

Competing hegemonic powers in the negotiating history of the GATT: an analysis of how the United States and United Kingdom's competing visions of the proposed multilateral trading regime influenced the final codification of the GATT

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CHAPTER ONE

1.1 Introduction

The General Agreement on Tariffs and Trade 1947 (hereafter referred to as the GATT) is the cumulative result of a complicated web of international relations and competing views on the progression of the world trading system that compounded in the aftermath of the Second World War. The framework provided by this innovative document set the tone for multilateral commercial relations in the future, particularly with regards to reducing tariff and non-tariff barriers.¹ While there is extensive literature on the nature of the GATT, as well as on its economic implications and legal texture, there is relatively little written about its negotiating history.

In order to attain a comprehensive and nuanced appreciation of why the GATT was reduced into the particular form that it was, one needs to delve further into what drove the key players at the negotiating table to insist on including or excluding certain provisions. The emphasis here will be placed on the United States and on the United Kingdom, especially in respect of their heated debate over the most-favoured-nation principle and its exceptions. It is hoped that such an examination of the negotiating history of the GATT will reveal the disparate visions of the proposed multilateral trading system and speak to the key motivating factors which generated its final codification.

While many important contributions were made by other countries, the United States and the United Kingdom were perhaps the biggest drivers behind the negotiations and had an unmatched influence in determining the institutional structure and substance of the GATT.² It becomes clear from an analysis of the negotiating history of the GATT that this transatlantic relationship contributed a great deal towards the formulation of the future

¹ Douglas A. Irwin, Petros C. Mavroidis & Alan O. Sykes *The genesis of the GATT* eBook (2009) 104.

² Op cit note 1 at 2299.

multilateral trade regime and, as such, constitutes a valuable topic of further study.

Notable mainstream theorists such as John Gerard Ruggie recognise the importance of the most-favoured-nation principle and non-discrimination in underpinning the liberal international economic order which materialised and matured in the twentieth century, as well as the respective contributions of the United States and the United Kingdom in generating sufficient political impetus for the ultimate institutionalisation of the multilateral trade system.³ It will nevertheless be asserted in this dissertation that, if one wishes to gain a more nuanced understanding of the significance of these principles underlying the GATT, more robust engagement is required with both the domestic experiences of the United States and United Kingdom as well as with pervasive international hegemonic dynamics as they manifested within the context of the GATT negotiations.

More specifically, it will be argued that the United Kingdom and United States experienced divergent trajectories of growth following World War II and were able to exercise influence over the negotiations to a lesser or greater degree as hegemonic powers. The United States benefitted from its unprecedented economic progress and attempted to capitalise on its increasing influence to secure greater market access for its domestic producers. By comparison, the United Kingdom had suffered extensive losses and was in a period of restoration. It wished to retain its imperial preferences vis-à-vis the Dominions which it perceived as providing an advantage in international trade. Because neither nation was able to unilaterally monopolise the international policy space, and because of the acknowledgement that the interdependence necessitated by free trade could prevent future conflict, they would ultimately reach a negotiated compromise in the form of the GATT.

In evaluating the negotiating history of the GATT, the domestic interests advanced by the key negotiating parties as well as contemporary hegemonic power dynamics, this dissertation will reveal the degree to which

³ John Gerard Ruggie *Constructing the world polity: essays on international institutionalization* (1998).

the meaning of the legal text is both contested and historically contingent. It will further be argued that such an analysis, premised upon a historical and textual methodology, is particularly useful for highlighting how domestic tensions and hegemonic norms inform the codification of legal texts as well as their subsequent interpretation. The principle of non-discrimination as it manifests in the most-favoured-nation clause as well as the exception afforded for existing imperial preferences provide a useful lens through which to view such dynamics.

The GATT was created in response to a very particular problem of wanting to circumvent the adoption of obstructive trade barriers in the postwar era and yet it has had continued significance up until present day.⁴ In this regard, the theoretical positions adopted by policy-makers, the respective economic and political contexts of the key negotiating players as well as the personalities of the negotiators all played critical roles in the evolution of the text of the GATT. A failure to acknowledge and engage with such complexities deprives many mainstream analytical works of the nuances required to fully appreciate the significance of the principles emerging from negotiations. This dissertation will therefore argue that oversimplified analyses of legal texts should be eschewed in favour of critically engaging with the negotiating dynamics underlying such texts as well as with the domestic tensions experienced by the key negotiating parties and broader contemporary trends in international hegemonic power.

1.2 Methodology and evaluation of sources

It would seem appropriate to pause briefly and make a few short comments on the methodology used in the writing and research of this piece. In this regard, many different secondary sources which were produced during the period of the negotiations as well as in its aftermath were used to provide insight into the unique factors constraining or propelling the United

⁴ Op cit note 1 at 2303.

States and the United Kingdom respectively towards certain national and mercantilist goals.

A great deal of credit must certainly go to Douglas A. Irwin, Petros C. Mavroidis and Alan O. Sykes for *The Genesis of GATT*,⁵ one of the few works which dealt directly with the negotiating history of the GATT and which provided abundant guidance and inspiration in the drafting of this dissertation.

It is unfortunate, and yet inevitable due to its scope, that this dissertation will not be able to give more than lip service to some of the complexities within the domestic territories of the United States and United Kingdom. Therefore, internal divergences shall only be mentioned where they are necessary to explain the motivating factors behind the formulation of the GATT. Similarly, with regards the beneficiaries of imperial preferences as well as the other key players at the negotiating table, relatively little attention will be paid to their diverse circumstances except insofar as it bears directly upon the negotiating history of the GATT.

Indeed, there are limitations both in the players considered as well as the temporal arc included, the motivations for the latter being further elaborated upon in sub-chapter 1.4. Nevertheless, it is hoped that this dissertation will provide a platform for further research and shed light on some of the historical contingencies which moulded the course of the multilateral trading system.

1.3 Assessment of the utility of historical analysis on legal texts

Before tracing the historical evolution of the GATT, it is necessary to comment on why such an exercise is a useful addition to the existing analyses of the GATT. In order to do so, one must consider the manner in which legal texts reflect the negotiated stance of different hegemonic interests and their varying degrees of bargaining power within a particular historical period as well as the manner in which those dynamics evolve and

⁵ Op cit note 1.

impact the text's ongoing interpretation. Authors such as Robert W. Cox draw attention to the pitfalls of considering international texts as universal, in the sense of reflecting universal norms and applying universally to all participating nations.⁶ Instead, it is submitted that the content of these texts is dictated by the interests of the dominant nations participating in the negotiations and the degree to which they are each able to exploit their power to secure provisions which align with their commercial and political objectives.⁷

It will be argued in this dissertation that, if one wishes to gain insight into such power dynamics and the manner in which they are reflected in legal texts, it is necessary to assess both the historical context in which the text was drafted as well as the degree to which the text itself embodies intersectional meaning. In adopting a historical and textual methodological approach, it becomes possible to deepen our understanding of various legal concepts in a manner not otherwise possible, and to enrich a multiplicity of different academic endeavours.

In this sense, Ismail has commented on the importance of both history and ideas as tools of analysis.⁸ Similarly, Gramsci's historical materialism, from which this dissertation takes a great deal of instruction, emphasises the dialectical relationship between ideas and material circumstances.⁹ In addition, Gramsci underlines the critical importance of not isolating ideas from their material circumstances and so paying due attention to hegemony as it manifests in both forums of political organisation and ideological trends.¹⁰ While Gramsci primarily focused on the state entity, authors such as Cox have extended his conceptual formula to the emergence of the international political sphere.¹¹

⁶ Robert W. Cox *The political economy of a plural world: critical reflections on power, morals and civilization* (2002) 59; Faizel Ismail 'An empirical analysis of apartheid South Africa's ideas and practices in the GATT: 1947 to 1994' (2015) 51.

⁷ Ibid.

⁸ Faizel Ismail 'An empirical analysis of apartheid South Africa's ideas and practices in the GATT: 1947 to 1994' (2015) 19.

⁹ Robert W. Cox 'Gramsci, hegemony and international relations' in Stephen Gill (ed) *Gramsci, historical materialism and international relations* (1994) 56.

¹⁰ Ibid at 56.

¹¹ Ibid at 58.

If one is to adopt Cox's explanation of the nature of different world orders which are characterised by the jostling of different hegemonic forces, it would seem that such structural configurations are ultimately conditional upon the particular contextual environment in which they reside.¹² One may extend such an understanding a step further by positing that legal and economic concepts, including the most-favoured-nation principle, are conceptualised and given real-world application in specific and characteristic ways because of this conditional existence.¹³ This subsequently has concrete implications for how different world forces interact with one another, and for how one ought to go about assessing such interactions. One may then describe legal concepts as both formed by and constitutive of social, political and economic forces.

In order to shed further light on this relationship between concept and context, the historical analyst is expected to construct and interpret events of the past as part of a broader context with its contingent norms and behaviours.¹⁴ Evidence obtained from a particular period does not have a fixed meaning, but rather it encompasses and embodies intersectional meaning.¹⁵ Such meaning may be created by extratextual social, political and economic processes through which the textual source was constructed as well as through the subsequent act of interpretation.¹⁶ Adopting such a theoretical stance on the importance of context and intertextuality allows for the introduction and utilisation of a broader array of historical sources, including legal materials.

In addition to considering historical context, assessing the contested manner in which texts are created is a similarly important avenue of study. Authors such as Roland Barthes and Jacques Derrida have described texts as 'tissues of quotations.'¹⁷ In this sense, one's interpretation of a text, in this

¹² Stephen Gill 'Epistemology, ontology and the 'Italian School'' in Stephen Gill (ed) *Gramsci, historical materialism and international relations* (1994) 29.

¹³ *Ibid.*

¹⁴ Robert F. Berkhofer, Jr. *Beyond the great story: history as text and discourse* (1997) 20.

¹⁵ *Ibid* at 21.

¹⁶ *Ibid.*

¹⁷ Elizabeth A. Clark *History, theory, text: historians and the Linguistic Turn* (2004) 132; Roland Barthes *Image, music, text* (1977) 146, 159-160; Jacques Derrida 'Semiology and grammatology: interview with Julia Kristeva' in Jacques Derrida (ed) *Positions* (1981) 33.

case a legal text, cannot be isolated from the network of references which it echoes.¹⁸ Any attempt to grasp the meaning of the text will necessarily involve a collaborative effort in which meaning will develop and morph in contact with the reader.¹⁹ To provide even more specificity, it is possible to consider Bakhtin's language dialectics to elaborate upon how understanding constitutes the coming together of the given text, past contexts (including a text's origins) and the anticipation of a future context in which the text is taken further in light of something the reader considers important.²⁰

It would therefore appear that legal texts, as with other historical sources, are subject to the tension between the historical contingency of their production as well as the adaptive nature of their subsequent interpretation and ultimate meaning, if one can speak of such a thing. Studying this interplay promises to reveal new insights into the significance of the text, the purpose for which it was formulated as well as the manner in which its interpretation has developed over time. This dissertation will focus on the insights gained in applying this historical and textual approach to the negotiating history of the GATT.

Analytical exercises of this nature could indeed be applied to numerous examples of international economic or political negotiation to demonstrate, in a Gramscian sense, the degree to which theories are always produced by individuals within a given political, spatial and temporal environment and in furtherance of a particular objective.²¹ Such an interpretation, however, needs to be qualified by a recognition of the limitations of determining authorial intention.²² While such an exercise may certainly provide useful insights and possible interpretations, such efforts cannot be held out as the single, conclusive determination.

¹⁸ Elizabeth A. Clark *History, theory, text: historians and the Linguistic Turn* (2004) 133.

¹⁹ *Ibid.*

²⁰ M. M. Bakhtin *Speech genres and other late essays* (1986) 161 as quoted in Raya A. Jones 'Towards dialogic epistemology: the problem of the text' (2017) 14 4 *Qualitative Research* 457 at 470.

²¹ *Op cit* note 12 at 24.

²² *Op cit* note 18 at 139

In addition, one cannot simply look at a series of discrete historical events and the actions of individuals within that series.²³ Rather, one ought to consider the aggregate of those social interactions and how they operate within certain overarching structures as a foundation for fruitful analysis and a rejection of more reductionist techniques.²⁴ This author has chosen the negotiating history of the GATT as a worthwhile subject of study because of the uniquely volatile context from which it arose but there are surely many other options to which such academic treatment could be extended. With a focus on methods of knowledge production and their manifestation in applicable legal concepts, this dissertation will attempt to assess the negotiating history of the GATT and its crucial most-favoured-nation clause in a holistic and thorough manner.²⁵

1.4 The significance of the historical period chosen as the subject of analysis

With reference to Braudel's concept of historical patterns of change at the level of the *longue durée* and *l'histoire événementielle*, one may situate the emergence of the GATT both within the slow-moving development of global trade and the internationalisation of knowledge production as well as within the more rapid succession of events in the aftermath of World War II.²⁶ This will encompass significant structural changes such as, 'the spreading and deepening of commodification and monetisation of social relations,'²⁷ as well as more temporally-isolated incidents. In this regard, Chapters 3 and 4 will develop the idea of the emergence of the GATT as a result of historical change at the slower tempos of *longue durée* and as well as hone in on the quicker rhythms of *l'histoire événementielle* which focus on the

²³ Op cit note 12 at 24.

²⁴ Ibid.

²⁵ Ibid at 27.

²⁶ Ibid.

²⁷ Ibid at 36.

consequences of individual events and, on an even more microscopic scale, on individual personalities.²⁸

It is hoped that the exercise of positioning the GATT and the most-favoured-nation clause within its relevant historical context and the different rhythms of historical change will provide a key of sorts to unlock a more thorough and substantial understanding of their relative importance as well as their contemporary meaning.²⁹ While the introduction of an apparent new world trading order might appear to be the result of an eruption of short-acting, dynamic forces, there are slower moving currents which underlie such developments and which deserve analytical attention. As Braudel has described, 'the problem for anyone tackling the world scene is to define a hierarchy of forces, of currents, of particular movements, and then tackle them as an entire constellation.'³⁰

While this approach may instinctually lend itself to a comparison with more recent interpretations of the text, the scope of this dissertation limits the evaluation of the GATT within the context of its conception.

1.5 Overview and organisation of dissertation

In order to pursue the argument that greater academic attention ought to be paid to both the historical context in which legal texts are created and the hegemonic power dynamics which inform their eventual codification, it will be necessary to begin by laying the theoretical foundations for such an approach and considering the specific ideas which characterised the GATT's negotiating history and the emergence of the multilateral trading system more generally. Having highlighted the key narratives espoused by the negotiating parties and their hegemonic underpinnings, the emphasis will shift to an overview of the historical period in which the GATT emerged and the progression of the drafting process itself. The significant features identified therein will subsequently be analysed and the relevant nuances

²⁸ Op cit note 12 at 44; Fernand Braudel *On history* (1982) 28.

