pdf](http://www.agradepolicy.org/output/resource/EC-US_joint_text_13_Aug_2003.pdf)

<sup>261</sup> Razneem Sally, "Whither the WTO? A progress report on the Doha Round" Center for Trade Policy Analysis, Cato Institute, 2003.

<sup>262</sup> Jagdish Bhagwati, "From Seattle to Hong Kong," *Foreign Affairs* Special Edition, December 2005.

<sup>263</sup> WTO, WT/MIN(03)W/6. The major difference in the G-20 proposal from the EU-US proposal was with respect to the tariff reduction formula applicable to developing countries.

<sup>264</sup> Post Cancun, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala and Peru left the Group but Zimbabwe and Tanzania joined as new Members. Guatemala has since joined the Group again.

<sup>265</sup> Pranav Kumar, "Will they divide the G20 too? Accessed online ([www.thehindubusinessline.com/2004/04/30stories/2004043000021.htm](http://www.thehindubusinessline.com/2004/04/30stories/2004043000021.htm))

countries' position on the reduction of farm subsidies.<sup>266</sup> Two days into the Conference, over 90 countries signed a letter saying they were not prepared to enter discussion on the 'Singapore issues' the North, but particularly the EU and Japan wanted.<sup>267</sup> The "draft Cancún Ministerial text"<sup>268</sup> was tabled, but the conference was declared closed even before the commencement of discussion on the Agriculture section of this document.

The United States and the EU did not engage in real negotiations on agriculture at Cancún. Instead, they unsuccessfully endeavoured to split the G-20 by exploiting the differences in positions of its members. Granted, it was an alliance of diverse interests. For example India maintains high tariffs and never supported opening markets, while Brazil, as a competitive exporter supports liberalization of trade. American trade representative Robert Zoellick pointed out: "Key mid-level developing countries employed the rhetoric of resistance as a tactic both to put pressure on developed countries and to divert attention from their own trade barriers. India's average bound agricultural tariff is 112 per cent, Egypt's 62 per cent and Brazil's 37 per cent — compared with a US average of 12 per cent."<sup>269</sup>

Walden Bello notes: "Not even the most optimistic developing country came to Cancún expecting some concessions from the big rich countries in the interest of development. Most developing country governments came to Cancún with a defensive stance. The big challenge was not that of forging a historic New Deal but that of preventing the US and the EU from imposing new demands on the developing countries while escaping any multilateral disciplines on their trade regimes."<sup>270</sup>

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<sup>266</sup> Accessed online <http://www.asil.org/insights/2005/08/insights050825.html>

<sup>267</sup> 'The WTO under fire' *Economist* 18 September 2003.

<sup>268</sup> WTO, Job(03)/150/Rev.2, Annex 1

<sup>269</sup> Robert Zoellick, 'America will not wait for the won't-do countries,' *Financial Times*, 22 September 2003.

<sup>270</sup> Walden Bello, 'The meaning of Cancún' *Focus on Trade* 93, September 2003. See also Joseph E. Stiglitz, *The development round of trade negotiations in the aftermath of Cancún*. Report for the Commonwealth Secretariat prepared by Joseph E. Stiglitz and Andrew Charlton with the Initiative for Policy Dialogue. (London: Commonwealth Secretariat, 2004).

The emphasis on a North-South division, as in the GATT, led again to a stalemate in negotiations. The US-EU inability to negotiate with the G-20 was a decisive factor, but it also meant that solidarity positions prevailed over interests in global agricultural reform. Jagdish Bhagwati sees the emergence of the G-20 as the central breakthrough of Cancún and a triumph for developing countries. The terms of the negotiations are in his view now set by a new Group of 5: the US, the EU, Brazil, India, and Australia.<sup>271</sup>

Ever since the Cancún debacle, the Doha Round has made little progress. On agriculture, negotiations started with a meeting between the G-20 ministers and the EU Trade Commissioner Pascal Lamy in Brazil on 12 December 2003, but only restated the positions of G-20 and the EU. Aggarwal suggests it was nevertheless an important milestone as the EU recognized the G-20 as a negotiating entity.<sup>272</sup>

The establishment of “Doha Work Program” in August 2004, welcomed as a breakthrough, was nothing more than a basic roadmap for future negotiations, and failed to generate any substantial achievements. Developed and developing countries have diverging positions on three major issues, i.e., agricultural protection, tariff reduction, and liberalization of trade in services. But developed countries will not unilaterally take action on agriculture without reciprocal concessions from developing countries on industrial tariffs and services. Developing countries are also reluctant to make first move until they secure material commitments from developed countries on agricultural protection.<sup>273</sup>

In July 2005, thirty major WTO Members met in a mini-Ministerial Meeting Dalian, China. The US and the EU accepted a proposal on the basic formula of agricultural tariff reduction from the G-20. But at the end of the Dalian meeting, the WTO Director-General Supachai Panitchpakdi expressed “grave concern” on the status of Doha

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<sup>271</sup> Bhagwati, 2005. Australia is representative of the Cairns Group.

<sup>272</sup> Aggarwal, 2005.

<sup>273</sup> Alan Beattie, ‘G8 Mood and Doha Talks ‘Show Disconnect,’ *Financial Times*, 10 July 2005.

negotiations.<sup>274</sup> As discussions continued in Geneva, major players did not move from their original positions: the EU refused to undertake actual cuts in agricultural tariffs; the US declined to reduce farm subsidies; key developing countries, such as Brazil, India and China, resisted making any substantial concessions on industrial tariffs and services in the face of the EU and the US' lack of commitments in the agricultural sector.<sup>275</sup>

In October 2005, the US made an offer of agricultural trade liberalization reform addressing the three pillars (tariffs, domestic support, and export subsidies).<sup>276</sup> Some EU Member States, in particular France, prevented the EU from making similar moves. The French President, Jacques Chirac, threatened to “block a world trade deal” if the EU's concessions went beyond the CAP.<sup>277</sup> The EU was divided between France and its allies, and the more accommodating United Kingdom and Nordic countries.<sup>278</sup>

#### **4.3.3. The WTO Ministerial Conference in Hong Kong in December 2005**

The expectation was that the Hong Kong meeting would deliver a face-saving pact with an accent on development. At the end of the negotiations WTO Director-General Pascal Lamy observed that the Doha Round was “back on track,” and especially that there has been a “rebalancing in the favor of developing countries.”<sup>279</sup>

The Hong Kong Ministerial Declaration<sup>280</sup> included, *inter alia*, deadlines for the elimination of agricultural export subsidies (2013) and cotton export subsidies (2006). Further negotiations in agricultural and non-agricultural market access were to be established within four months. The development dimension foresees duty and quota-free

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<sup>274</sup> ‘Dalian: Ministers Recommit to Doha Round, But Skepticism Abounds, *Bridges Weekly Trade News Digest* 9(25), 13 July 2005.