²⁹ Op cit note 12 at 38.

³⁰ Fernand Braudel *On history* (1982) 34.

unpacked in greater detail in order to demonstrate the utility of such an approach.

More specifically, Chapter 2 will consider the conceptual underpinnings of the multilateral trading system and its theoretical justifications. This chapter will include a brief assessment of the general trends observed in the historical progression of international trade so as to better situate the codification of the GATT within its broader context. In doing so, it will be pertinent to reflect upon the appropriateness of using the most-favoured-nation principle as the subject of a stereoscopic study of multilateral trading relations, and its potential for exposing implicit power dynamics.

In Chapter 3, the emphasis will shift towards the specific historical context of the postwar period, with special attention being paid to the respective trajectories of the key negotiating parties in the context of their negotiations on the GATT, culminating in its codification at the Geneva conference. This chapter will begin by assessing the tentative steps taken following World War I towards more comprehensive international cooperation, the political and economic ramifications of the Great Depression and the regressive effect of the protectionist stances adopted by many during the interwar period. Such themes feed into the perceived role of the most-favoured-nation principle in maintaining world peace. Subsequently, it will be necessary to evaluate the international reaction to the Second World War and the political calculations involved in adopting the Havana Charter. This chapter will then further engage with the negotiations as they unfolded in the postwar period.

Chapter 4 will, in turn, hone in on the specific negotiating history of the GATT by examining the debates pursued by the American and British negotiators in respect of the ambit of the most-favoured-nation clause as well as the anticipated role of imperial preferences within the multilateral trading system. Briefly, this legal text was the result of a number of different drafting processes aimed at preparing appropriate legal instruments to regulate both the International Trade Organisation as well as the General Agreement on

Tariffs and Trade.³¹ The political impetus generated as a reaction to the two world wars manifested in a genuine willingness to liberalise international trade by eliminating arbitrary trade restrictions and providing mechanisms to enable further negotiation on the reduction of trade barriers.³² Unpacking such debates and the degree to which the major negotiating parties were either willing to compromise or stuck steadfast in their position will illuminate competing visions of future trading relations and their underlying motives.

In Chapter 5, the nature of these debates and their impact on the final formulation of the most-favoured-nation principle and its exceptions will be critically assessed in light of the aforementioned historical context and power dynamics. It will further be argued that such an assessment highlights the importance of questioning the neutrality of assumptions underlying the international trade framework and of always situating concepts within their specific context. For example, consider the utility of the argument that the motivation for many nations to create the GATT was based on its potential to achieve equilibrium in respect of terms of trade externalities through the reciprocal reduction of trade barriers as well as to provide governments with binding commitments to counterbalance against the demands of domestic interest groups.³³ In order to unpack each of these nuances, it is necessary to go beyond a superficial textual interpretation and, instead, critically engage with the nature and influence of incumbent hegemonic influences and the extent to which their manoeuvrings inform the meaning of the text.

Chapter 6 will conclude this dissertation and briefly retrace the formative aspects of its argument while making a few rudimentary comments on the developing interpretation and perceived state of the most-favoured-nation principle today and how this potentially provides an opportunity for future research.

³¹ Op cit note 1 at 117.

³² Ibid at 108.

³³ Ibid at 121.

CHAPTER TWO

2.1 Introduction to the theories underlying the negotiating history of the GATT

In order to begin understanding the significance of the agreement reached in the GATT negotiations, it is appropriate to highlight some of the key themes which emerged and assess the degree to which they gained support from the respective negotiating parties and were in turn advanced or defended by such parties. Engaging in such an academic exercise shall deepen our understanding of the codification of the GATT by revealing the interplay between the domestic experiences of the negotiating parties and their conduct on the international stage.

The importance of ideas in formulating the multilateral trading system, as well as the historical context of such ideas, cannot be overstated.³⁴ At the most rudimentary level, one ought to briefly consider the origins of the concept of 'international' so as to better assess the particular arguments put forward by the negotiating parties to the GATT.³⁵ Gill describes this concept as reflecting a self-governing 'inter-state system' which appears to operate with its own modes of production and exchange, and yet is influenced by the domestic experiences of the participating states.³⁶ This necessarily entails an interaction between the 'national' and 'international', implying a degree of embeddedness of international structures in more domestic social relations of power.³⁷ This is a theme that will emerge quite clearly in the discussion of the American and British domestic contexts and how their political structures and dynamics of popular opinion would come into play in the process of negotiating the future multilateral trade regime.

In this respect, consider how Richard Gardner summarised the fundamental issue underlying the negotiations as identifying, 'how to devise

³⁴ Op cit note 8 at 26; Louis Emmerij, Richard Jolly & Thomas G. Weiss *Ahead of the curve? UN ideas and global challenges* (2001) 9.

³⁵ Op cit note 12 at 30.

³⁶ Ibid.

³⁷ Ibid.

international arrangements benefitting not just the world community as a whole but each of its parts.³⁸ Rather than polarising the Anglo-American interactions as being premised upon fundamental differences of economic opinion, the emphasis should additionally be placed on how these major negotiating parties were able to reconcile different economic factors with their respective domestic political environments which encompassed diverse public opinion, strong-willed parliamentary influence and various procedural limitations.³⁹ That is, the domestic situations of the United States and United Kingdom, in addition to their economic development and the policy positions of leading trade negotiators, influenced the course of the GATT negotiations and thus ought to form part of any substantive analysis of the historical progression of the multilateral trading system.

In addition to such domestic tensions which feature in the trajectory of international decision-making, one ought to assess the role of emerging hegemonic powers as they interacted on an international scale. Indeed, the transitional period in which the GATT was formed cannot be divorced from the more broadly changing patterns of identity formation which saw a shift towards greater integration of society within the international space and the gradual dissolution of more bounded concepts of territorial interests.⁴⁰ Rather than purely transplanting domestic issues into an international context, new narratives emerged as a result of the creation of several significant international forums. The acceleration of economic integration, for example, was guided by and rationalised through postwar concepts of world peace being best served by the interdependence of nations.⁴¹

The narratives so often vocalised by both the United Kingdom and the United States reflect their reaction to the fallout of both world wars. However, their debate over the necessity and specific form of the international organisation best suited to addressing this fallout can also reveal a great deal about more extensive, transnational patterns of hegemonic power.

³⁸ Richard E. Gardner *Sterling-dollar diplomacy in current perspective: the origins and the prospects of our international economic order* (1980) xiv.

³⁹ *Ibid* at xv.

⁴⁰ *Op cit* note 12 at 31.

⁴¹ *Ibid*.

Reacting to the transformation of the world order, one might speak of the creation of a new global society which emphasises the globalisation of certain ideals.⁴² From the perspective of the student of history, there is a clear need to approach such transformation, not through a static, bounded conception of historical structures which isolates domestic and international developments, but rather through dialectical and integrative methods of analysing changes in social and political structures.⁴³

If one is to take a closer look at hegemony on an international level, it is necessary to begin by outlining hegemony as an accumulation of certain values and norms about the political or social order which are accepted by many without much questioning.⁴⁴ This may be powered by the dominant social strata who widely accept these values and norms.⁴⁵ Thus Gill argues that changes in society and in the stability of the political and economic international order are the result of the interrelationship between structure and a miscellany of events as they manifest at a particular historical juncture.⁴⁶ In order to develop a hegemonic order, states need to establish and defend a particular global political and economic regime which is universally conceived of as being aligned with the values and interests of most actors.⁴⁷ This would operate on the level of co-ordinating inter-state relations within a global mode of production.⁴⁸

Cox identifies states which have established such hegemonies as having themselves experienced a socio-economic overhaul which has both internal consequences for the state's structure but also external influences which ultimately extend their domestic hegemony outward.⁴⁹ As will become clear from the discussion in Chapter 3, the core of world hegemony at the time of the formulation of the GATT was represented by the United States and in that sense one must view the GATT's negotiating history as an

⁴² Op cit note 12 at 34.

⁴³ Ibid at 41.

⁴⁴ Ibid at 42.

⁴⁵ Ibid; Op cit note 6.

⁴⁶ Op cit note 12 at 43.

⁴⁷ Op cit note 9 at 61.

⁴⁸ Ibid.

⁴⁹ Ibid.

example of the extension of American hegemonic power, albeit not without some limitations. In considering the manifestation of the 'globally-conceived civil society',⁵⁰ one ought to consider the intellectual strata of the United States and the United Kingdom and their reception of different ideas regarding the prospective format and content of the GATT as reflective of the dispersion of certain hegemonic ideologies.⁵¹

One method by which hegemony is established is through international organisations which create hegemonic institutions and ideologies that themselves infiltrate internationally and connect various national modes of production.⁵² Of particular interest for this dissertation is the manner in which they produce and promote standards that serve the development of the hegemonic world order.⁵³ Institutions, such as the GATT, are both the result of hegemonic norms as well as a further facilitator of such norms through the legitimisation of certain policies and practices favourable to dominant forces.⁵⁴ An intriguing point made by Cox in his description of international organisations as facilitators of hegemony is that such organisations are often capable of and expected to accommodate exceptions or revisions for certain counter-hegemonic notions.⁵⁵ In the context of the creation of the GATT, as well as subsequent debates regarding the degree to which the GATT can accommodate the interests of developing nations, Cox's point on the role of counter-hegemonic influences is very interesting.

While subsequent chapters will engage in a more thorough analysis of the relationship between the United States and the United Kingdom, it suffices to comment briefly that the United States was generally considered to be responsible for driving the establishment of the GATT and therefore the hegemonic world trade order.⁵⁶ It did, however, require the assent and acquiescence of other nations, in particular the United Kingdom as it similarly

⁵⁰ Op cit note 9 at 61.

⁵¹ Ibid at 62.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid at 63.

occupied a hierarchically-dominant position.⁵⁷ While the support of other nations was sought, the decision-making was heavily dependent upon the United States and the United Kingdom which is why the scope of analysis in this dissertation is limited to these two negotiating parties.⁵⁸

Having assessed some of the literature on both the significance of domestic experiences and international hegemonic powers in the historical development of the multilateral trading system, it now becomes appropriate to examine how this interaction of different forces emerged by briefly tracing the fluctuating patterns of trade liberalism and the manner in which the United States and the United Kingdom featured within these patterns as their hegemonic roles evolved.

2.2 Historical patterns of trade liberalism and the hegemonic roles of the United Kingdom and the United States

Gill and Law identify two historical periods which they offer as distinct examples of 'regimes of accumulation.'⁵⁹ The first is the consolidation of British hegemony with the commercial influence of the gold standard and the second is the rise of American global power after 1945 accompanied by the introduction of the Bretton Woods institutions.⁶⁰ With regards to the latter, one of the key initiators for such global power was the creation of institutions to govern the world order, at least in respect of more capitalist-leaning nations, which ensured relative stability for the core.⁶¹

This development was supported by a significant degree of overlap of certain values, norms and institutions within leading capitalist countries, in keeping with the notion of 'embedded liberalism' which characterises how various nations approach multilateralism as being rooted in 'domestic

⁵⁷ Op cit note 9 at 63.

⁵⁸ Ibid.

⁵⁹ Stephen Gill & David Law 'Global hegemony and structural power of capital' in Stephen Gill (ed) *Gramsci, historical materialism and international relations* (1994) 96.

⁶⁰ Ibid.

⁶¹ Op cit note 59 at 96.

interventionism.⁶² The outward expansion of this group of forces created many formal and informal postwar alliances, most centring around the United States as the seat of hegemonic power.⁶³ The creation of this 'international historic bloc' constitutes the background upon which the GATT was created and should at all times be considered as a relevant informing factor for the interpretation of the text of the GATT.⁶⁴ It should nevertheless be noted that this requires more thorough engagement than is ordinarily adopted in mainstream works on significant events in the liberal international economic order and, as such, key features including domestic factors and international relationships of power should not be overlooked in favour of reductionist narratives.

Rather than understanding this dynamic as simply the co-operation of certain capitalist interests across national territories, one ought to look into domestic social and political institutions and civil society which perceived such shared values as legitimate.⁶⁵ Indeed, that will form part of the analysis to come which will look at increasing international economic integration and its proposed regulation by the GATT from a domestic perspective. This will shed light on how the negotiations around the GATT were influenced by the varying degrees of legitimisation of certain ideas at a domestic level and how political actors who attempted to stamp their mark upon the emerging world order were either restrained or given mandate by domestic demands.⁶⁶

It should be noted that there is an additional nuance to be considered here. One cannot assume that the professed concerns of nations participating in the negotiations aligned wholly with actual domestic opinion. Indeed, Cox and Ismail have criticised such assumptions for failing to account for the degree to which domestic practices departed from these ideas.⁶⁷ In embracing this nuance, one is able to unearth discrepancies

⁶² Op cit note 59 at 96; John Gerard Ruggie *Constructing the world polity: essays on international institutionalization* (1998) 72; Op cit note 8 at 32.

⁶³ Op cit note 59.

⁶⁴ Ibid at 97.

⁶⁵ Ibid.

⁶⁶ Ibid at 98.

⁶⁷ Op cit note 8 at 28; Robert W. Cox *The political economy of a plural world: critical reflections on power, morals and civilization* (2002); Robert W. Cox *Universal foreigner: the individual and the world* (2013).

between the ideals professed by participating nations and the reality of their domestic practices.⁶⁸ For example, authors such as Mazower are able to consider such discrepancies in their investigations into the history of multilateralism and to expand upon such observations in assessing official statements and proclaimed economic or political motivations.⁶⁹ The significance of such discrepancies lies in what they reveal about the tensions that are presumably brought to bear on textual and policy-related negotiations.

With regards to this relationship between domestic contexts and the nature of participation in international forums, Ismail posits an interesting argument that the mechanism of free trade is used by nations who are experiencing strong economic growth because greater access to world markets advances their interests.⁷⁰ The United States surfaced from the Second World War boasting a comparatively strong economy and began pursuing a multilateral trading system.⁷¹ Rather than simply ascribing to the idea of 'embedded liberalism',⁷² this argument provides a more solid platform from which to understand the motivating factors behind the evolution of the multilateral trading system.⁷³ This would certainly help explain why the United States remained committed to protecting certain sensitive economic sectors and yet continued to play the proponent of free trade in the GATT negotiations.⁷⁴ As the strongest international economic actor, they stood to gain a great deal from opening up trade and yet they remained careful to protect those sectors, particularly agriculture, which were economically or politically sensitive.⁷⁵

⁶⁸ Op cit note 8 at 20.

⁶⁹ Ibid; Mark Mazower *No enchanted palace: the end of empire and the ideological origins of the United Nations* (2009); Mark Mazower *Governing the world: the history of an idea* (2012).

⁷⁰ Op cit note 8 at 37.

⁷¹ Ibid.

⁷² John Gerard Ruggie *Constructing the world polity: essays on international institutionalization* (1998) 72.

⁷³ Op cit note 8 at 37.

⁷⁴ Ibid at 38; Rorden Wilkinson *The WTO: crisis and the governance of global trade* (2006); Rorden Wilkinson *What's wrong with the WTO and how to fix it* (2014).

⁷⁵ Op cit note 8 at 38; Rorden Wilkinson *What's wrong with the WTO and how to fix it* (2014) 19.

Notably, authors such as Friedrich List appear to express support for this theory by arguing that such nations which are experiencing strong economic growth started off using protectionism and state intervention and, only when their economies had grown sufficiently, began espousing the importance of free trade.⁷⁶ In that sense it has been said that, 'when anyone has attained the summit of greatness, he kicks away the ladder by which he has climbed up, in order to deprive others of the means of climbing up after him.'⁷⁷

List describes the United Kingdom as taking exactly this approach in the nineteenth century, even going so far as to abolish the importation of goods from its colonies if they threatened domestic industries.⁷⁸ However, as British manufacturers improved their capabilities there was a greater willingness to accommodate freer trade.⁷⁹ Perhaps the most commonly cited example of this transition was the repeal of the Corn Laws in 1846.⁸⁰ From that point onwards, free trade policies were increasingly adopted across the European continent, mostly facilitated by bilateral treaties, and the British benefitted from having increased access to those markets.⁸¹ One such treaty which facilitated this increased trade liberalism was the Cobden-Chevalier (UK and France) Treaty of 1860.⁸² The real impact of this treaty was in its inclusion of a clause extending most-favoured-nation treatment as well as in its disruption of European protectionism by prompting continental European nations to seek reciprocal concessions from France.⁸³ As the European nations began entering into more commercial treaties, the most-favoured-nation clause was increasingly adopted to promote non-discrimination in trade.⁸⁴

⁷⁶ Op cit note 8 at 38; Friedrich List *The national system of political economy* (1904).

⁷⁷ Ha-Joon Chang *Kicking away the ladder: development strategy in historical perspective* (2002) 3; Op cit note 8 at 38.

⁷⁸ Op cit note 77 at 22; Op cit note 8 at 38.

⁷⁹ Op cit note 77 at 23; Op cit note 8 at 39.

⁸⁰ Op cit note 77 at 3; Op cit note 8 at 39.

⁸¹ Mark Mazower *Governing the world: the history of an idea* (2012) 39; Op cit note 8 at 39.

⁸² Op cit note 81 at 42; Op cit note 8 at 39.

⁸³ Gerard Curzon *Multilateral commercial diplomacy: the General Agreement on Tariffs and Trade and its impact on national commercial policies and techniques* (1965) 15.

⁸⁴ *Ibid.*

This period of free trade, however, did not last as Germany as well as other European countries began returning to protectionist trade policies which largely remained in place until World War I.⁸⁵ It has been suggested that this was predominantly a result of Germany's emergence from the Franco-Prussian war in 1871 and the alliances which arose thereafter, as well as the colonial land grab in the late 1800s.⁸⁶ With respect to Germany more specifically, initial calls from the iron and steel industry for greater protection of domestic markets were ignored by conservative politicians who largely hailed from agricultural backgrounds and it was not until an agricultural crisis arose because of escalating American competition that the manufacturers calling for greater domestic protection gained traction.⁸⁷

These tariff reforms adopted by Germany in 1879 are now retrospectively seen as a turning point in tariff history.⁸⁸ In response thereto, France began increasing tariffs to further its own agricultural protection.⁸⁹ Germany, owing to the end of the Cobden-Chevalier Treaty and the 1891 famine, soon began to retreat from its protectionist stance so as to find markets to accommodate its expanding industry as well as to secure food by liberalising imports and making some small concessions in a series of new treaties.⁹⁰ Nevertheless, owing to Germany's unwillingness to make any significant concessions, this did not have a far-reaching impact in terms of liberalising trade more generally across Europe and Germany's move was later reversed in the early twentieth century.⁹¹ This was accompanied by Russia, Austria and Switzerland all raising their tariffs to compete with Germany.⁹² The implication was that, at the onset of the First World War, most of continental Europe had adopted a strongly protectionist stance.⁹³

The United Kingdom maintained its free trade economic policy, but most other countries perceived this as being motivated purely by self-interest

⁸⁵ Op cit note 83 at 18; Op cit note 81 at 47; Op cit note 8 at 39.

⁸⁶ Op cit note 81 at 47; Op cit note 8 at 39.

⁸⁷ Op cit note 83 at 17.

⁸⁸ Ibid.

⁸⁹ Ibid at 18

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid at 19.

⁹³ Ibid.

and were not as willing to replicate their tariff reforms.⁹⁴ Indeed, the growing competition from other European countries in Africa and the influence of increased protectionism in Europe did push the United Kingdom towards seeking preferential access for her territories.⁹⁵ The United Kingdom began putting in place preferential agreements with its colonies using, for example, the Sugar Convention of 1902 which, 'prohibited the entry of bounty-fed sugar from Prussia, Denmark, Spain, and the Argentine.'⁹⁶ While the campaigning of 1903 to put in place a protection of 10 per cent on manufactured goods and implement retaliatory measures to ensure increased access for British goods did not ultimately come to fruition, the evidence of some small shift towards protectionist thinking is clear.⁹⁷

The United States followed a similar trajectory, albeit in a different temporal context.⁹⁸ That is, the United States also began transforming its previously protectionist trade policy to accommodate the notion of free trade when its economy became more competitive and it sought to benefit from having increased access to global markets in the late 1930s.⁹⁹ Indeed, from the time of Hamilton's term as the secretary of the Treasury in the late eighteenth century until the commencement of the Second World War, the United States had predominantly maintained its infant industry protection model through the institution of high tariffs on imports to safeguard domestic industries.¹⁰⁰

In the early twentieth century, the United States as well as many continental European countries were moving towards more protectionist economic stances and, with the unsettling of trade networks as a consequence of extensive international conflicts, the possibility of imposing free trade policies seemed remote.¹⁰¹ There was greater state intervention in the market to avoid importing from or exporting to non-allied countries.¹⁰²

⁹⁴ Op cit note 81 at 47; Op cit note 8 at 39.

⁹⁵ Op cit note 83 at 19.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Op cit note 8 at 40.

⁹⁹ Op cit note 77 at 24; Op cit note 8 at 40.

¹⁰⁰ Op cit note 77 at 25; Op cit note 8 at 40.

¹⁰¹ Op cit note 83 at 18; Op cit note 81 at 23; Op cit note 8 at 40.

¹⁰² Op cit note 83 at 20.

The use of joint committees by the allies to purchase important goods by pooling their imports is one example of the more noticeable presence of the state in commercial activity.¹⁰³ The interwar period was similarly typified by heavily protectionist policies.¹⁰⁴ The political reorganisation of Eastern Europe, the steadfast protection afforded to wartime industries as well as the safeguarding of replacement industries created overseas to substitute goods previously bought from Europe all contributed towards the perceived need for more protectionist foreign policy.¹⁰⁵ While non-tariff barriers were gradually reduced following the First World War, there was a simultaneous rise in tariffs.¹⁰⁶

The United Kingdom, once the bastion of free trade, moved away from its previously liberal policies and instead developed the Commonwealth System of Imperial Preferences which was aimed at increasing the number of goods subject to tariffs.¹⁰⁷ Similarly, once Germany regained autonomy it started raising its tariffs.¹⁰⁸ The United States, beginning with the Emergency Tariff Act of 1921, also brought on a series of tariff increases which many thought to be inappropriate because the United States was a substantial net creditor.¹⁰⁹

The cumulative effect of the unstable economic and political conditions also prevented the reintroduction of trade treaties which had played such an important role in global commerce in the early twentieth century.¹¹⁰ By extension, the unconditional most-favoured-nation clause fell into disuse and discriminatory trade practices became increasingly common.¹¹¹ By 1929 it seemed clear that the United States intended on raising its already high tariffs and protectionist tendencies in other countries remained strong.¹¹² Curzon describes how, 'as the year proceeded,

¹⁰³ Op cit note 83 at 20.

¹⁰⁴ Ibid at 18; Op cit note 81 at 23; Op cit note 8 at 40.

¹⁰⁵ Op cit note 83 at 21.

¹⁰⁶ Ibid at 22.

¹⁰⁷ Clair Wilcox *A charter for world trade* (1949) 7; Op cit note 8 at 40; Op cit note 83 at 23.

¹⁰⁸ Op cit note 83 at 23.

¹⁰⁹ Ibid.

¹¹⁰ Ibid at 24.

¹¹¹ Ibid.

¹¹² Ibid.

depression, and the deconsolidation of duties and denunciation of treaties, set in.¹¹³

Following the Wall Street crash, there was a decline in American demand with American funds being removed from overseas which accompanied a downturn in producing countries and a decrease in European industrial production.¹¹⁴ The cyclical pattern of falling demand, declining prices and the stagnation of foreign trade had significant ramifications for balance-of-payments issues.¹¹⁵ This was further intensified by countries adopting protectionist trade policies and implementing tariff and non-tariff barriers in an attempt to insulate themselves against the plummeting demand and fluctuating prices.¹¹⁶ Such measures, most famously characterised by the Smoot-Hawley Act of 1930, were received with retaliatory responses.¹¹⁷ The United Kingdom similarly introduced protective mechanisms through the vehicle of the Import Duties Act in 1932 and, most notably, abandoned the gold standard resulting in extreme volatility in exchanges.¹¹⁸ Wilcox commented that support for the tenets of economic liberalism, which had already suffered a major loss of approval during World War I, were further eroded by the Great Depression.¹¹⁹

By the mid-1930s, it seemed that the world was beginning to recover from the impact of the Great Depression and world industrial production was steadily improving.¹²⁰ Nevertheless, very little had been done to restore trade integration because of the uneasy global political environment.¹²¹ It is within this context that the United States, under the guidance of Cordell Hull, introduced the Reciprocal Trade Agreements Act of 1934 which made use of an unconditional most-favoured-nation clause and provided mechanisms that generalised tariff concessions made in pursuit of boosting exports.¹²² In

¹¹³ Op cit note 83 at 24.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid at 25.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Clair Wilcox *A charter for world trade* (1949) 7; Op cit note 8 at 40.

¹²⁰ Op cit note 83 at 26.

¹²¹ Ibid.

¹²² Op cit note 119 at 7; Op cit note 8 at 40.

doing so, a decisive step was taken towards promoting free trade which would grow in significance following World War II.¹²³

This shift in policy was thought to be motivated by the United States' economic strength, reflected in their large proportion of world production and exports which required additional demand from overseas markets.¹²⁴ By comparison, the United States imported very few goods, the result of which was that there was a dollar shortage in the international market and some nations were forced to restrict their importation of American goods.¹²⁵ Many felt, therefore, that the Western European market ought to be reconstructed through the development of an institution promoting trade liberalisation which would improve market access.¹²⁶

Nevertheless, as has been discussed above, the United States still tended towards applying protectionist policies vis-à-vis particularly sensitive domestic industries, despite its growing support of free trade policies on the international stage.¹²⁷ In addition, in spite of securing concessions on many goods, this was not sufficient to spark off a significant move towards trade liberalisation as the more general tendency towards keeping trade restrictions in place would continue up until the Second World War.¹²⁸ Despite the inclusion of a most-favoured-nation clause in the Reciprocal Trade Agreements Act, the United States was not willing to extend concessions arrived at bilaterally to the world.¹²⁹

Attitudes would, of course, begin to shift during World War II, but the overview outlined above does lend weight to the notion that historical patterns of trade liberalism mirror, at least to a degree, the emergence of hegemonic nations as they experience economic development and can dictate the openness of international markets and yet still reserve sufficient policy space to protect domestic interests. This correlation is useful to the extent that it demonstrates the importance of critically evaluating the nature

¹²³ Op cit note 8 at 40.

¹²⁴ Op cit note 83 at 26; Op cit note 119 at 10; Op cit note 8 at 41.

¹²⁵ Op cit note 119 at 10; Op cit note 8 at 41.

¹²⁶ Ibid.

¹²⁷ Op cit note 8 at 42.

¹²⁸ Op cit note 83 at 27.

¹²⁹ Ibid.

of hegemonic power dynamics as it reveals a great deal about why nations participate in international negotiations in the manner that they do. This is significant for the purposes of this dissertation as it supports the submission that the text of the GATT cannot be divorced from the historical circumstances in which it was drafted and, as such, any academic consideration of the GATT's provisions ought to assess the impact of such circumstances on the meaning of the text. This is particularly true of the most-favoured-nation principle as well as of non-discrimination in trade more generally as they are perhaps most ostensibly reflective of the negotiated compromises reached amongst hegemonic interests.

2.3 The most-favoured-nation clause as an instrument of hegemonic interests

The GATT proposes that the multilateral trade project is primarily aimed at,

'raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods ... by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce.'¹³⁰

Generally speaking, it has been argued that the most fundamental principles underlying the GATT and the system of multilateral trade are non-discrimination, reciprocity and free trade.¹³¹ Ruggie's description of the ideas involved in the development of multilateral institutions in the postwar period

¹³⁰ Preamble to the General Agreement on Tariffs and Trade, Basic Instruments, Volume III, Geneva, 1958.

¹³¹ Op cit note 8 at 28; John Gerard Ruggie 'Multilateralism: the anatomy of an institution' (1992) 46 3 *International Organization* 561 at 561; John Gerard Ruggie 'Third try at world order? America and multilateralism after the Cold War' (1994) 109 4 *Political Science Quarterly* 553 at 553; Op cit note 3; Robert W. Cox *The political economy of a plural world: critical reflections on power, morals and civilization* (2002).

is of particular interest here.¹³² He suggests that multilateralism essentially involves the coordination of relations between multiple states according to certain doctrines.¹³³ Perhaps one of the most significant of such doctrines may be the most-favoured-nation principle. In comparing bilateral trade agreements entered into under Hitler's Germany with the most-favoured-nation treatment afforded by the GATT, Ruggie comments that the former were innately discriminatory in that the agreements were only created in respect of specific products in specific instances where an advantage could be obtained.¹³⁴ By contrast, with the GATT's most-favoured-nation clause, tariff reductions are extended to all other member states.¹³⁵ This demonstrates, at least in some sense, the significance of the specific formulation of the most-favoured-nation clause which was incorporated into the final text of the GATT, and how it reflects contemporary sentiments shared by the major negotiating parties.