<sup>275</sup> Alan Beattie & Frances Williams, ‘Prospects for WTO Gloomier as Talks End’, *Financial Times*, 27 July 2005.

<sup>276</sup> Rob Portman, America's Proposal to Kick-Start the Doha Trade Talks, *Financial Times*, 10 October 2005.

<sup>277</sup> George Parker, ‘Chirac Fires Warning Shot on Trade Deal in Defense of Farm Subsidies’, *Financial Times*, 28 October 2005.

<sup>278</sup> Bhagwati (2005) also suggests that the 10% unemployment level in France leads to popular opposition to opening markets to foreign competition.

<sup>279</sup> WTO, Summary of December 18, 2005, Day 6: Ministers Agree on Declaration that ‘Puts Round Back on Track,’ [http://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/min05\\_18dec\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_18dec_e.htm)

<sup>280</sup> Bridges Daily Update on the Sixth Ministerial Conference, Issue 4, 16 December 16 2004, ([http://www.ictsd.org/ministerial/hongkong/wto\\_daily/16\\_December/en051216.htm](http://www.ictsd.org/ministerial/hongkong/wto_daily/16_December/en051216.htm).)

access for at least 97% of products originating from the LDCs to be provided by 2008. Developing countries had originally been opposed to the list (Annex C), of detailed items for future liberalization in services, the position held by the EU and the US. Services was linked to the main text of the declaration and open to further negotiation and supported by the developing countries.

Firstly, a deadline for the elimination of agricultural *export subsidies* (including export credits, guarantees, and insurances) was set to the end of 2013. Developing countries relinquished their initial position (elimination of export subsidies by the end of 2010), accommodating the EU's position. With respect to cotton, all forms of export subsidies were to be eliminated in 2006 with duty and quota-free access for LDCs' cotton. Secondly, on *domestic support*, greater cuts would be made in higher bands (higher levels of subsidies). Accordingly, the EU would embrace the highest cuts (top band), followed by the US and Japan (middle band), and the rest of the Members (bottom band). Thirdly, by April 30, 2006 progress on *market access* modalities was promised.<sup>281</sup>

The April deadline lapsed without any meaningful US, EU or G-20 talks. On July 28, 2006, the WTO General Council approved Director General Pascal Lamy's recommendation to suspend the Doha Round negotiation.

#### **4.3.4. Conclusion**

There are at least two questions to consider. The first is whether the course of the Doha Round is indicative of a bigger problem. Does this *impasse* mark the end of the WTO as an effective negotiating forum? The immediate defence is that current negotiations are more complex than in the past, firstly because the WTO now has many more members and secondly because the remaining barriers to trade are the hardest to tackle. C. Fred Bergsten is of the view that "behind-the-border distortions such as subsidies, raise more complex issues than do traditional tariffs and quotas"<sup>282</sup> If the WTO is not the right forum, an alternative forum able to drive the regime of multilateral

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<sup>281</sup> The modalities are the template for determining eventual levels of reduction of trade barriers (tariffs and subsidies) both in agricultural and non-agricultural (industrial) sectors.

<sup>282</sup> C. Fred Bergsten, 'Rescuing the Doha Round', *Foreign Affairs* Special Edition, December 2005.

liberalised trade will need to be created. So, despite the intransigence evident in the process of negotiation WTO members are unlikely to discard the present gains. The key actors, the United States and the European Union, face formidable domestic obstacles to making essential concessions than they did in the past. The regime of liberalized trade is yet to extend to agriculture and the process will not be immediate, but if countries feel that the WTO does not work they may be tempted to bypass it or ignore it. The likely result will be (A) big powers preferring to act unilaterally, (B) smaller powers acting in alliance, and/or (A) and (B) reaching bilateral agreements.

This scenario, where the predictability and fairness of a rules-based system is replaced by an arbitrary one based on power, raises a second question based on the premise that the WTO is meant to have teeth: the rules based WTO should offer effective remedy even to the smallest of its members. The second question therefore is more interesting but more difficult to answer, and will form the basis of the discussion in the next section. Will developing countries shift from negotiation to litigation in dealing with developed countries' agricultural subsidies?

#### **4.4. The Cotton Case**

##### ***4.4.1. North and South***

Cotton figures as a significant export item for at least 20 of the 50 nations designated as least developed countries by the United Nations. In Central and West Africa, more than 10 million people depend directly on cotton production. Since the early 1970s cotton production in the region has multiplied by five. About 95 per cent of the region's cotton is exported and is the main cash crop for a large section of the rural population. Cotton is the major source of foreign exchange and government revenue for Burkina Faso, Mali, and Benin. According to the World Bank, the Central and West Africa region is among the lowest-cost producers of cotton in the world because of low labour costs and small plots. Despite this comparative advantage, it is losing world markets, and African cotton farmers are suffering rising poverty. According to Oxfam, an NGO, "lower world prices are transmitted to the poor in the form of reduced farm

incomes, lower agricultural wages, and diminished provision of basic services.”<sup>283</sup> The countries balance of payment measures are exacerbated.

Subsidies have helped make the United States the world's top cotton exporter, with more than 40 per cent of the world market. Cotton is one of the world's most heavily subsidized crops. According to US Department of Agriculture figures, American cotton exported at 37 cents a pound in 2002 cost agricultural companies 86 cents to produce. The US government, underwritten by American taxpayers, made up the difference. During the 2001/02 season, the US government paid more to its cotton farmers than the value of the harvested crop — \$3.9 billion in subsidies for a crop valued at \$3 billion. The only comparative advantage cotton growers in the US have is access to subsidies, without which they could not compete internationally.<sup>284</sup>

Legislation passed in May 2002, increased the amount the government pays farmers. The Farm Security and Rural Investment Act of 2002 provides an additional \$83 billion in farm expenditure, above the \$100 billion spent on existing programmes. Cotton growers are expected to receive an additional \$2.5 billion annually during the next 6 years. These cotton growers are mainly corporate agricultural companies.

In 2003, partly due to the continuous flooding of the market by US cotton, world cotton prices fell to 42 cents per pound, far below the long-term average of 72 cents. The export subsidy programme, called Step 2, pays domestic users and exporters to buy US grown cotton whenever US cotton prices exceed world market prices. These subsidies thus guarantee a minimum price to US farmers — in 2004 at about 52 cents per pound — regardless of what happens to world prices. Cotton production in the US grew by 42 per cent between 1998 and 2001 — oblivious to almost five years of depressed world prices.

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<sup>283</sup> Oxfam International, *Cultivating Poverty The Impact of US Cotton Subsidies on Africa*. [http://www.oxfam.org/eng/pdfs/pp020925\\_cotton.pdf](http://www.oxfam.org/eng/pdfs/pp020925_cotton.pdf). (27 September 2002).

<sup>284</sup> Becker, Elizabeth (2004a) *Looming Battles over Cotton Subsidies* *New York Times* (24 January, 2004)  
Becker, Elizabeth (2004b) *WTO Rules Against US on Cotton Subsidies* *New York Times* (27 April, 2004)

The contrast between rich North and poor South is emphasized by Oxfam: “The 25,000 cotton farmers in the US receive more in subsidies than the entire gross domestic product of Burkina Faso — one of the world's poorest countries, where more than 2 million people depend on cotton for their livelihood.”

#### **4.4.2. Brazil's case before the WTO<sup>285</sup>**

In 2002, Brazil — a major cotton exporter — expressed its growing concerns about US cotton subsidies by initiating a WTO dispute settlement case (DS267) against specific provisions of the US cotton programme. The dispute concerns several US measures which Brazil alleged to be export subsidies in violation of the United States' obligations under the Agreement on Agriculture<sup>286</sup>, the WTO Agreement on Subsidies and Countervailing Measures (“SCM Agreement”)<sup>287</sup> and the GATT 1994.<sup>288</sup>

Brazil's claim was that subsidies paid to US cotton farmers from 1999 to 2000 and those authorised in the Farm and Security Rural Investment Act of 2002 contravenes WTO rules. Brazil argued that the US was responsible for driving down world cotton prices, consequently causing harm to Brazilian farmers while increasing the US share of the global cotton market. In its case, Brazil estimated that US production would be 29 per cent lower and cotton prices would be 12.6 per cent higher in the absence of US subsidies.

Brazil contended that US export and actionable subsidies provided from 1999-2002 caused serious prejudice to the interests of Brazil in violation of Article 6.3(c) of the SCM Agreement.<sup>289</sup> Brazil also contended that these subsidies give the United States

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<sup>285</sup> United States-Subsidies on Upland Cotton-Report of the Panel (WT/DS267/R) (September 8, 2004)

<sup>286</sup> Accessed online [http://www.wto.org/english/docs\\_e/legal\\_e/14-ag.pdf](http://www.wto.org/english/docs_e/legal_e/14-ag.pdf)

<sup>287</sup> Accessed online [http://www.wto.org/english/docs\\_e/legal\\_e/24-scm.pdf](http://www.wto.org/english/docs_e/legal_e/24-scm.pdf)

<sup>288</sup> Accessed online [http://www.wto.org/english/docs\\_e/legal\\_e/06-gatt.pdf](http://www.wto.org/english/docs_e/legal_e/06-gatt.pdf)

<sup>289</sup> Article 6.3(c) of the SCM Agreement provides that serious prejudice within the meaning of Article 5(c) may arise in any case where the effect of the subsidy is "significant price suppression ... in the same market."

more than an equitable share of world exports of upland cotton in violation of Articles XVI:1 and XVI:3 (“Additional provisions on export subsidies”) of the GATT 1994.<sup>290</sup>

#### ***The Cotton Four (Benin, Burkina Faso, Chad and Mali)***

The African cotton producers were third parties to the case. The four West African countries had called for the end to cotton subsidies of all WTO member countries through the so-called “Cotton Initiative” launched prior to the Ministerial meeting in Cancun in 2003. The four countries proposed in the agriculture negotiations the “Sectoral Initiative in Favour of Cotton” with effect that the EU and the US should embark on a three-year phase-out of cotton subsidies. An annex, “Draft Decision Concerning Specific Measures in Favour of Cotton with a View to Poverty Alleviation” was added at the Ministerial Conference so that in the meantime, transitional mechanisms to offset the losses incurred would be set.<sup>291</sup> These countries were not asking for preferences, but for a correction of trade distortions.

#### ***4.4.3. The Panel Report***<sup>292</sup>

On September 8, 2004, a WTO dispute settlement panel ruled against the United States on several key issues. The Panel noted that the US was the world’s largest exporter of upland cotton during the marketing years 1999 to 2002. It also found that, according to the record evidence, the United States’ share of world exports increased from approximately 23.5 per cent in 1999 to 24.5 per cent in 2000 to 37.3 per cent in 2001 to 39.9 per cent in 2002. In comparison, the Panel noted that Brazil's share of world production of upland cotton was approximately 3.8 to 5 per cent from 1999 to 2002, while Brazil's share of world exports of upland cotton never exceeded 2.4 per cent in the same period. The Panel concluded that, due to the large relative proportion of the United

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<sup>290</sup> “Accordingly, contracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product.” (Article XVI:3)

<sup>291</sup> Accessed online [http://www.wto.org/English/tratop\\_e/agric\\_e/cotton\\_subcommittee\\_e.htm](http://www.wto.org/English/tratop_e/agric_e/cotton_subcommittee_e.htm)

<sup>292</sup> (WT/DS267/R). International Law in Brief: Developments in international law, prepared by the Editorial Staff of International Legal Materials. The American Society of International Law September 21, 2004.

States production and export of upland cotton, the United States exerted a substantial proportionate influence on prices in the world market for upland cotton.

The Panel noted that US support for cotton during the period between 1999-2002 averaged \$3.28 billion per year, well above the \$2 billion that was provided to cotton farmers in 1992. The Panel also found that US programs for cotton under the Farm and Security Rural Investment Act of 2002 did not meet the requirements for exemption under Article 13 of the Agreement on Agriculture. The US failed to meet the requirement that such support not exceed 1992 spending levels. The Panel concluded that the U.S. price-contingent subsidies provided to U.S. cotton farmers between 1999 and 2002 caused serious prejudice to Brazilian competitors.

#### ***4.4.4. The Appeal***<sup>293</sup>

On 18 October 2004 the United States notified the DSB of its decision to appeal the Panel report. On 3 March 2005, a WTO Appellate Body upheld the Panel's ruling on appeal. The Appellate Body (AB) upheld all major findings of the Panel that ruled that US cotton subsidies were in violation of WTO rules on agriculture and subsidies. The AB agreed with the panel that the 'export credit guarantees' and 'step 2 marketing payments' offered to US cotton producers were prohibited export subsidies. The AB recommended in March 2005 that the United States remove certain "prohibited subsidies" by 21 July 2005, and remove the adverse effects resulting from certain "actionable subsidies" by 21 September 2005.