The essence of the most-favoured-nation principle is that countries apply the most favourable duties to each other's goods in order to ensure non-discriminatory market conditions.¹³⁶ Curzon describes these as, 'the lowest duties applied by either and the most advantageous trading conditions, whether at the time of concluding the undertaking or treaty or at a future date.'¹³⁷ This was the mechanism through which equal access to markets was sought by nations such as the United States.¹³⁸ Echoes of this motivation can be found in the United States' "Proposals for the Expansion of World Trade and Employment" which identified various factors limiting free trade and which will be discussed further in Chapter 3.¹³⁹

¹³² John Gerard Ruggie 'Multilateralism: the anatomy of an institution' (1992) 46 3 *International Organization* 561; Op cit note 8 at 31.

¹³³ Op cit note 132 at 568; Op cit note 8 at 31.

¹³⁴ Op cit note 132 at 569; Op cit note 8 at 31.

¹³⁵ Op cit note 132 at 569; Op cit note 8 at 31.

¹³⁶ Op cit note 8 at 40; United Nations Conference on Trade and Development 'Most-favoured-nation treatment' (1999) *UNCTAD series on issues in international investment agreements*.

¹³⁷ Op cit note 83 at 18; Op cit note 81 at 58; Op cit note 8 at 45.

¹³⁸ Op cit note 119 at 21; Op cit note 8 at 45.

¹³⁹ Op cit note 119 at 21; Op cit note 8 at 45; Op cit note 1 at 904, Annex A-5.

Article I of the GATT prescribes that unconditional, most-favoured-nation treatment be extended to all member states.¹⁴⁰ It follows then that quantitative restrictions, bilateralism and other commercial policies which extend preferences are not wholly consistent with a framework which espouses non-discrimination in trade.¹⁴¹ Because of the nature of the GATT, there is very little room to evade the implications of most-favoured-nation treatment except by absconding from the entire institution of the GATT itself and it is unlikely that a nation would forfeit all the other tariff concessions from which it may benefit simply to avoid having to grant most-favoured-nation status in respect of one tariff heading.¹⁴²

There are certain recognised exceptions of which the most notable for our purposes is the accommodation of preferences already existing at the time the GATT was signed.¹⁴³ Imperial preferences are perhaps the most controversial example wherein the United Kingdom retained certain preferences in its Dominions.¹⁴⁴ These imperial preferences were eventually accepted by the American negotiators during the Geneva conference in a desperate attempt to save the GATT project.¹⁴⁵ Their inclusion in the final codification of the GATT is a consequence of the extended debates between the key negotiating parties which resulted in the United States allowing this preference to be included conditional upon the United Kingdom's agreement not to further increase those preferences.¹⁴⁶

Interestingly, in agreeing to this preference cap, the United Kingdom could not even raise tariffs on goods which had been traditionally duty-free.¹⁴⁷ Because most goods imported from Commonwealth countries were duty-free, should the United Kingdom wish to change this duty-free policy it would need to enact a legislative amendment which in turn required Parliamentary approval, such approval being extremely difficult to obtain

¹⁴⁰ General Agreement on Tariffs and Trade, 1947, art I; Op cit note 8 at 46.

¹⁴¹ Op cit note 83 at 57.

¹⁴² Ibid at 62.

¹⁴³ Op cit note 8 at 46.

¹⁴⁴ Ibid at 45.

¹⁴⁵ Karin Kock *International trade policy and the GATT: 1947-1967* (1969) 114; Op cit note 8 at 46.

¹⁴⁶ Op cit note 83 at 65.

¹⁴⁷ Ibid at 66.

given contemporary political dynamics.¹⁴⁸ The necessary implication of this was that a substantial portion of the United Kingdom's tariffs were bound.¹⁴⁹ This restricted their ability to increase most-favoured-nation rates where their trade policy demanded it and where their commitments under the GATT made it possible.¹⁵⁰ This would later be revised by special waiver when it was recognised that the United Kingdom was being prevented from exercising its full rights under the GATT.¹⁵¹

The degree to which states, such as the United Kingdom, practically embraced non-discrimination in trade is a point of debate. Indeed, studies such as the one conducted by Patterson show that trade discrimination was still rife in this period following World War II and many nations failed to truly observe the most-favoured-nation clause when dealing with certain special economic or political interests.¹⁵² Thus there seems to be a discrepancy between theory and practice which can, to an extent, be explained by the malleability of the most-favoured-nation clause.

In this regard, note that the Economic Committee of the League of Nations commented that, 'when world trade is following an upward course, it will be found that the system of equality of treatment is established or re-established all along the line, whatever the theories in favour at the moment. When world trade declines, on the contrary, the clause suffers with it.'¹⁵³ The implication is that, as Curzon has argued, the most-favoured-nation clause can heighten the effects of either an increase or decrease in world trade.¹⁵⁴ The Cobden-Chevalier Treaty, for example, is widely perceived as being responsible for the lowering of tariffs throughout Europe as many countries were prompted by the agreement to seek out agreements with France to

¹⁴⁸ Op cit note 83 at 66.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Gardner Patterson *Discrimination in international trade: the policy issues, 1945-1965* (1966); Op cit note 83 at 45.

¹⁵³ Economic Committee of the League of Nations 'Equality of treatment in the present state of international commercial relations: the most-favoured-nation clause' (1936) 6.

¹⁵⁴ Op cit note 83 at 58.

reduce trade obstacles.¹⁵⁵ In this scenario, the most-favoured-nation clause appears to have played a role in expediting tariff reductions.¹⁵⁶

It could, however, be argued that the most-favoured-nation clause was instead implicated in the rising protectionism which followed the Great Depression.¹⁵⁷ This is because of the disinclination of parties to allow others to obtain unrequited benefits from concessions made between two trading partners which led to, 'a freezing of the then existing situation or even to increases in tariffs equally and indiscriminately applied to everyone.'¹⁵⁸ With the multilateral character of the GATT, however, such concerns would largely be assuaged as the benefits to be derived from concessions made by other countries were more widely accessible owing to their inclusion on the list of negotiable tariff rates.¹⁵⁹

On the one hand, it has been suggested that the most-favoured-nation clause encourages higher tariffs because of the assumption that, for it to be accepted, tariffs would need to be sufficiently high to 'keep the most efficient producer at bay.'¹⁶⁰ This has a negative impact on less economically efficient countries who are less capable of bearing the additional tariff burden.¹⁶¹ The idea that concessions would be automatically granted to third parties who were seen to not have reciprocated sufficiently is another perceived argument identifying the most-favoured-nation clause as a factor which discourages negotiation and encourages protectionism.¹⁶² This was certainly an opinion held by many in the interwar period.¹⁶³ Indeed, many thought that the most-favoured-nation clause encouraged nations to simply wait for others to negotiate tariff reductions so that they would automatically benefit from such developments without having to make any reciprocal concessions.¹⁶⁴

¹⁵⁵ Op cit note 83 at 58.

¹⁵⁶ Ibid at 59.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid at 62.

¹⁶⁰ Ibid at 59.

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

On the other hand, most proponents of the impact of the most-favoured-nation clause instead argue that no party would be willing to reduce their tariffs unless they were confident that it would not be undermined by the granting of greater tariff concessions to his trading competitor.¹⁶⁵ This argument, which Curzon terms 'avoidance of nullification',¹⁶⁶ is thought to dispel all arguments to the contrary.¹⁶⁷ Indeed, it is generally thought that eliminating differential duties prevented the use of tariffs in a retaliatory manner.¹⁶⁸ Simply put, the most-favoured-nation clause favours the most efficient producers to the benefit of consumers which is one of the underlying arguments in support of free trade more generally.¹⁶⁹ With the gift of hindsight, it appears that the most-favoured-nation clause has proved fit-for-purpose in its application within the multilateral context where it has been able to prevent the distortion of trade through discrimination.¹⁷⁰

What becomes clear is that the most-favoured-nation clause has served many different purposes in the history of trade liberalism and, owing to its malleable nature, has been favoured as a tool of different hegemonic interests. Indeed, the aforementioned example wherein the negotiating parties disagreed about how to interpret the scope of the most-favoured-nation clause in light of pre-existing imperial preferences is indicative of the degree to which each perceived the importance of the clause's subsequent application in the future multilateral trading system.

The general principle of non-discrimination in trade as well as the most-favoured-nation clause provide a useful lens through which to assess the manner in which legal texts are contingent upon the domestic interests of the negotiating parties as well as their respective power to pursue such interests on the international stage. It therefore remains to further evaluate the negotiating history of the GATT in a more concerted manner to determine what it reveals about the context in which the most-favoured-nation clause

¹⁶⁵ Op cit note 83 at 60.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid at 67 – 68.

was formulated and to take note of the nuances which can be uncovered through the adoption of a historical and textual methodological approach.

CHAPTER THREE

3.1 Overview of different historical periods of hegemonic power

This chapter will begin by revisiting the key historical periods in which the two major negotiating parties experienced a significant shift in their ability materially to influence the international commercial narrative. This will provide a useful background within which to contextualise the subsequent consideration of both the interwar and World War II periods in the remaining sub-chapters. These sub-chapters will focus on tracing the origins of the GATT to demonstrate how the United States and United Kingdom's disparate views in respect of the proposed world trading order reflected their experience of divergent domestic tensions. It is hoped that this will showcase the utility of exploring the negotiating parties' pursuit of certain national and mercantilist interests and how this adds greater nuance to an analysis of the ultimate codification of the GATT.

While it is possible to trace many different historical cadences of hegemonic power, for the purposes of this dissertation what is most relevant is the three periods identified by Arrighi and Gill which usefully capture the transition from early British hegemony between 1845 and 1875 to American hegemony following World War II.¹⁷¹ In respect of the first period, the United Kingdom benefitted from playing a prominent market role, from overseeing the international monetary system and from having sufficient credibility to assert the legitimacy of its interests in international expansion.¹⁷² This period is characterised by the liberalisation of trade which was justified on the basis of the central argument in *The Wealth of Nations* that free trade would bring

¹⁷¹ Op cit note 12 at 42; Giovanni Arrighi 'The three hegemonies of historical capitalism' in Stephen Gill (ed) *Gramsci, historical materialism and international relations* (1994) 174.

¹⁷² Ibid.

greater prosperity for all and which allowed the United Kingdom to legitimately implement doctrines of free trade in pursuit of British supremacy.¹⁷³

In the second period which endured from the late 1800s up until the end of the Second World War, the balance of power was much less stable and more countries began to vie for supremacy with the result being an uptake in conflict, the most dramatic examples of which are the two world wars.¹⁷⁴ Unlike the free trade regime observed in the first period, nations shifted to more protectionist foreign economic policies with, for example, the gold standard being abandoned.¹⁷⁵ This situation could not continue indefinitely and a new hegemony began to materialise towards the end of the Second World War.¹⁷⁶ During the third period, the United States would then, from 1945 onwards, lead the restructuring of the world order in a similar manner to the United Kingdom's rise to power in the nineteenth century, albeit in the context of a far more complex and interconnected world.¹⁷⁷

It is within this transitional period between the second and third periods that one can situate the negotiating history of the GATT and it is within that timeframe that our subsequent discussions will be focused. Against the backdrop of the United States' rise to hegemonic dominance, it will be possible to assess the manner in which the GATT negotiations provide insight into the United States' growing interests and whether they aligned with the interests of the United Kingdom which had emerged from the periods of international conflict in a much less favourable condition and which hoped to consolidate its existing trade privileges. In taking cognisance of the two countries' different trajectories, one can gain further insight into what motivated their respective pursuits of certain policies in the context of the interwar period as well as during World War II and its aftermath.

¹⁷³ Op cit note 12 at 43; Adam Smith *The wealth of nations* (1776).

¹⁷⁴ Op cit note 9 at 60 - 61.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

3.2 The interwar period

World War I constituted an understandably jarring setback following which governments were slow to recede wartime controls on international trade.¹⁷⁸ The interwar period is of particular significance for our purposes because of the impact of the Great Depression and the rise of totalitarian states on subsequent attempts to foster international economic cooperation.¹⁷⁹ In assessing the interwar period, it will become clear that, despite its earlier tendencies to revert to protectionist economic policy, the United States would begin to pursue freer trade policies more vigorously as its economy recovered from the Great Depression. The emergence of political forums focused on international commercial stability, the change in the American political administration and the influence of policy-makers such as Cordell Hull would transform the United States' approach to international trade.¹⁸⁰ By contrast, the United Kingdom was consolidating its imperial ties and began to retreat from its previously liberal trade regime. The diverse nature of the United States and United Kingdom's trajectories would be reflected in their respective positions at the GATT negotiations.

As has been mentioned above, the United States' foreign policy had been previously characterised by its economic protectionism and political isolationism.¹⁸¹ This began to evolve during the interwar period, primarily owing to its developing economy and relative strength within the international order. The United States' remarkable shift from upholding more isolationist policies to undertaking to lead the new international order marked an important transition in the general attitude towards international commercial relations and was symptomatic of the rise in American supremacy.¹⁸²

One of the most significant events that occurred during the interwar period was the creation of the League of Nations which sought to prevent future international conflict. In keeping with this narrative, it was suggested

¹⁷⁸ Op cit note 1 at 149.

¹⁷⁹ Ibid at 145.

¹⁸⁰ Ibid.

¹⁸¹ Op cit note 38 at 1.

¹⁸² Op cit note 1 at 145.

that economic recovery ought to be promoted through forums such as the World Economic Conference of 1927 and that economic interdependence in pre-empting and preventing military conflict ought to be considered as a potential model for future international interactions.¹⁸³ Indeed, there were some discussions within the context of this Conference on the importance of tariffs and the most-favoured-nation principle.¹⁸⁴ However, ultimately, few practical consequences flowed from such discussions and the ability of international trade to be used as a mechanism for conflict prevention was not to be realised.¹⁸⁵

The subsequent descent of the world economy into recession and the government-sanctioned protectionist response prompted the onset of the Great Depression in the early 1930s.¹⁸⁶ This was further exacerbated by the tendencies of governments to fortify their domestic industries by increasing trade barriers.¹⁸⁷ Consider the example of the United States which implemented the Smoot-Hawley tariff, sending already prohibitive tariffs even higher and prompting other countries to follow suit.¹⁸⁸ Even the United Kingdom, which had traditionally favoured free trade policies, introduced emergency tariffs during 1931 and put into force the Import Duties Bill in the following year.¹⁸⁹ Such efforts to protect balance of payments and increase domestic economic activity were similarly enacted across many different countries.¹⁹⁰

One notable development that arose during this period was the preferential tariff arrangements between the United Kingdom and its Dominions which were settled at a conference in Ottawa in 1932.¹⁹¹ These arrangements afforded preferential tariff treatment to goods coming from countries within the Dominion and imposed prohibitive duties on those goods

¹⁸³ Op cit note 1 at 149.