#### ***4.4.5. Effect: Adjustments and retaliation***

On 21 March 2005, the Panel and AB reports were adopted by the WTO membership. The WTO ruled that in the case brought by Brazil and cotton-producing companies from West Africa, the USA's cotton export subsidy program violated the WTO agreement on subsidies. Under dispute settlement rules, the US was expected to bring its policies into line with the panel's recommendations or negotiate a mutually

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<sup>293</sup> (WT/DS267/AB/R)

acceptable settlement with Brazil. In June 2005, the US Department of Agriculture (USDA) complied with part of the ruling that did not need Congressional approval.<sup>294</sup>

When the US failed to meet the deadline of 1 July 2005 to remove the prohibited export subsidies, Brazil claimed the right to retaliate against \$3 billion in US exports to Brazil based on the prohibited subsidies, and proposed \$1 billion in retaliation based on the actionable subsidies. Brazil's request for authorization from the WTO to impose countermeasures met with American objections to the retaliation amounts. The US requested WTO arbitration on the matter. However, on 18 August 2005 the two parties reached a procedural agreement to temporarily suspend retaliation proceedings.<sup>295</sup>

In February 2006 the US House of Representatives approved legislation that would repeal the support programme.<sup>296</sup> This was consistent with the development goals of the Doha Development agenda, which calls for developed countries to eliminate all forms of export subsidies for cotton in 2006. The end of the Step 2 programme in August 2006 meant that the United States had begun to comply with a portion of the AB's rulings. But in August 21, 2006, Brazil submitted a request for a WTO compliance panel to review whether there was full compliance with the panel and AB rulings. The US blocked the DSB from approving Brazil's request. According to the Congressional Research Service "additional permanent modifications to US farm programs may still be needed to fully comply with the WTO ruling on "actionable subsidies."<sup>297</sup>

#### **4.4.6. Conclusions**

This is the first formal challenge to the North's agricultural subsidies in the WTO. Brazil's former deputy agriculture minister Pedro de Camargo Neto was quoted:  
*"Negotiation is better than litigation, but the fact that the US is not moving on domestic*

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<sup>294</sup> Deficit Reduction Omnibus Reconciliation Act of 2005.

<sup>295</sup> (WT/DS267/25)

<sup>296</sup> 'Congress Approves Legislation Repealing Cotton Subsidy Program' USTR Press Releases, 1 February 2006.

<sup>297</sup> Randy Schnepf, 'U.S. Agricultural Policy Response To WTO Cotton Decision,' *Congressional Research Service*, September 8, 2006.

*agricultural subsidies in the Doha round means that bringing a WTO case may help to push the talks along.”*

The economic adviser at the Brazilian Embassy in Washington explained to reporters: *"You have to understand we are fed up with these farm subsidies and hearing for 25 years that things will get better. The only way to deal with it is to turn this into a make-it-or-break-it proposition."*<sup>298</sup>

The cotton victory is significant, as it shows that the dispute settlement 'route' can be used against to enforce WTO rules. Furthermore, this also points to a situation where smaller countries can cooperate and thus have the possibility of redressing serious trade disputes with much larger countries through WTO litigation when WTO negotiations alone fail. The decisions of the WTO Dispute Settlement system can be expected to be critical in influencing future subsidy challenges.

Another aspect is the influence of this and any future rulings on the negotiations. Though the Doha Round talks were suspended indefinitely on July 2006 developing countries may use the ruling to advance developing country interests. This strengthens the case for the reduction and elimination of developed country subsidies and puts the pressure on the developed countries in the current round of negotiations.

More specifically the cotton case is an example of sector specific collaboration. By banding together cotton producers have cooperated according to their producer interest rather than merely their regional or bloc interests. This shows a likely shift away from solely political factors to more pragmatic economic alliances in cooperation.

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<sup>298</sup> Becker, Elizabeth (2004a) 'Looming Battles over Cotton Subsidies' *New York Times* (24 January 2004)

## CHAPTER 5

### CONCLUSION: Cooperation Theory and Prospects

This Chapter begins with a summary of the research, starting with the problem statement, research question and the principal results of this dissertation. Section 2 discusses what lessons can be learned from this research. Finally, section 3 focuses on the implications of these findings in the context of the literature and presents some conclusions relevant to the study of international relations.

#### 5.1.

At the outset of this dissertation a number of questions about international institutions, about the rules under which they operate, and their origins and evolution, prompted a closer analysis of the institutions governing international trade relations between states. The approach to this complex area was from the perspective of developing countries, the South. Of particular interest was whether there was evidence of cooperation by these states of the south, and questions of 'How they define and pursue their interests?' And 'How they influence or are constrained by international institutions?' This made it necessary to follow a historical and comparative methodology and ask 'Why and how do changes to the institution influence the competitive and cooperative behaviour of its members?' The fundamental change to be observed was the extent to which the international system has moved away from being a power-based system to one that is law-based.

The Rationale for this study is straightforward. As the trade relations (like most interstate relations) over time become more rule-based and thus more institutionalised the expectation is that 'weaker' but equally sovereign states can and will use those institutional provisions available to them to their advantage. If this is the case, it should be primarily in areas where conflicting interests are predominant that evidence in support can be found. This presents therefore the need to look at the provisions of the trade regime that regulate the resolution of disputes between states party, and, also at those

topics that are currently contentious, namely those affecting state relations in agriculture trade.

The Research Question is thus set out in three parts. The first, asks: What effect has 'legalising' (understood as formalising in law and institutions) international trade relations, under (1) the GATT and under (2) the WTO, had on states of the South? The second and third parts provide analysis in looking at firstly, how states have been able to advance their aims of economic development in each of the GATT and WTO regimes, and secondly how the change in the regime has influenced the way in which states of the South cooperate.

A comparative methodology was used. The power-based relations under GATT (1947-1994) were compared to the rule-based relations of the WTO (1995-2005). The norms, principles, rules and decision-making structures of each regime were compared. The historical approach is necessary to compare and understand the important changes to the regime over time. The focus was on the outcomes of diplomatic negotiations, especially as they referred to the norms that provide the foundation of the regime. Norms were seen as the general obligations that guide states' behaviour in designing decision-making procedures and in implementing rules.<sup>299</sup> The North-South issues under GATT and under the WTO are compared, especially as it regards a development norm. By investigating the evolution of the norms and rules of trade relations over time, the concept of international regime provided the basis of comparison to explore continuity and change in the political economy.

The theoretical context of this study centres on how the realist (power) and liberal (institutionalist) scholars seek to explain the international trade regime. The Realist primacy of the state means cooperation is explained as the convergence of self-interest, whether states enter a temporary alliance or accept a more permanent organization. Thus any international organization can only be as effective as the most powerful states permit them to be. But, even if one accepts the existence of anarchy as predominant, structural

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<sup>299</sup> Finalyson and Zacher 1983: 276.

anarchy does not mean that international politics is only characterized by conflict. States do cooperate with one another and do create rules and institutions in many areas. These theoretical implications are considered in detail in the final section.

The result of the study is based on the finding that the international institutions affect the decisions states make. The options open to states participating in a regime are limited by the norms, principles and rules of the institutions to specific types of decisions and actions.

The analysis shows that states are constrained by the possible remedy institutions are able to offer. The GATT offered only limited remedy, so states looked outside the regime to UNCTAD and the NIEO. In contrast, the dispute settlement system of the WTO regime offers states a legal or judicial route (though international law has its limitations) that GATT did not. To date, under the WTO regime there are modest but significant victories for states of the South, and the case brought by Brazil against American subsidies on cotton production is presented as an illustrative example.

## **5.2.**

The questions, and the structure followed by this thesis in answering them, are represented schematically in the table below. As noted, this inquiry asks: Do the changes to the institutions governing trade present those states with new policy choices? Two aspects were considered: First, the 'Agenda-setting' capability of states; second, the use of formal dispute settlement procedures. In this context, the study considered whether the creation of the WTO has led to more effective multilateral cooperation on trade issues between states of the South, than was the case during GATT. A key finding is that the WTO mechanism allows for significant change in the type of choices, decisions and behaviour that states of the South can engage in their international trade relations. These are discussed below.

What effect has 'legalising' (formalising in law/institutions) international trade relations (under I.GATT and II.WTO) had on states of the South? -In their cooperation? -In advancing their aims of economic development?			
<b>QUESTIONS (Chapter 2) Literature Review And Theory</b>	<b>CASE I (Chapter 3) THE GATT REGIME</b>	<b>CASE II (Chapter 4) THE WTO REGIME</b>	<b>Why? (Chapter 5) COOPERATION of the SOUTH</b>
Effect of 'legalising' (formalising in law/institutions) Anarchy-order dichotomy?	<i>Power</i> -based relations of the GATT (1947-1994)	<i>Rule</i> -based relations of the WTO (1995-2005)	Legalization-order. States options are constrained by the possible remedy institutions can offer
In their cooperation? (Economic development) Foreign policy choices?	The North-South issues under GATT  The NIEO	The North-South issues under WTO  Doha Development Agenda	North-South groups like Cairns group  South-South groups like the G-20
Effectiveness of multilateral cooperation on trade issues	Outside institutions, UNCTAD and the NIEO	Inside institutions, The DSU offers legal or quasi-judicial route	Producer groups. Brazil (+4) against American subsidies on cotton production

### 5.2.1. The North-South issues under WTO

**Before: A North-South face-off in advancing economic development.**

**Now: South-South unity and cooperation in advancing economic development**

The realization that individually states of the South were unable to exert significant influence on the international system and its institutions prompted an increase in their cooperation. The collective identity of 'developing country', and the political routes taken to bring about this Third World solidarity, has been an important aspect of international relations. It is particularly the emphasis on the economic development of these countries that has united them at the international level. In advancing this aim they have met with some degree of success. For example, a development orientation has become standard in most international forums, and dominates the agenda of many of the international organizations. At the WTO especially, the economic needs of developing

countries is a primary concern and is seen as crucial to the current negotiations of the Doha Development Round. In the words of the Doha Declaration, (paragraph 2), the developing countries hope to “secure a share in the growth of world trade commensurate with the needs of their economic development”.

It would be wrong to deduce that since ‘development’ is now to be found at the top of the agenda that this represents some kind of victory for the South. As the historical approach used here has shown, the needs of developing countries have not always been paramount and indeed in the first two decades of GATT the concerns of these states seem to be negligible to the success of the various negotiations. As Chapter 3 explains, the GATT regime had since its origin certain institutional flaws that, although provided the framework for tariff reductions, did little else to extend benefits to the agriculturally dependent countries of the South. Despite the GATT norms of non-discrimination and reciprocity, the absence of a system of dispute resolution that could protect their interests meant that the politically powerful always dominated the GATT talks. In particular, by excluding agriculture trade from a free trade regime the protection of this sector where countries of the south would have enjoyed a comparative advantage, the protectionist impulses of Northern producers went unchecked. This scene was complicated by the special and differential treatment enjoyed by some developing countries by virtue of arrangements concluded with their ex-colonial masters, and which was denied to others. The developing countries’ signatory to GATT could exert little pressure multilaterally and not surprisingly, played only a small role initially.

The GATT then was unable to provide the institutional setting for the reforms that these states pursued. It was therefore primarily through UNCTAD that attempts to reform and restructure the world economy were pursued, and that the ‘right to development’ was given wider currency. This attempt to restructure the world economy had some results that were positive politically, but less clearly so in economic terms.<sup>300</sup> The G77 and the NAM were influential in building political solidarity, as seen in the move in the early

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<sup>300</sup> The benefits of an open economy, and the cost of a closed economy, are now among the most widely shared canons of economic orthodoxy.

1970s towards a NIEO. Economically, many of the demands were at odds with the liberal orientation of free trade, and UNCTAD's reforms such as the validation of domestic protection for import-substitution strategies and a generalized system of preferences, were diametrically the opposite of what GATT's reciprocity principle required. SDT legitimised the argument for avoiding liberalisation, leaving developing countries outside the dynamic of the world system. By seeking to deviate from GATT rules, and succeeding in driving the new institutional structures such as UNCTAD, states of the south found that cooperation for their collective interest was best found *outside* the rather than within the GATT regime.

The period of transition came as North-South tensions escalated, and the face-off at the UN General Assembly in 1974 and 1975 can be considered a turning point. Not only was the demand for a NIEO badly received and criticized for being too radical, it also exposed the shortcomings of a solidarity that was based on broad principles and a long-list of urgent reforms, which provided no real basis for negotiation. How can the G77 and the economic vision of a NIEO be assessed? For one, it demonstrated the capacity for diplomatic cooperation by States of the South. But the lesson for policy makers is that it is hard to derive a consensus position in complex international policy matters, when these require trade-offs between competing values. With countries of vastly differing levels of interest and expertise operating together, such as the G77, maintaining common positions in negotiations is difficult. The search for agreement required a more pragmatic approach, such as through the Integrated Program for Commodities and the Lome Convention. The strategy of the G77 was based on the assumption that concessions could only be wrested from the rich countries through collective action by developing countries. The necessary implication was that this collective action would be through UNCTAD rather than the GATT.

As trade flows moved beyond commodities and manufactured goods to services, and as trade barriers were seen no longer simply as tariff barriers, the need to improve the GATT became apparent. There was however a fundamental change taking place, the creation of a global economy, for which GATT was not specifically geared. This

prompted the inclusion at the beginning of the eighth round of GATT of a special negotiation on the 'functioning of the GATT system' (or FOGS). This in turn led to the creation of the WTO at the conclusion of the Uruguay Round, which would provide not only new areas under regulation, such as agriculture which was of interest to the states of the south, but would also provide the legal basis for international trade relations.

That the WTO is the international organization dealing with global trade rules has meant that is seen also as having a primary responsibility for global development. This expectation, that the WTO can deal with broader issues that include the environment, employment, investment, culture *and* the development needs of the poorest nations, places more responsibility on the organization that it may be expected to handle. The idea of the Doha Development Agenda, of promoting justice and development beyond trade interests, appears to have been broadly accepted but not possible to implement. Unlike the NIEO however these are ideas prominent within the WTO regime.