¹⁸⁴ Ibid at 153.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid at 157.

¹⁸⁹ Ibid at 161.

¹⁹⁰ Ibid.

¹⁹¹ Ibid at 164.

coming from elsewhere.¹⁹² Indeed, many argue that the Ottawa agreements, coupled with more general increases in tariffs imposed on American exports, were implemented by nations responding to the Smoot-Hawley tariff which was extremely unpopular internationally.¹⁹³ This system of imperial preferences was hotly contested in the negotiations preceding the final codification of the GATT as the United Kingdom wished to maintain this preferential treatment, much to the consternation of the United States. Indeed, some within the American administration saw such preferences as causing unacceptable injury to American exports and, despite attempts being made at forming an agreement to curb the discriminatory effect of these tariffs, the commencement of World War II rendered any progress ineffective.¹⁹⁴

A loosely comparable situation arose in central Europe where Nazi Germany began creating a trade bloc of its own by establishing bilateral clearing arrangements with nearby countries to the benefit of Germany.¹⁹⁵ Such arrangements had the effect of disrupting the trade system which had pre-existed the First World War and which was beginning to experience a resurgence in the interwar period.¹⁹⁶ Despite such concerns being vocalised at international forums such as the World Economic Conference in 1933, insular protectionist policies retained a stronghold to the detriment of the economic system and political stability.¹⁹⁷

Following the administrative change in the United States in 1932, tariff negotiations gained momentum with the signing into law of the Reciprocal Trade Agreements Act of 1934 which provided that, where a bilateral trade agreement incorporated an unconditional most-favoured-nation clause, American tariffs may be reduced by a maximum of 50 per cent.¹⁹⁸ This

¹⁹² Op cit note 1 at 164.

¹⁹³ Kenneth W. Dam 'Cordell Hull, the Reciprocal Trade Agreements Act, and the WTO' in Ernst-Ulrich Petersmann (ed) *Reforming the world trading system: legitimacy, efficiency and democratic governance* (2005) 85.

¹⁹⁴ Op cit note 1 at 218.

¹⁹⁵ Ibid at 164.

¹⁹⁶ Ibid at 169.

¹⁹⁷ Ibid at 173.

¹⁹⁸ Ibid at 182.

began opening up trade by reducing the influence of the American Congress in setting duties.¹⁹⁹

One of the key players motivating this policy shift was the Secretary of State under the Roosevelt administration, Cordell Hull, whose experiences in World War I impressed upon him the value of curbing economic rivalry in order to prevent war.²⁰⁰ In this regard, Hull commented that long-lasting international peace is closely intertwined with, and dependent upon, free trade.²⁰¹ He initially advocated for the unilateral reduction of American tariffs and an unconditional most-favoured-nation clause aimed at eliminating sanctions, preventing export subsidisation and removing the United Kingdom's imperial preference system.²⁰² He would later abandon his position on the unilateral reduction in tariffs and instead begin to focus on reciprocity in trade.²⁰³

Hull's stance on the importance of free trade and the best manner in which to implement it would subsequently influence the American State Department's policy position following World War II which was aimed at curbing trade restrictions in order to achieve enduring peace.²⁰⁴ Indeed, the consequences of Hull's work would extend beyond his retirement in 1944 and filter into the discourse in the negotiations of the GATT.²⁰⁵ The experience that American trade officials gained through negotiating the reciprocal trade agreements of the 1930s under Hull would prove to be an important advantage in the postwar period when it came to deciding upon the future multilateral trading system.²⁰⁶ Indeed, some have proclaimed that, 'Hull was the most important individual responsible for what ultimately became the GATT.'²⁰⁷

¹⁹⁹ Op cit note 1 at 182.

²⁰⁰ Ibid at 198; Cordell Hull *The memoirs of Cordell Hull Vol I & II* (1948) 81 – 84.

²⁰¹ Op cit note 1 at 206; Cordell Hull *The memoirs of Cordell Hull Vol I & II* (1948) 81 – 84; Kenneth W. Dam *The GATT – law and international economic organization* (1970) 12.

²⁰² Op cit note 193 at 84.

²⁰³ Ibid at 86.

²⁰⁴ Op cit note 1 at 223.

²⁰⁵ Ibid at 226.

²⁰⁶ Ibid at 230.

²⁰⁷ Ibid at 238.

The United States' about-turn in respect of the nature of its trade policy, prompted by its economic growth and internal political changes, was a significant development in the interwar period. The manner in which it later pursued this agenda is testament to its burgeoning economic and political power and yet it was still somewhat constrained by the United Kingdom's dogged commitment to its imperial preferences. The nature of these tensions will be further explored in sub-chapters 3.3 and 3.4.

3.3 The onset of World War II

Upon the commencement of the Second World War in September 1939, the United States was in an uncertain position with the American public having little appetite for military confrontation and the government needing to prioritise the continued survival of the United Kingdom.²⁰⁸ The proposed course of action was to provide economic support through the Lend Lease program which facilitated the transfer of necessary supplies to the United Kingdom as well as other allied nations.²⁰⁹ This was put into force in March 1941 and provided that reimbursement was to be in the form of an unstipulated, non-monetary benefit.²¹⁰ The nature of this reimbursement would be revealed after the Second World War when it became possible for the United States to cash in on its claim by securing agreements from the United Kingdom to participate in the new international economic order.²¹¹

In particular, the United States wished to use its economic strength to eliminate the imperial preferences enjoyed by the British in respect of their Dominions.²¹² It was thought that their superior bargaining power could be used to coerce the United Kingdom into discarding these preferences.²¹³ This particular issue came to a head in 1941 when the United Kingdom's Treasury, under the leadership of John Maynard Keynes, attempted to evade

²⁰⁸ Op cit note 1 at 238.

²⁰⁹ Ibid at 242.

²¹⁰ Ibid.

²¹¹ Ibid at 245.

²¹² Ibid.

²¹³ Ibid at 249.

any concrete economic policy commitments.²¹⁴ Such efforts proved to be futile as the draft aid agreement given to Keynes provided that defense aid was conditional upon eliminating discriminatory trade restrictions.²¹⁵ This did not go unnoticed by the British who initially resisted what they perceived to be a forced imposition of unilateral obligations.²¹⁶

What is significant about this exchange is the competing ideas communicated about the countries' respective visions for the future of international trade. Without reading too much into the comments made by the officials, the United Kingdom exhibited less appetite for establishing a more liberal trade regime than the United States.²¹⁷ This logically flows from the strategic advantage each stood to gain from such a system and is similarly reflected in the GATT negotiations where each country tried to capitalise upon their relative power to ensure their particular vision and interests were safeguarded.

The internal politics of the United Kingdom at that particular juncture go some way towards explaining the response of Keynes to the wording of the draft aid agreement. Keynes himself had acknowledged the domestic divisions stemming from divergent positions on whether to accept free trade as an objective or to control imports, and on whether imperial preferences could legitimately retain a position in the postwar period.²¹⁸ Keynes was inclined towards greater import control but deliberately distanced himself from old forms of trade discrimination.²¹⁹ He commented on, 'all the old lumber, most-favored-nation clause and the rest which was a notorious failure and made such a hash of the old world.'²²⁰

Keynes felt that government regulation of the domestic economy and of international trade was necessary, particularly in order to improve employment statistics.²²¹ Keynes' inclination towards not relying on market

²¹⁴ Op cit note 1 at 249.

²¹⁵ Ibid at 254; Article VII of the Draft Aid Agreement (28 July 1941) in terms of An Act to Promote the Defense of the United States (11 March 1941).

²¹⁶ Op cit note 1 at 258.

²¹⁷ Ibid at 261.

²¹⁸ Ibid at 266; Foreign Relations of the United States Vol III (1941) 13.

²¹⁹ Op cit note 1 at 266 – 270; Foreign Relations of the United States Vol III (1941) 13.

²²⁰ As quoted in op cit note 1 at 270.

²²¹ Op cit note 1 at 279.

forces to keep the economic system in balance and instead allowing greater government intervention is clear from his own academic contributions.²²² In his work, Keynes argues that,

'We do not wish...to be at the mercy of world forces working out, or trying to work out, some uniform equilibrium according to the ideal principles... We wish...to be our own masters, and to be as free as we can make ourselves from the interferences of the outside world.'²²³

Keynes' position differed from the American view which prioritised nondiscrimination and endorsed minimal governmental regulation.²²⁴ The core of this difference of opinion was something that would be echoed in subsequent meetings.²²⁵ For example, in a meeting in August 1941 where Presidents Roosevelt and Churchill would eventually sign the Atlantic Charter, this debate over the extent to which the United Kingdom would compromise on its position vis-à-vis imperial preferences was revisited.²²⁶ A clause was ultimately included which provided that the parties will endeavor to liberalise trade and to improve market access, albeit while respecting existing trade obligations.²²⁷ This amounted to allowing the United Kingdom to retain its imperial preferences, to the dismay of Hull and others.²²⁸

These conflicting views would not be easily reconciled, particularly as the British were in no hurry to confine their future postwar policies and did not view Hull's position as representative of the majority of the Roosevelt administration.²²⁹ The internal instability and divisions within Churchill's coalition government made it politically undesirable to pursue the elimination of imperial preferences as part of the Anglo-American Mutual Aid

²²² Op cit note 83 at 28; John Maynard Keynes 'National self-sufficiency' (1933) 22 4 *The Yale Review* 755.

²²³ John Maynard Keynes 'National self-sufficiency' (1933) 22 4 *The Yale Review* 755 as quoted in op cit note 83 at 28.

²²⁴ Op cit note 1 at 279.

²²⁵ Ibid.

²²⁶ Ibid at 283.

²²⁷ Ibid at 289; Atlantic Charter, Joint declaration by the President of the United States and the Prime Minister of the United Kingdom (14 August 1941) 55 Stat. 1603; Executive Agreement Series 236, s 4.

²²⁸ Op cit note 1 at 294.

²²⁹ Ibid at 311.

Agreement.²³⁰ Despite this perception of nondiscrimination being a personal fixation of Hull and the State Department, there was in fact widespread resentment towards the British imperial preference system which was later reiterated by President Roosevelt himself.²³¹ Gradually, this impasse in the negotiations dissipated culminating in the signing of the Anglo-American Mutual Aid Agreement in February 1942 with article VII prescribing that discriminatory trade treatment be removed and tariff and non-tariff barriers reduced.²³² Divergent interpretations of this provision and the extent to which the United Kingdom had bound itself to eliminating imperial preferences would plague Anglo-American negotiations for years to come as both nations began trying to develop the foundations of the future multilateral trading system.²³³

What is useful to note is that there were a myriad of factors which impacted these debates over the interpretation of art VII, including theoretical disagreements about the substantive issues at stake, different internal political contexts influencing respective negotiating positions as well as personality dynamics.²³⁴ In respect of the negotiating teams, each was supported and instructed by different government departments and committees which aimed to advance specific interests that aligned with their institutional mandate.²³⁵ There were similarly conflicting ideological positions on what the postwar world ought to look like.²³⁶ Furthermore, there were tensions between, on the one hand, more progressive economists and civil servants formulating opinions and engaging in negotiations, and, on the other hand, political officials who were hamstrung by party interests, electoral concerns and lobbyist groups and who ultimately had the final decision-making power.²³⁷ It is through an analysis of domestic factors such as these

²³⁰ Op cit note 1 at 315.

²³¹ Ibid at 323.

²³² Ibid at 334; Anglo-American Mutual Aid Agreement (28 February 1942), art VII.

²³³ Op cit note 1 at 342.

²³⁴ Ibid at 345.

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Ibid at 353.

that one is fully able to appreciate the significance of the negotiated compromise which resulted in the codification of the GATT.

For example, consider the Division of Commercial Policy and Trade Agreements and its relationship with more politically-attuned parts of the State Department.²³⁸ The former made concerted efforts to reduce obstacles to trade which were sometimes met with resistance by other government agencies.²³⁹ The latter, by contrast, was in a much more precarious position and had to be sensitive to Congress' stance on trade policy as well as to competing party interests.²⁴⁰ On an alternate level, it could be said that, generally speaking, the Democrats tended to favour the reduction of trade barriers and the Republicans instead preferred policies effecting the retention of protectionist tariffs.²⁴¹ At this time, Congress was led by a Democrat majority, allowing the Roosevelt and Truman administrations to fulfill their policy objectives.²⁴² However, critically, the Republicans obtained a majority in Congress near the end of 1946.²⁴³ This would have important ramifications for the 1947 Geneva conference.²⁴⁴

In the United Kingdom, trade policy had to be implemented by consensus obtained at the Cabinet.²⁴⁵ During the wartime period, the coalition government comprised of Labour and Conservative ministers who unsurprisingly held divergent views on trade policy, the result of which was that Churchill had to carefully negotiate any proposed changes.²⁴⁶ Unlike the American presidents who predominantly enjoyed the support of Congress, Churchill had to compromise on many policy agendas in order to accommodate and placate the more protectionist-swayed Conservative party as well as the Labour party whose objectives included trade expansion and socialism.²⁴⁷ Another prominent domestic figure in the United Kingdom was

²³⁸ Op cit note 1 at 361.

²³⁹ Ibid at 370.

²⁴⁰ Ibid at 366.

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Ibid at 374.

²⁴⁶ Ibid.

²⁴⁷ Ibid at 378.

the Board of Trade which formulated economic policy and which participated in any negotiations related thereto.²⁴⁸ It was predominantly headed by Labour ministers such as Hugh Dalton and Sir Stafford Cripps.²⁴⁹

In addition, the Economic Section of the War Cabinet Secretariat participated in strategising British trade policy insofar as it supported the Board of Trade by providing advice.²⁵⁰ The Economic Section was comprised of notable academics including James Meade who often participated in negotiations with the United States.²⁵¹ Meade was an important figure who became the head of the Economic Section in 1946 and who advocated for the establishment of an international economic body in the postwar period to eliminate political sources of conflict.²⁵² The work of the Board and the Economic Section in trying to liberalise trade was met with criticism from Keynes and the Treasury.²⁵³ While the Treasury was predominantly concerned with the balance-of-payments issue, Keynes was ultimately not convinced of the benefits of having a multilateral trading system.²⁵⁴ Finally, one ought not to overlook the role of the Dominions Office in promoting the interests of the former colonies and regulating imperial preferences.²⁵⁵

This brief exposition of the internal conflicts and multi-layered decision-making institutions of the United States and United Kingdom exposes the complexity at play at the domestic level which would affect negotiations between the nations.²⁵⁶ Even more interesting is the degree of influence which certain individuals played in the GATT negotiations.²⁵⁷ Such individuals were often academics or civil servants who had novel ideas about the anticipated character of the postwar trading system and who could engage with their counterparts across the negotiating table.²⁵⁸ Such influence was mitigated by the powers of political superiors who struggled to

²⁴⁸ Op cit note 1 at 382.

²⁴⁹ Ibid.

²⁵⁰ Ibid at 394.

²⁵¹ Ibid.

²⁵² Ibid at 390; James Meade *The economic basis of a durable peace* (2012).

²⁵³ Op cit note 1 at 394.

²⁵⁴ Ibid.

²⁵⁵ Ibid at 398.

²⁵⁶ Ibid.

²⁵⁷ Ibid at 410.

²⁵⁸ Ibid at 402.

come to agreement because of the constant need to prioritise sensitive and diverse domestic interests.²⁵⁹ This is evident in interactions between officials such as Sir Stafford Cripps and Will Clayton who butted heads over tariffs and imperial preferences at the 1947 Geneva Conference.²⁶⁰

After the signing of the Atlantic Charter and later the Anglo-American Mutual Aid Agreement, further progress was sought on the topic of what the international system of commerce and trade would practically look like.²⁶¹ One of the first opinions drafted on this topic emphasised the importance of securing the support of the United States for, 'a multilateral system of open trade, convertible currencies, and limited exchange-rate flexibility.'²⁶² This proposition was taken up by subsequent academics such as Meade who explained that the United Kingdom also had a great deal to benefit from the liberalisation of trade.²⁶³ The international system Meade foresaw would be accessible for all nations who agreed to comply with the membership standards, would prohibit discrimination in trade (except for imperial preferences) and would remove protectionist trade barriers.²⁶⁴ Trade discrimination would only be permitted against non-member states and in favour of certain recognised groupings of states, i.e. in the context of imperial preferences.²⁶⁵

Meade's proposals were eventually given to the Board of Trade and endorsed by the Overton Committee.²⁶⁶ The Committee similarly commented on the importance of expanding trade by reducing trade barriers, eliminating quantitative restrictions and preventing the introduction of new trade preferences.²⁶⁷ It was further added that it would be preferable to actively pursue these objectives in a timeous manner while there was strong political

²⁵⁹ Op cit note 1 at 407.

²⁶⁰ Ibid.

²⁶¹ Ibid at 412.

²⁶² Ibid at 416; Alec Cairncross and Nita Watts *The economic section, 1939–1961: a study in economic advising* (1989) 96.

²⁶³ Op cit note 1 at 419, 423.

²⁶⁴ Ibid at 427.

²⁶⁵ Ibid at 430.

²⁶⁶ Ibid at 439.

²⁶⁷ Ibid at 443.

will to do so.²⁶⁸ While these changes found support amongst the staff of the Economic Section and the Board, they were criticised amongst members of the government and the Treasury.²⁶⁹ Keynes, for example, condemned the report as going too far in its endorsement of free trade, and instead maintained that trade controls and exchange restrictions should be used in pursuit of full employment.²⁷⁰ Others, such as Sir Hubert Henderson, commented on how important it was to remedy the British balance-of-payments problems and asserted that preferential, discriminatory trade arrangements may be useful in the postwar period.²⁷¹

Despite such objections, the Overton proposal eventually gained traction, albeit in a more diluted form produced by the Hurst Committee.²⁷² The memorandum produced was then put before the War Cabinet which decided upon the multilateral reduction in trade barriers more broadly, qualified by the availability of using quantitative restrictions to remedy balance-of-payments issues.²⁷³ With regards imperial preferences, no definitive decision was made.²⁷⁴ This was ostensibly because of the need to first consult with the Dominions, but practically was more likely a response to the Conservatives' strong opposition to eliminating imperial preferences.²⁷⁵ After having contacted the Dominions, Canada, having an interest in retaining American and British market access, expressed its support for the proposal.²⁷⁶ By contrast, South Africa, Australia and New Zealand expressed a preference for bilateral trade negotiations.²⁷⁷

Interestingly, at around the same time, the United States had not made as much progress with regards to its development of commercial policy, and it still seemed to want to initiate bilateral trade arrangements with

²⁶⁸ Op cit note 1 at 447; Jay Culbert 'War-time Anglo-American talks and the making of the GATT' (1987) 10 4 *The World Economy* 381 at 398.

²⁶⁹ Op cit note 1 at 447.

²⁷⁰ Ibid at 451; Op cit note 83 at 30.

²⁷¹ Op cit note 1 at 471.

²⁷² Ibid at 479.

²⁷³ Ibid at 492; Op cit note 83 at 30.

²⁷⁴ Ibid.

²⁷⁵ Op cit note 1 at 496.

²⁷⁶ Ibid at 499.

²⁷⁷ Ibid at 507.

specific countries rather than adopt a multilateral approach.²⁷⁸ However, the Reciprocal Trade Agreements Act was renewed in 1943 which gave greater impetus to the State Department to overhaul its trade policy.²⁷⁹ This, together with the fact that the United Kingdom had already consulted with the Dominions, meant that in 1943 talks relating to postwar trade policy were revived.²⁸⁰

The Washington Seminar took place in late 1943 and a British delegation, including figures such as Keynes and Meade, travelled to Washington to engage in preliminary, informal talks on postwar economic policy with American officials such as Harry Dexter White and Harry Hawkins.²⁸¹ While there was some tension in the discussions regarding the proposed regulation of exchange rates and international payments, there was greater consensus on the subject of international trade and reducing trade barriers.²⁸² With regards to tariffs, the United States maintained their preference towards engaging in bilateral negotiations to reduce tariffs for specific products but the British officials were increasingly able to convince them of the merits of a more multilateral approach.²⁸³ Imperial preferences also featured as one of the more sensitive topics for discussion.²⁸⁴ The United States persisted in trying to persuade the United Kingdom to completely eliminate imperial preferences but the British officials remained firm in resisting such advances, reasoning that their strong ties to the former colonies and the complex domestic position could not be so easily sidestepped.²⁸⁵

In October 1943, the parties formulated a joint statement which established the foundations upon which a commercial agreement would eventually be created.²⁸⁶ Of course, at the political level, further discussion

²⁷⁸ Op cit note 1 at 515.

²⁷⁹ Ibid at 519.

²⁸⁰ Ibid at 524.

²⁸¹ Ibid at 527.

²⁸² Ibid at 534.

²⁸³ Ibid at 542.

²⁸⁴ Ibid at 546.

²⁸⁵ Ibid at 550.

²⁸⁶ Ibid at 561.

was still required.²⁸⁷ In the United States, the State Department published its "Interim Report" which reaffirmed the importance of enforcing non-discrimination in international trade.²⁸⁸ The British influence on American thinking could be seen in the shift away from bilateral negotiations and towards a more multilateral approach.²⁸⁹ This Report as well as the negotiations at the Washington Seminar would form the basis of the State Department's subsequent efforts to establish more detailed and comprehensive proposals to be dealt with on the international stage.²⁹⁰

The 1944 Bretton Woods conference marked another significant plot point in the negotiations preceding the formulation of the GATT.²⁹¹ There the World Bank and International Monetary Fund were created with the intention that they would address many of the economic concerns of the postwar period, in particular developing institutions capable of dealing with balance-of-payments lending as well as providing assistance for development and reconstruction.²⁹² On the topic of trade, an ambitious project was initiated to develop an international trade organisation but negotiations were stalled and for over a year little progress was made.²⁹³ This was mostly due to the British negotiators who, despite having expressed support for a multilateral trade system, were struggling to garner domestic consensus because of the controversy surrounding imperial preferences as well as the desire of some to retain quantitative restrictions to remedy balance-of-payments issues.²⁹⁴ It was felt that the potential gains from such a trade organisation would not be sufficient to make up for the loss of their preferential trading relationships with the Dominions.²⁹⁵ Pressnell describes how the more the negotiations on the trade proposals were stalled, the more opportunity there was for

²⁸⁷ Op cit note 1 at 561.

²⁸⁸ Ibid at 569.

²⁸⁹ Ibid at 577.

²⁹⁰ Ibid at 587.

²⁹¹ Ibid at 590.

²⁹² Ibid.

²⁹³ Ibid at 593.

²⁹⁴ Ibid.

²⁹⁵ Ibid at 598.

opposition in the United Kingdom to develop, particularly amongst the Conservatives.²⁹⁶

What emerges from contemporary narratives is that the United Kingdom wanted the United States to substantially reduce its tariffs before it would seriously consider the reduction or elimination of imperial preferences.²⁹⁷ Perhaps it was thought that this would be sufficient to quell fears about the arrangement being disproportionately favourable to the United States.²⁹⁸ Nevertheless, the Commonwealth countries, bar Canada, continued to express reluctance about doing away with imperial preferences.²⁹⁹ An additional concern, most famously expressed by Keynes, was that the proposed policy would not allow the state to utilise quantitative import controls.³⁰⁰ The British negotiators used this lack of consensus as a bargaining tool in further discussions by emphasising the degree to which they were domestically constrained.³⁰¹ It seemed less and less likely that these policy proposals would be realised.³⁰²

The United States were frustrated at this lack of progress but continued to work on various proposals under the guise of the newly appointed Committee on Trade Barriers.³⁰³ The Committee created a draft convention which proposed that the United States should seek the reduction of tariffs by 50 per cent with the allocation of a five year period in which any substantial injury to a particular industry caused by greater import volumes could be addressed by the implementation of import quotas.³⁰⁴ Furthermore, it was proposed that there would be an elimination or reduction of tariff preferences and an abolition of quantitative restrictions.³⁰⁵ The United States' Secretary of State, Dean Acheson, publically discussed how critical reform of

²⁹⁶ Op cit note 1 at 604; Leslie Pressnell *External economic policy since the War: the post-war financial settlement* Vol 1 (1986) 131-134.

²⁹⁷ Op cit note 1 at 609.

²⁹⁸ Ibid at 616.

²⁹⁹ Ibid at 631.

³⁰⁰ Ibid at 620.

³⁰¹ Ibid at 643.

³⁰² Ibid at 659.

³⁰³ Ibid.

³⁰⁴ Ibid at 667.

³⁰⁵ Ibid.

the prewar trade barriers was to the expansion of trade and to the facilitation of employment.³⁰⁶

Transatlantic talks resumed in December, 1944 and British officials expressed satisfaction at the proposals put forward by the Americans, in particular because of the compromises met on employment and quantitative restrictions as well as on the concessions made in respect of the removal of imperial preferences.³⁰⁷ However, beyond the economist officials, there was still an unwillingness by decision-makers to wholeheartedly commit to the United States' proposals.³⁰⁸

The nuances revealed by evaluating domestic divisions, internal decision-making structures and the influence of key policy-makers are extremely insightful in respect of which interests would be stubbornly defended or easily abandoned as the negotiations unfolded and the implications thereof for the drafting of the text. It is now appropriate to engage in a similar exercise in respect of the developments in the postwar period.

3.4 World War II draws to a close

In early 1945, it seemed an end to the war in Europe was in sight and yet there was no set commercial policy in place to govern trade in the aftermath of the conflict.³⁰⁹ This period was characterised by notable changes in American and British personnel which had implications for the manner in which negotiations would proceed.³¹⁰ In the United States, Cordell Hull retired and Will Clayton was appointed in his place to take up the cause of trade liberalisation.³¹¹ In addition, in April 1945, President Truman was elected as the new leader of the United States.³¹²

³⁰⁶ Op cit note 1 at 674.

³⁰⁷ Ibid at 692.

³⁰⁸ Ibid at 696.

³⁰⁹ Ibid at 712.

³¹⁰ Ibid at 716.

³¹¹ Ibid at 712.

³¹² Ibid at 721.

Following World War II, the British coalition government was disbanded and the Labour party won the July 1945 elections with Clement Attlee taking the helm.³¹³ Under the Labour government, there was a greater emphasis placed on, 'economic planning and full employment.'³¹⁴ Hugh Dalton, who had served at the Board of Trade and who had promoted the notion of a multilateral trade system, became the Chancellor of the Exchequer.³¹⁵

Despite the fact that all of these uncertainties and shifts in personnel could easily have disrupted the negotiations on trade policy, there was remarkably little change in position on either side of the debate.³¹⁶ If anything, the United Kingdom's Labour government was more willing to consider the multilateral approach to trade than the previous incumbent.³¹⁷ The Labour government was also relatively indifferent towards imperial preferences but, nevertheless, found it difficult to garner sufficient popular support for their elimination.³¹⁸

Notably, the American State Department needed to renew the mandate to negotiate under the Reciprocal Trade Agreements Act.³¹⁹ Securing this mandate was particularly important because it framed the manner in which tariffs were to be negotiated in the aftermath of the war.³²⁰ The decisions made in this regard about the percentage of tariff reductions provides insight into their commitment to expanding international trade.³²¹ On the question of whether reductions of up to 50 per cent could be implemented on a selective or general basis, some hesitation was shown and ultimately it was decided that selective reductions would be preferable.³²² There were fierce debates on this in Congress and the Senate with Republicans expressing concern over the potential impact on domestic

³¹³ Op cit note 1 at 721.

³¹⁴ Ibid.

³¹⁵ Ibid.

³¹⁶ Ibid at 725.

³¹⁷ Ibid at 728.

³¹⁸ Ibid at 732.

³¹⁹ Ibid at 736.

³²⁰ Ibid.

³²¹ Ibid at 744.

³²² Ibid at 756.

industries.³²³ The renewal of negotiating authority was nevertheless passed, facilitating the possibility that a 'multilateral-bilateral approach' be adopted which allowed countries to negotiate bilaterally in respect of specific product categories with the principal suppliers of that product.³²⁴ The tariff agreed upon would then be applicable in respect of all member states by virtue of the application of the most-favoured-nation clause.³²⁵

The United Kingdom was dissatisfied with this 'multilateral-bilateral approach'.³²⁶ Their concerns were primarily that the proposed bilateral negotiations would be time-consuming and complex and that they were less palatable than a simple, uniform reduction in tariffs.³²⁷ The United Kingdom compiled a "Draft Statement of Principles" in response thereto which emphasised the benefits of having an international trade organisation premised on multilateral trade negotiations.³²⁸ Hawkins of the United States expressed his hope that, despite the position in the United States, a small aggregation of the larger trading nations could negotiate bilaterally and, in a sense, achieve something akin to uniform tariff reductions.³²⁹

Canadian officials similarly expressed disappointment at the adoption of the 'multilateral-bilateral approach'.³³⁰ Their suggestion, which in hindsight would have far-reaching ramifications, was that tariff negotiations should be undertaken with a small nuclear group of states so as to prevent the dilution of commitments if dealing with a number of countries.³³¹ This suggestion would later influence American policy and the Executive Committee on Economic Foreign Policy began expressing support for this so-called 'selective nuclear multilateral-bilateral approach'.³³² This entailed a small group of countries meeting together to negotiate bilaterally for the reduction of specific tariffs, before approaching the general international conference.³³³

³²³ Op cit note 1 at 774.