It is important to note that these historical developments in the regime trace a continuation of the main principles of GATT under the WTO. As Chapter 4 notes, the substantial change to the regime is that the institutional foundations are explicitly set out and that the adjudication of trade disputes follows a legal rather than diplomatic process. These developments were also fruitfully explored via the theory of neoliberal institutionalism that posits that the increase in economic and other forms of interdependence should increase the probability of cooperation among states. As an economy with global linkages emerges, the institutions capable of providing oversight and regulation are created, and these have as their founding principle some recognition under international law. This should be no surprise. As Deborah Cass makes clear, "historically the development of international law itself runs parallel with the growth of international trade and commerce."<sup>301</sup>

This legal aspect, where states have duties and responsibilities arising from the treaty obligations under the WTO, has re-characterised the North-South playing field.

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<sup>301</sup> Cass, 2005: 16.

### 5.2.2. Multilateral cooperation on trade issues

**Before: A broad South alliance outside GATT, via UNCTAD, NAM and the NIEO**

**Now: Producer groups like “Brazil (+4)” against American subsidies on cotton work inside institutions where the WTO DSM offers legal or quasi-judicial route**

The WTO DSM aims to resolve trade quarrels between members. Such mechanism has always been present throughout the GATT/WTO history, but, only since the Uruguay Round, benefited from a genuine adjudicative approach. Article XXII of the GATT, entitled ‘Consultation’ establishes the procedures for resolution and emphasises that it is negotiation and diplomacy rather than litigation that is the GATT’s *modus operandi*. Unlike in the GATT years, the new WTO maintains that “right perseveres over might”. The WTO, in comparison, is a more legalistic, rule-oriented approach. The key change under the WTO is that Panel or Appellate Body reports are *automatically* adopted, except where the Dispute Settlement Body decides by consensus not to adopt the report, thus breaking with the underlying diplomatic nature of the GATT.

There is more to this new approach to disputes than is immediately apparent. As this study has shown, though the disputes are mainly about the infringement of obligations under the WTO agreements, the implications of the Panel Reports on the ongoing multilateral negotiations are also worthy of consideration. What this means is that the different views advanced by North or South in the negotiations themselves can be strengthened (or weakened) by recourse to the WTO dispute settlement and its binding decisions.

When looking at the history of the WTO negotiations, the inclusion of agriculture and the Agreement of Agriculture are a significant step. While there has been negotiation on agriculture, and subsequently agreements to be implemented, this has not meant that there are fewer disputes in this area. The three pillars of market access, domestic support and export subsidies are new obligations whose novelty lies not in their nature but in the fact that they seek to extend the regime’s market oriented rules to new products. The recent

events, where continued developed world agricultural protection is seen to be debilitating the development of the South, have been stumbling blocks to the successful completion of the Doha Round of negotiations. Whereas under the GATT regime no provision was made for a ruling, the WTO's dispute resolution mechanism permits for litigation, which can, in effect, allow the opportunity for advance where negotiation has deadlocked.

The deadlock in the Doha Round, most clearly evident at the failure of the Cancun Ministerial in 2003, brought to the surface the tensions created by the apparent recalcitrance of the North to adhere to the Agreement on Agriculture. While there is still evidence that the South can maintain unity, and create coalitions such as the G20 to best express it, this study has shown that the parallel track opened up by the Cotton Case may best represent a successful outcome for agricultural producers of the South. Though the ruling against American subsidies on cotton does not win the war, it is nevertheless a significant battle. The fact that the WTO regime offers protection via litigation is another weapon in the armoury of the South. This is made even more relevant by the fact that it represents a new type of cooperation.

The Cotton Case is an example of cooperation but not in the same way that the NIEO was. It represents rather a sector specific collaboration. Under the leadership of Brazil, clearly a leader of the global South, cotton producers from African nations that individually would not have had the means to bring the case to the WTO were able to cooperate in building an alliance of Third World cotton producers. The fact that this was the first time that an African country participated in the dispute settlement process is in itself a milestone, but the fact that four African countries were collaborating as cotton producers rather than merely an amorphous 'South' may be most notable result. The conclusion thus reached is that this 'parallel track' shows what is possibly a likely shift from broad, and essentially political alliances to pragmatic alliances based on sector specific producers.

There is the danger that in time the illustrative example of the cotton producers signifies not a successful beginning for this type of producer collaboration but rather an anomaly.

Without venturing into speculation there are no easy answers. There are still however at least three main problems with accepting this WTO decision as indicative of a new form of cooperation in international trade.<sup>302</sup> The first is that countries may be pressured out of bringing complaints for fear of retaliation or an adverse response in some bilateral agreement. The second is that countries may turn a blind eye to foreign indiscretions, if they wish to adopt similar behaviour themselves. Hypothetically, while they may want to challenge a particular subsidy on the basis of legal argument, if successful, it would undermine its own prohibited subsidy programmes. The third observation is that leaving rights to nation-states themselves will obviously not result in any country challenging its own behaviour.

This points to the wider problem characterised by the swinging pendulum between anarchy and order or power and law in international relations, and the next section now considers the implication in the theoretical context. Put simply, despite what conclusions are reached from the example under consideration, a truly judicial mechanism will not be set up at the international economic level without fully redefining Member States' sovereignty.

### **5.2.3. The effect of 'legalising' trade relations and the anarchy-order dichotomy: States are constrained by the institutions they create**

The WTO and GATT originated in international agreements between sovereign nation-states. The philosophical underpinning of the international system has been the acceptance of the paramount rights of sovereign nations.<sup>303</sup> States retain full economic freedom, except where these rights have been constrained through recognised developments in international law. Where commerce and trade are concerned, any limitation to those sovereign rights is generally established consensually through treaty. The pro-sovereignty bias of the GATT–WTO system is seen also by the accepted process of decision-making within the system. All key decisions under GATT, including the

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<sup>302</sup> There is another argument, not considered here, that there is a tendency for governments to be captured by vested interests when deciding which actions to bring.

<sup>303</sup> For example, art 2(1) of the *United Nations Charter* recognises that every state is sovereign and equal.

adoption of Panel reports on disputes, have almost always been reached on a consensus basis. Historically, new rules have been developed and disputes resolved only with the consensus of each of the participating contracting parties. Where international economic law is concerned, the GATT–WTO system has been unique, particularly in terms of its development and utilisation of a binding Dispute Settlement Mechanism.<sup>304</sup>

This new scenario is one where an arbitrary system based on power is replaced by the predictability and fairness of a rule-based system. The rule-based WTO should offer effective remedy even to the smallest of its members. But can international law, or more precisely an international legal regime on trade issues, do all that it says it can? It is in the ability (or inability) to exercise remedial and coercive powers that the WTO system should be measured. In the majority of cases the Reports merely call for the measures in dispute to be brought into conformity with WTO obligations. This study has shown that it is the inability to enforce awards that places considerable limits on the effectiveness of a regime's legal power.