³²⁴ Ibid at 785.

³²⁵ Ibid.

³²⁶ Ibid at 789.

³²⁷ Ibid.

³²⁸ Ibid at 798.

³²⁹ Ibid.

³³⁰ Ibid at 810.

³³¹ Ibid at 813.

³³² Ibid at 817; Foreign Relations of the United States Vol VI (1945) 74-76.

³³³ Op cit note 1 at 817.

The suggestion initiated the idea that an institution akin to the GATT would be a good starting point before establishing a fully-fledged International Trade Organisation (hereafter referred to as the ITO).³³⁴ Later that year, the American proposals were put to British officials who, again, were resistant to many aspects of the envisaged tariff negotiations, in particular the separation of preferences from the general category of tariff reductions as well as the proposed stance on import quotas and export subsidies.³³⁵

In August 1945, President Truman unexpectedly ended the provision of aid to Britain and its allies, creating panic amongst the British who were concerned as to how they would remedy their balance-of-payments deficit.³³⁶ Attempts were subsequently made to try and secure another loan from the United States, without making any assurances on trade policy.³³⁷ This was unsuccessful and the United States pushed for more developments on the trade policy front.³³⁸ Initially, an agreement was reached on the need for tariff negotiations to be held in early 1946 as well as for a more general conference to be held on trade and employment.³³⁹ Once again, the most controversial issue continued to be imperial preferences, and some American officials felt that American aid ought to be conditional upon the elimination of imperial preferences.³⁴⁰ Others took a softer line on the issue of preferences out of concern for the potential backlash from the United Kingdom.³⁴¹

Negotiators from the United Kingdom were unwilling to kowtow to these demands and insisted that preferences should be negotiated separately in the future subject to a reciprocal reduction in the United States' tariffs.³⁴² Arguments about resistant domestic opinion and stalling tactics in the form of consulting with the Dominions were used to avoid entering into

³³⁴ Op cit note 1 at 813.

³³⁵ Ibid at 821.

³³⁶ Ibid at 833.

³³⁷ Ibid.

³³⁸ Ibid at 850.

³³⁹ Ibid.

³⁴⁰ Ibid at 854.

³⁴¹ Ibid.

³⁴² Ibid at 858.

any substantial commitments.³⁴³ Ultimately, the United States would backtrack on their assertions of requiring the elimination of imperial preferences before they would grant aid and instead they accepted that preferences could be discussed in the context of trade barriers more broadly.³⁴⁴ It was conceded that such agreements on reducing tariffs on a most-favoured-nation basis would, by extension, lessen the significance of preferences.³⁴⁵ This is a particularly good example of how the major negotiating parties' respective bargaining power shaped the nature of free trade commitments. In considering such nuances, one is able to gain a more comprehensive understanding of the GATT's implications.

Following such progress, the United States pushed for further advancement in the negotiations on trade policy in the form of a joint proposal.³⁴⁶ This proved simpler than earlier discussions on financial assistance because there was more widespread agreement and, where there were small divergences in opinion (i.e. in respect of state trading and export taxes), the American trade officials were willing to compromise and acquiesced to the demands of the United Kingdom.³⁴⁷ The United Kingdom's Cabinet accepted the policy agreement on 6 November 1945 and, later that year, the details of the United States' loan to the United Kingdom were settled.³⁴⁸ The statement issued by Prime Minister Attlee and President Truman reflected their approval of the developments made in creating the foundations of an international trade system premised upon multilateralism and non-discrimination.³⁴⁹

After a great deal of stagnation in negotiations, the abovementioned decisions provided momentum for the multilateral trade project.³⁵⁰ The State Department publically produced a document called the "Proposals for Expansion of World Trade and Employment" identifying factors which

³⁴³ Op cit note 1 at 862.

³⁴⁴ Ibid at 870.

³⁴⁵ Ibid; Foreign Relations of the United States Vol VI (1945) 152.

³⁴⁶ Op cit note 1 at 878.

³⁴⁷ Ibid at 882.

³⁴⁸ Ibid at 894 – 898.

³⁴⁹ Ibid at 898; Bureau of Public Affairs *State Department Bulletin* (9 December 1945) 906.

³⁵⁰ Op cit note 1 at 901.

restricted international trade, including government-imposed and private trade restrictions.³⁵¹ The Proposal indicated that a conference should be held in 1946 to discuss how to deal with barriers to trade.³⁵² Many countries agreed to attend this conference, including Australia, Canada, China, France, India, New Zealand, South Africa, the United Kingdom and the United States amongst others.³⁵³

In February 1946, it was suggested by the Economic and Social Council of the United Nations that a conference on trade and employment be established and a charter created to establish the foundations for the future ITO.³⁵⁴ It was envisaged that these preparations would operate in conjunction with the aforementioned group of countries who were negotiating tariffs.³⁵⁵ The negotiators would develop an international instrument which would indicate the commitments they agreed upon, and this would later be put to a wider international conference.³⁵⁶ It was thought that a protocol on specific tariff reductions would be annexed to the Charter for the ITO, and such tariff schedules would have a multilateral effect.³⁵⁷ The United States proposed that this protocol be put into force before the Charter.³⁵⁸

However, the meeting of the aforementioned countries did not occur as scheduled, predominantly due to the United States' State Department being unable to comply with the procedures required by the Reciprocal Trade Agreements Act for tariff negotiations.³⁵⁹ Ultimately, with the anticipation that domestic interests may lobby against cutting certain tariffs and the upcoming Congressional elections in November 1946, the United States made the decision to delay the conference until 1947.³⁶⁰ Despite concerns about losing momentum, the State Department utilised the reprieve to work on the

³⁵¹ Op cit note 1 at 904, Annex A-5.

³⁵² Ibid.

³⁵³ Op cit note 1 at 908.

³⁵⁴ Ibid at 912.

³⁵⁵ Ibid.

³⁵⁶ Ibid at 915, Annex A-6.

³⁵⁷ Ibid at 919.

³⁵⁸ Ibid at 923.

³⁵⁹ Ibid at 927; Op cit note 83 at 32.

³⁶⁰ Op cit note 1 at 932.

specific provisions of a draft charter and to test their popularity amongst the participating nations.³⁶¹

Canada expressed unconditional support for the draft and the United Kingdom only objected to the extent that the charter diverged from the earlier Proposal.³⁶² Issues regarding preferences were raised again, with New Zealand expressing concern about foregoing its preferential treatment in the United Kingdom's market.³⁶³ The United Kingdom, by contrast, was more inclined to consider negotiating on preferences if met with a strong commitment from the United States that they would reduce their tariffs.³⁶⁴ In response to some of these concerns, the United States drafted the "Suggested Charter."³⁶⁵

A preparatory meeting aimed at making arrangements for the subsequent conference on the ITO was convened in London in October 1946 and, for the first time, negotiations were extended to include nations such as Australia and India.³⁶⁶ This more extensive participation provided further insight into what such a multilateral trade agreement might look like and more diversified criticisms of the "Suggested Charter" were also put forward.³⁶⁷ Canada and Australia, for example, expressed their disapproval of the lack of strong commitments to reduce tariffs on agricultural products.³⁶⁸

Interestingly, there was already an awareness of the fact that developing countries were concerned about whose interests the agreement would serve.³⁶⁹ The aim of such developing countries has been described as wanting to redirect the participating nations' focus towards ensuring that developing nations be allowed to continue using quantitative import quotas to protect more vulnerable industries, to promote employment and to foster

³⁶¹ Op cit note 1 at 944.

³⁶² Ibid.

³⁶³ Ibid at 952; Foreign Relations of the United States Vol I (1946) 1349.

³⁶⁴ Op cit note 1.

³⁶⁵ Ibid at 956.

³⁶⁶ Ibid at 959.

³⁶⁷ Ibid.

³⁶⁸ Ibid.

³⁶⁹ Ibid at 963, Annex A-7; Foreign Relations of the United States Vol I (1946) 1362.

economic development.³⁷⁰ The outcome of their efforts was that additional chapters were added to the draft charter dealing with these issues.³⁷¹ This is one of the first instances where talk emerged about having an exception for developing countries, in particular allowing them to continue using quantitative restrictions as they 'caught up' with more industrialised nations.³⁷²

The outcome of the meeting was that there was widespread agreement on the draft ITO Charter as well as on the regulation of a number of issues including state trading and restrictive business practices.³⁷³ It was thought that this updated document better represented the interests of all participating nations and in that sense had a truly international character.³⁷⁴ Crucially, agreement was reached on the importance of having a provisional agreement (eventually known as the GATT) which would come into force before the ITO Charter.³⁷⁵

The first comprehensive draft of the GATT was created by a UN drafting committee in early 1947 which took inspiration from the parts of the draft ITO Charter which pertained to trade policy.³⁷⁶ It was thought that producing such a text would guarantee the enactment of the tariff concessions agreed upon.³⁷⁷ The nature of the document was therefore somewhat different to the aforementioned Charter which focused more on internal domestic policies.³⁷⁸

An additional preparatory meeting was scheduled to occur at Geneva in April 1947.³⁷⁹ Despite the Republicans obtaining a majority in Congress in the elections and expressing concerns about the effects of tariff reductions on domestic producers, the meeting was able to go ahead on the basis of certain concessions being made.³⁸⁰ These concessions included the

³⁷⁰ Op cit note 1 at 968.

³⁷¹ Ibid; Foreign Relations of the United States Vol I (1946) 1361.

³⁷² Op cit note 1 at 976.

³⁷³ Ibid at 988.

³⁷⁴ Ibid at 991.

³⁷⁵ Ibid.

³⁷⁶ Ibid at 994.

³⁷⁷ Ibid.

³⁷⁸ Ibid.

³⁷⁹ Ibid at 997.

³⁸⁰ Ibid at 1013.

provision of a procedure for domestic companies to file complaints where foreign competition was adversely affecting a particular industry because of a reduction in tariffs.³⁸¹ This procedure effectively provided the United States with the ability to revoke or change concessions made if they caused serious injury to domestic producers.³⁸² While some Republicans felt that this procedure did not go far enough, it was sufficient to placate both parties and to allow the Geneva Conference to commence as planned.³⁸³ In fact, President Truman noted the importance of the impending conference when he said, 'The success of this program is essential to the establishment of the International Trade Organisation [and] to the strength of the whole United Nations structure of cooperation in economic and political affairs ... The negotiations at Geneva must not fail.'³⁸⁴

The purpose of the meeting at Geneva was twofold.³⁸⁵ Firstly, further work was to be done on the draft ITO Charter so that it would be ready to be put forward for ratification at the UN conference in Havana.³⁸⁶ Secondly, further tariff negotiations would be pursued and the proposed interim document (i.e. the GATT) would be finalised.³⁸⁷ The main negotiators and decision-makers were Will Clayton and Clair Wilcox who represented the United States and Sir Stafford Cripps and James Helmore who represented the United Kingdom.³⁸⁸ Although many other nations participated in decision-making, it has been said that the successful resolution of the negotiations was largely dependent on the United Kingdom and the United States.³⁸⁹

While significant work was done to technically refine the text of the ITO Charter and the GATT, the bulk of the work had been completed in London and so few substantive changes were required.³⁹⁰ The use of quantitative restrictions, whether it be by developing countries for economic

³⁸¹ Op cit note 1 at 1016.

³⁸² Ibid; Congressional Record Vol 83 Part I (26 February 1947) 1411.

³⁸³ Op cit note 1 at 1024.

³⁸⁴ Ibid at 1028; Bureau of Public Affairs *State Department Bulletin* (16 March 1947) 483.

³⁸⁵ Op cit note 1 at 1036.

³⁸⁶ Ibid.

³⁸⁷ Ibid.

³⁸⁸ Ibid.

³⁸⁹ Ibid at 1040.

³⁹⁰ Ibid at 1045.

development or for the remedy of balance-of-payment problems, remained a controversial issue.³⁹¹ In addition, the most-favoured-clause had not been universally accepted with an Australian representative contesting its inclusion.³⁹² However, there were only minor requests for amendment and the most-favoured-nation clause was ultimately agreed upon.³⁹³ Despite its misgivings, the United States did make some concessions and general consensus was ultimately reached on the formulation of both the GATT and the ITO Charter by August.³⁹⁴

Essentially, the GATT was perceived to be an interim measure to ensure compliance with those tariff concessions already agreed upon before the ITO Charter came into effect.³⁹⁵ However, despite the aforementioned consensus having been reached on the GATT and ITO Charter, the actual content of the proposed tariff reductions had not yet been decided.³⁹⁶ While the United States boldly put forward the tariff reductions it had been authorised to make, other countries were not as forthcoming and there was a deadlock in negotiations.³⁹⁷ For example, with regards to raw wool, the Americans were not authorised to make any tariff concessions which angered the Australians who were hoping to benefit from more favourable tariffs.³⁹⁸ In order to streamline the progress made at the conference, President Truman authorised that the wool tariff be reduced by 25 per cent despite facing serious opposition from Congress.³⁹⁹

Predictably, the most contentious issue remained imperial preferences.⁴⁰⁰ There was still significant tension between the United Kingdom and the United States over how to balance the reduction of American tariffs and the elimination of British preferences amongst the Dominions.⁴⁰¹ Many commented that Helmore and Cripps were being

³⁹¹ Op cit note 1 at 1049.

³⁹² Op cit note 83 at 61.

³⁹³ Ibid at 62.

³⁹⁴ Op cit note 1 at 1049.

³⁹⁵ Ibid.

³⁹⁶ Ibid at 1053.

³⁹⁷ Ibid.

³⁹⁸ Ibid at 1061.

³⁹⁹ Ibid at 1070.

⁴⁰⁰ Ibid.

⁴⁰¹ Ibid at 1074.

unreasonably stubborn on the issue of preferences and failed to exhibit a genuine commitment to the tariff negotiations at Geneva and to the long-term trade policy objectives.⁴⁰² Old vested interests in imperial preferences remained strong and the United Kingdom was unwilling to take the political risk of abandoning such ties.⁴⁰³

Despite having made so much progress, some still doubted whether the free trade project would be realised, in particular because of deteriorating Anglo-American relations.⁴⁰⁴ Will Clayton was under pressure domestically to secure the elimination of imperial preferences and discriminatory trading.⁴⁰⁵ Others in the State Department were concerned about the potential fallout should Clayton stick steadfastly to his demand for the total elimination of preferences.⁴⁰⁶ Sir Stafford Cripps, on the other side of the negotiating table, was equally stubborn in his defense of the United Kingdom retaining its preferences.⁴⁰⁷ This was perhaps a consequence of the severe economic issues faced by the United Kingdom following World War II, as well as some remaining hostility over the manner in which the loan negotiations had played out in 1945.⁴⁰⁸

Given this context, it is not surprising that the British negotiators were reluctant to concede anything to the United States and, indeed, began backtracking on the agreement reached.⁴⁰⁹ Some have suggested that, 'The strong defense of imperial preferences could be read as reflecting fears about Britain's diminishing role as a world power.'⁴¹⁰ There was a shifting balance of power as the United Kingdom was perceived to be retreating in the midst of its economic difficulties and clinging to its Commonwealth ties as the vestiges of its former power.⁴¹¹ In this political vacuum, the United States expanded its global commitments both politically and economically.⁴¹²

⁴⁰² Op cit note 1 at 1078.