Nevertheless, judging by use made of the WTO DSM so far, it is clear that this mechanism represents a significant development. For one, there have to date been as many cases subject to dispute settlement as there were in the fifty years of the GATT. Secondly, developing countries have been more active in WTO dispute settlement.<sup>305</sup> With greater recourse to multilateral dispute settlement, developing countries' participation has increased. Developing countries, especially ill served by GATT's diplomacy, are better poised to benefit from the WTO's more legalistic architecture.

### 5. 3.

The **theoretical context** of this study centres on how the realist (power) and liberal (institutionalist) approaches seek to explain the international trade regime. While it is not necessary to adopt a polarized view of a binary between realism and idealism, this

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<sup>304</sup> See 'Understanding on Rules and Procedures Governing the Settlement of Disputes'

<sup>305</sup> Lacarte-Muro, J., and Gappah P. International Trade, Developing Countries and the WTO Legal and Dispute Settlement System: a view from the bench. *Journal of International Economic Law*. 2000, 3(3), 395-401.

was more useful in a comparative study than broadly Marxist, mercantilist or liberal starting points. These traditional perspectives accounted for the actions of the most powerful, under the concept of hegemony, but were unable to give a proper theoretical account of countries of the South as other than passive or unwilling participants in the international economy. Liberal philosophy, ostensibly the basis for the regime of free trade and the post-1945 international order, was of greater explanatory value. The hegemon's role in establishing a regime is however less important here than the maintenance and continuation of the regime after hegemony. The focus on interdependence — and the institutions created to manage it — makes a neo-liberal or liberal institutionalist approach most relevant to the study of multilateral relations.

Areas of study considered were firstly the foundation of an international society of states under anarchy and secondly the causal impact of interdependence on state relations. Empirical observation reveals the proliferation of formal institutions for international cooperation, with their basis on generally agreed principles of international law. To recap the theory, the Realist primacy of the state means cooperation is explained as the convergence of self-interest, whether states enter a temporary alliance or accept a more permanent organization. Thus any international organization can only be as effective as the most powerful states permit them to be. From the perspective of liberal theory, even if one were to accept the existence of anarchy as predominant, structural anarchy does not mean that international politics is characterized by conflict. As neo-liberal theorists explain, states do cooperate with one another and, in many areas, do create rules and institutions.

The distinction that domestic policy requires a level of legitimacy while in foreign policy any means can be used to achieve the ends is no longer readily accepted as always true. As economic and political integration creates high levels of interdependence, the effect is a blurring of the domestic order with the international one. With increasing interdependence evident there has also been the perceived disintegration of state sovereignty. The hypothesis advanced in this thesis is that an increase in economic and other forms of interdependence should increase the probability of cooperation among

states, but that this cooperation when carried out legitimately under law does not neutralise or undermine sovereignty. The conclusion is that there can be a greater emphasis on the importance of law as an explanatory factor in the analysis of state behaviour in the international system.

The binding legal effects of treaties and how much leeway a state may choose to exercise in complying or not complying to its obligations remains a central question. Louis Henkin, in answering the question of how nations behave was of the view that “almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time”<sup>306</sup> For the most part, states perceive compliance to be in their own self interest.

The theoretical aspects of this study have made only a modest contribution to the ongoing debate. The starting point, utilizing some of the tools of international political economy particularly regime analysis, proved fruitful in providing a framework for comparison. The conclusion is that this set of tools has not kept pace with the development in economics and international law. There is considerable overlap between international relations and international law. An interdisciplinary approach is useful in the study of organized international cooperation.

The evolution of the regime towards one that is characterized as rule-based was borne out in Chapters 3 and 4 and is a significant conclusion. The transformation of the GATT dispute resolution process from one that relies principally on political negotiation to a much more formal legal process in which the disputants present claims before a binding third party tribunal, can be seen as the ‘judicialization’ of international trade relations. The role of international dispute resolution has been shown as an important new institutional aspect of the WTO and one that will likely become more prominent in future. Deborah Cass’ observation is valid, “historically the development of international law itself runs parallel with the growth of international trade and commerce.”<sup>307</sup>

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<sup>306</sup> Louis Henkin, *How Nations Behave*, 1968.

<sup>307</sup> Cass, 2005: 16.

The comparative historical aspects of this study introduced the shortcomings perceived in the GATT regime and how they caused the developing countries to seek exceptions and special treatment. As Chapter 3 shows, the states of the South were constrained by the possible remedy offered by the GATT institution, and, since the GATT could not advance their interest sufficiently, it was outside the GATT that their cooperation on trade issues advanced. This was seen primarily via UNCTAD and in the NIEO. As noted in the conclusion to that chapter, the initial apparent success of building Third World solidarity did not materialize into successfully launching a new international economic order. The failure of the NIEO may have been caused by its over-ambitious demands, but its significance can nevertheless be seen in that it did herald an acceptance that the rights and duties of states applied to the economic and not just the political sphere. In the broader analysis regarding the development of international law in development, these events also show that any legal rules, constraining and modifying state power, are not generally subject to change solely in response to fluctuations in the immediate interests of states. The NIEO was thus largely a normative effort, around which South coalesced.

As explored in Chapter 4, there is rather both a longer time frame and a transnational legal process necessary in order to build institutions and establish a legal order. This Chapter therefore focused firstly on the process of the Uruguay Round, and, secondly, as regards agriculture, the importance of interpretation through the WTO DSU system and the precedents created. The principal finding is that much institutionalised cooperation has now taken an increasingly 'legalized' or 'judicialized' form, that is, one that depends increasingly on legal dispute mechanisms.

This is not to say that coalition building is not still the main way that developing countries negotiate multilateral trade agreements. Indeed Chapter 4 explained how the G20 alliance has redefined a North-South face-off, but nevertheless the success of the G20's blocking or defensive posture, though perhaps too early to call, does not compare to the success of the legal action initiated on cotton subsidies. Developing country

success in using the WTO's judicial instruments shows the causal impact of legal rules, institutions and processes on actors and actions.

This conclusion is consistent with the view that legal rules constrains state behaviour by forming the basis on which actions must be justified, decision making authorized, and determining the institutional structures within which political decisions are reached. It would however be prudent to offer some qualification and not to deny the importance of power and self-interest in international politics, or International Relations approaches based on these. As is often pointed out, treaties are in large measure the expression of conditions and relationships at the time of their making and cannot freeze forever the status quo prevailing at any particular moment in time. As conditions alter, there is still no agency with power to adjudicate the breach of the treaty or prevent recourse to war. Thus power is the great regulator of relations among states. However, the respect for international law has been greatest under conditions of stability and of broad agreement about legitimate aims, as is the case in the period under consideration here. A common law of international trade might threaten the sovereignty of nation states. From the perspective of some WTO members that threat is already evident. Of course, that threat is also an opportunity for an enhanced international legal order.

The starting point in reviewing the literature and assessing the key arguments in international political economy was the question about the nature of the international system of states, evaluating the realist and liberal emphasis on anarchy and order respectively. From this the different theoretical perspectives traced the role of the state, analysing the tensions between autonomy and interdependence, and concluding that the interaction of economic and political factors are a necessary in contemporary study. The focus of this study, the creation of the international order, followed the literature on hegemony and regimes and found that neither fully captures the causal impact of changes to institutions. Therefore the study of international order and an international trade regime was considered in terms of neoliberal institutionalism and studies from the perspective of international law.<sup>308</sup> Robert Keohane's work as the most prominent International

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<sup>308</sup> Antecedents can be found in the British School and the work of Hedley Bull.

Relations scholar in what can be called institutionalist research was central. Like these theorists, this thesis is interested in the form of international institutions, or rather, the difference that form makes.

Whether states in future will resist the waning of their autonomy by manipulating arrangements to maximise their own interests, or whether states will accept and formalise institutionalised co-operation remains an open question. By looking particularly at the context of dispute resolution this study hopes to contribute to others considering the development of the international trade regime and to those looking at issues of importance to countries of the South.

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<b>EXPORTS OF AGRICULTURAL PRODUCTS</b>								
<b>1990, 2000, and 2005</b>								
<b>(millions of dollars) (b-includes WTO estimates)<sup>309</sup></b>								
	<b>1990</b>			<b>2000</b>			<b>2005</b>	
	<b>World</b>	<b>414723</b>		<b>World</b>	<b>552989</b>		<b>World</b>	<b>851847</b>
1	United States	59404	1	European Union (25)	229313	1	European Union (25)	369708
2	Canada	22339	2	intra-EU (25)	173280	2	intra-EU (25)	285652
3	Australia	11628	3	United States	71408	3	extra-EU (25)	84056
4	China	10060	4	extra-EU (25)	56033	4	United States	82674
5	Brazil	9779	5	Canada	34789	5	Canada	41178
6	Thailand	7786	6	Australia	16446	6	Brazil	35039
7	Malaysia	7500	7	China	16384	7	China	28711
8	Argentina	7482	8	Brazil	15467	8	Australia	21209
9	New Zealand	5966	9	Thailand	12242	9	Argentina	19182
10	Hong Kong, China	4556	10	Argentina	11933	10	Thailand	17816
11	Indonesia	4154	11	Mexico	9100	11	Russian Federation	14874
12	Singapore	4095	12	Malaysia	8015	12	Indonesia	14320
13	re-exports	3735	13	Russian Federation	7764	13	Malaysia	13377
14	Taipei, Chinese	3732	14	Indonesia	7764	14	New Zealand	13006
15	India (b)	3506	15	New Zealand	7642	15	Mexico	12721
16	Mexico	3466	16	India (b)	6401	16	India (b)	10134
17	Turkey	3300	17	Chile	6399	17	Chile	10098
18	Japan	3298	18	Hong Kong, China	5693	18	Turkey	8080
19	Norway	3077	19	re-exports	5240	19	Japan	6007
20	Korea, Republic	2985	20	Japan	4395	20	Norway	5926

## Appendix 1

<sup>309</sup> Exports of agricultural products of selected economies, 1990-05, *International Trade Statistics WTO 2006*. ([http://www.wto.org/english/res\\_e/statis\\_e/its2006\\_e/its06\\_bysector\\_e.htm](http://www.wto.org/english/res_e/statis_e/its2006_e/its06_bysector_e.htm))

Exports of agricultural products <sup>310</sup> (2000 and 2005)			
10 Biggest exporters as % of world total			
		Value (m dollars)	(%)
<b>2000</b>	<b>World</b>	<b>552989</b>	<b>100.0</b>
1	European Union (25)	229313	41.5
2	United States	71408	12.9
3	Canada	34789	6.3
4	Australia	16446	3.0
5	China	16384	3.0
6	Brazil	15467	2.8
7	Thailand	12242	2.2
8	Argentina	11933	2.2
9	Mexico	9100	1.6
10	Malaysia	8015	1.4
<b>2005</b>	<b>World</b>	<b>851847</b>	<b>100.0</b>
1	European Union (25)	369708	43.4
2	United States	82674	9.7
3	Canada	41178	4.8
4	Brazil	35039	4.1
5	China	28711	3.4
6	Australia	21209	2.5
7	Argentina	19182	2.3
8	Thailand	17816	2.1
9	Russian Federation	14874	1.7
10	Indonesia	14320	1.7

## Appendix 2

<sup>310</sup> 'Exports of agricultural products of selected economies, 1990-05', *International Trade Statistics WTO 2006*. Also at ([http://www.wto.org/english/res\\_e/statis\\_e/its2006\\_e/its06\\_bysector\\_e.htm](http://www.wto.org/english/res_e/statis_e/its2006_e/its06_bysector_e.htm))

## Exports of agricultural products<sup>311</sup> (2000 and 2005)

### Share in economy's total merchandise exports, Ranked by percentage change

#### Decreasing importance of Agriculture trade

	2000	2005	% Change
1 Guatemala	60.2	37.1	-23.0
2 Kenya (b)	61.3	45.6	-15.6
3 Tanzania (b)	65.2	52.3	-12.9
4 Zimbabwe (b)	59.6	46.9	-12.7
5 Viet Nam (b)	27.4	17.9	-9.5
6 Peru	27.2	18.4	-8.8
7 Chile	33.3	24.9	-8.4
8 Ecuador	39.5	31.2	-8.3
9 Iceland	66.1	59.4	-6.7
10 Côte d'Ivoire (b)	59.4	52.8	-6.6
11 Nicaragua	84.8	78.9	-6.0
12 Australia	25.7	20.0	-5.7
13 Kazakhstan (b)	8.2	2.9	-5.3
14 Moldova	62.9	58.8	-4.1
15 India (b)	14.1	10.1	-4.1
16 China	6.6	3.8	-2.8
17 Turkey	13.8	11.0	-2.8
18 Romania	8.0	5.3	-2.7
19 Serbia and Montenegro	22.6	20.1	-2.4
20 Colombia	23.7	21.6	-2.1

(b-includes WTO estimates)

#### Appendix 3

<sup>311</sup> 'Exports of agricultural products of selected economies, 1990-05', *International Trade Statistics WTO 2006*. Also at ([http://www.wto.org/english/res\\_e/statis\\_e/its2006\\_e/its06\\_bysector\\_e.htm](http://www.wto.org/english/res_e/statis_e/its2006_e/its06_bysector_e.htm))

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