⁴⁰³ Ibid at 1090.

⁴⁰⁴ Ibid at 1094.

⁴⁰⁵ Ibid at 1098.

⁴⁰⁶ Ibid at 1102.

⁴⁰⁷ Ibid at 1106.

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid at 1110 – 1115; Foreign Relations of the United States Vol I (1947) 967-963.

⁴¹⁰ Op cit note 1 at 1119.

⁴¹¹ Ibid.

⁴¹² Ibid.

Concerns around the state of the United Kingdom's economy, as well as the broader European continent, forced the Americans to act somewhat conservatively in making their demands in the tariff negotiations.⁴¹³ Indeed, the formulation of the Marshall Plan in 1947 prompted Clayton to reconsider the renewed importance of the negotiations at Geneva as he perceived the successful provision of financial aid to promote recovery as being closely interlinked with securing a strong multilateral trade system.⁴¹⁴

The tariff negotiations were still underway at the end of August 1947.⁴¹⁵ American optimism about reaching final consensus was declining, prompting Clayton to suggest that negotiations with the United Kingdom should be terminated and agreements should be secured with the other nations on a multilateral basis.⁴¹⁶ This was rejected by President Truman who instead decided to accept a less than substantial elimination of imperial preferences from the United Kingdom.⁴¹⁷ This decision to allow the United Kingdom to largely retain its imperial preferences set the Geneva negotiations back on track, with tariff negotiations concluding in October 1947.⁴¹⁸

In December 1947, President Truman issued a proclamation which made the GATT effective in the United States from 1 January 1948.⁴¹⁹ He expressed unconditional enthusiasm for the GATT and remarked that the establishment of the GATT constituted an important juncture in the historical development of international economic relations.⁴²⁰ Prime Minister Mackenzie King of Canada, similarly, praised the GATT as an unprecedented achievement and one of extensive importance for Canada's national welfare.⁴²¹ In the United Kingdom, however, there was less

⁴¹³ Op cit note 1 at 1119.

⁴¹⁴ Ibid at 1123; Foreign Relations of the United States Vol I (1947) 955.

⁴¹⁵ Op cit note 1 at 1127.

⁴¹⁶ Ibid.

⁴¹⁷ Ibid.

⁴¹⁸ Ibid at 1134.

⁴¹⁹ Ibid at 1138; Harry S. Truman 'Carrying out General Agreement on Tariffs and Trade concluded at Geneva, October 30, 1947' Proclamation 2761A.

⁴²⁰ Op cit note 1 at 1138.

⁴²¹ Ibid; Dominion of Canada, House of Commons, 20th Parliament *Official Report of Debates* (9 December 1947) 99.

enthusiasm about the outcome of the conference.⁴²² Nevertheless, the President of the Board of Trade believed that the agreements reached were fair and that whatever concessions had been made in terms of tariff reductions and preferences were balanced against equivalent concessions made by other participating nations.⁴²³

At the most basic level, the Geneva conference achieved the finalisation of the GATT and commenced its implementation in the form of concrete tariff and preference reductions and binding tariff rates.⁴²⁴ At the first Geneva round, the agreements reached by the participating nations included numerous tariff items and covered a significant portion of international trade.⁴²⁵ While perhaps these tariff reductions did not have an immediate impact on trade because of some residual trade barriers that still needed to be phased out, the symbolic achievement cannot be overstated.⁴²⁶

The infamous failure of the proposed ITO shifted a great deal of responsibility onto the GATT and its function in regulating international trade.⁴²⁷ While initially the GATT was perceived to be an interim arrangement to eventually be replaced by the ITO, it became increasingly clear as the Havana conference progressed that there was little chance of achieving consensus on the ITO Charter.⁴²⁸ Curzon remarked on how fortuitous this was because the most important facets of multilateralism persisted without being weighed down by rigid rules which may have hindered the workability of the international trade regime.⁴²⁹ Others, however, were not as optimistic. Take Richard Gardner who thought that the impermanence with which the GATT was developed, especially reflected in its lack of administrative frameworks, would limit the extent to which the project of international economic integration could be realised.⁴³⁰

⁴²² Op cit note 1 at 1142.

⁴²³ Ibid.

⁴²⁴ Ibid at 1146.

⁴²⁵ Ibid; General Agreement on Tariffs and Trade, 1949.

⁴²⁶ Op cit note 1 at 1146.

⁴²⁷ Ibid at 1162.

⁴²⁸ Ibid at 1166.

⁴²⁹ Op cit note 83 at 32.

⁴³⁰ Ibid; Op cit note 38 at 349.

This brief retelling of the negotiating history of the GATT reveals how sensitive the process was, and how easily it could have been derailed.⁴³¹ This is clearly a result of the particular context in which such negotiations took place as well as of the key players involved in the negotiating process.⁴³² One can certainly start to see how the United States advanced its domestic interests in conjunction with its growing political and economic power. Despite the fact that the United States was more economically powerful and aware of its political leadership, it was not yet in a position to wholly dominate negotiations and there are multiple examples of the United States compromising in response to demands by other countries.⁴³³ Most notably, the United Kingdom could pressurise the United States into backing down on the issue of its preferential trading relationship with the Dominions as the United Kingdom repeatedly emphasised the lack of domestic support for the elimination of imperial preferences.⁴³⁴ The interplay between these powers as they experienced disparate economic trajectories and unique domestic constraints is extremely useful insofar as it provides insight into how a critical engagement with the negotiating history of the GATT can generate important information about how principles such as non-discrimination in trade and the most-favoured-nation principle were intended to operate and how that may have evolved over time.

CHAPTER FOUR

4.1 The drafting of the GATT

Having discussed the more general historical trend which led up to the finalisation of the GATT, it now stands to discuss the specific drafting processes as applicable to the development of the GATT. This brief analysis will reemphasise the notion that engaging in a comprehensive historical

⁴³¹ Op cit note 1 at 1178.

⁴³² Ibid.

⁴³³ Ibid at 1182.

⁴³⁴ Ibid.

investigation of the origins of a particular text, of the kind undertaken in Chapter 3 (and to be further undertaken in Chapter 4), is an important exercise which reveals, in this particular case, the more practical significance of why the most-favoured-nation principle was incorporated into the GATT in the specific manner and form which it was.

As has already been covered in Chapter 3, the formulation of the GATT took place through negotiations held by the Preparatory Committee of the ITO between 1946 and 1948.⁴³⁵ The United Nations' Economic and Social Council appointed the Preparatory Committee which subsequently appointed a Drafting Committee as well as many working committees.⁴³⁶ The most important of these working committees for our purposes is Committee II on General Commercial Policy which dealt with many of the GATT provisions.⁴³⁷ Representatives from all the countries sitting on the Preparatory Committee were entitled to send delegates to participate in Committee II.⁴³⁸ Throughout this process, there was significant overlap between negotiations on the ITO and on the GATT, primarily because the GATT was perceived as an interim agreement.⁴³⁹

The first negotiations on the GATT occurred at the conference in London in 1946 where the outlines of the relationship between the GATT and the ITO began to take form.⁴⁴⁰ The starting point for the Preparatory Committee was the aforementioned "Suggested Charter" which had been designed by the United States in advance of the conference.⁴⁴¹ The "Suggested Charter" was, in effect, a summary of the consultations between the United Kingdom and the United States which provided a basis upon which participating nations could respond to the proposed provisions.⁴⁴² However, the consequences of delegates agreeing on particular provisions of the "Suggested Charter" were limited because they did not have the legal

⁴³⁵ Op cit note 1 at 1190.

⁴³⁶ Ibid at 1285.

⁴³⁷ Ibid at 1292.

⁴³⁸ Ibid at 1295.

⁴³⁹ Ibid at 1198.

⁴⁴⁰ Ibid.

⁴⁴¹ Ibid at 1254.

⁴⁴² Ibid at 1257.

authority to bind their governments and so further meetings were required to secure such agreement.⁴⁴³

It is worth commenting on some of the decisions made at the London Conference insofar as they pertain to exceptions to non-discrimination. Notably, on the issue of preferences which would be afforded some limited allowances under the GATT, it was agreed that the definition of 'preferences' would include both long-standing preferences (such as the imperial preferences) and short-term contractual arrangements.⁴⁴⁴ In addition, customs unions that were already formed and that may be formed in the future were not subject to the most-favoured-nation clause.⁴⁴⁵ Indeed, at the London Conference, the general attitude towards the most-favoured-nation clause was to restrict the scope of its application.⁴⁴⁶ For example, in respect of its treatment of government procurement, there was an obligation to abide by the most-favoured-nation principle under the "Suggested Charter" but this was eliminated in the negotiations in London.⁴⁴⁷

A great deal of progress was made and the negotiators decided that the matter of multilateral tariff negotiations should be pursued further at a separate meeting.⁴⁴⁸ The ideas expressed in the "Suggested Charter" about the GATT serving as an international agreement on reducing tariffs through multilateral negotiations and eliminating discriminatory trade practices were predominantly retained.⁴⁴⁹ The notion was that it would be beneficial to have an agreement which gave effect to some of the provisions in the proposed ITO Charter but which would become operational before the Organisation.⁴⁵⁰ The result would be that the tariff reductions agreed upon would not need to be put to one side while the remaining negotiations on the ITO continued.⁴⁵¹

⁴⁴³ Op cit note 1 at 1305.

⁴⁴⁴ Ibid at 1309 - 1312.

⁴⁴⁵ Ibid at 1316.

⁴⁴⁶ Ibid at 1320.

⁴⁴⁷ Ibid.

⁴⁴⁸ Ibid at 1202.

⁴⁴⁹ Ibid at 1320.

⁴⁵⁰ Ibid at 1273.

⁴⁵¹ Ibid.

Rather the tariff reductions, in combination with the provisions on commercial policy, would form the GATT and be implemented more speedily.⁴⁵²

Discussions on the GATT were continued in New York in 1947 where the first draft of the GATT was written.⁴⁵³ These assumptions about the temporary nature of the GATT shaped its text as drafters were careful to exclude institutional provisions and provisions on topics which would later be governed by the ITO Charter.⁴⁵⁴ Thus, in New York, another draft of the Charter was created alongside the first draft of the GATT.⁴⁵⁵ The New York draft of the GATT did not differ significantly from the provisions proposed in London, however the abovementioned distinction became clearer in the terminology used.⁴⁵⁶ That is, for example, the ITO Charter had 'member states' and the GATT had 'contracting parties'.⁴⁵⁷ This indicated the different purposes intended for the GATT and ITO, with the former seen as an interim, multilateral contractual agreement and the latter as a fully-fledged international organisation.⁴⁵⁸

The first draft of the GATT would be adjusted further and finalised at the Geneva Conference by the Drafting Committee in conjunction with the Preparatory Committee.⁴⁵⁹ This conference would also mark the first round of tariff negotiations where parties would agree on reductions in their tariff rates.⁴⁶⁰ The culmination of these efforts was recorded in the Geneva Final Act, incorporating both the final draft of the GATT as well as the results of the tariff negotiations.⁴⁶¹ The Final Act would be enforced in terms of the Protocol of Provisional Application which provided that governments ought to apply Parts I and III which dealt with tariff concessions, the most-favoured-nation clause and other administrative issues.⁴⁶² Part II, which dealt with

⁴⁵² Op cit note 1 at 1277.

⁴⁵³ Ibid at 1210.

⁴⁵⁴ Ibid.

⁴⁵⁵ Ibid at 1346.

⁴⁵⁶ Ibid at 1369.

⁴⁵⁷ Ibid.

⁴⁵⁸ Ibid.

⁴⁵⁹ Ibid at 1380.

⁴⁶⁰ Ibid at 1218.

⁴⁶¹ Ibid.

⁴⁶² Ibid.

national treatment, non-tariff barriers to trade and exceptions would be applied where it did not conflict with existing legislation.⁴⁶³

The GATT negotiations concluded towards the end of 1947 and the GATT became officially operational on 1 January 1948 in the manner described above.⁴⁶⁴ There were few changes made to the draft, however the text was given greater legitimacy because the negotiators in Geneva were official representatives who could bind their government to the commitments in the GATT.⁴⁶⁵ Article XXIX elucidated the interrelationship between the ITO and the GATT by establishing that if the ITO should not come into force or no longer be in force, then the GATT's contracting parties should meet and decide whether to amend, supplement or maintain the GATT.⁴⁶⁶

Of course, the ITO would never enter into force and the GATT would take on a far more significant role in regulating international trade than initially anticipated. Even to the degree that the GATT was expected to function as a temporary arrangement, the drafting negotiations reveal a great deal about contemporary power dynamics and the respective agendas of the negotiating parties. In particular, discussions around how the negotiating parties came to agree upon including the most-favoured-nation clause as well as its exception for imperial preferences in the text of the GATT provides insight into how the United Kingdom and the United States pursued certain domestic interests and attempted to assert their respective visions of the future world trading order. By engaging with such dynamics one gains an appreciation of how the application of principles such as non-discrimination in trade is so context-dependent. What has become increasingly clear as we have traced the negotiating history of the GATT is that, while the United States was experiencing an upward trajectory of economic growth and political power, the United Kingdom was still suffering the aftereffects of the two world wars and was trying to hold onto the last vestiges of its dominance.

⁴⁶³ Op cit note 1 at 1222.

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid at 1391.

⁴⁶⁶ Ibid at 1233; General Agreement on Tariffs and Trade, 1947, art xxix.

This juxtaposition, and the implications it had for the drafting of the GATT, will be explored further in Chapter 5.

CHAPTER FIVE

5.1 Manner in which the balance of power within the international sphere and divergent historical trajectories influenced the GATT negotiations

Ruggie has argued that, 'to say anything sensible about the *content* of international economic orders and about the regimes that serve them it is necessary to look at how power and legitimate social purpose become fused to project political authority into the international system.'⁴⁶⁷ While this is an important point, many mainstream works lack the application of a similar approach to analyses of legal texts such as the GATT, the consequence of which being that such works are not able to provide a nuanced understanding of the principles underlying such texts.

It is therefore the aim of this chapter to engage in a multi-layered investigation into the relevant historical context and dynamic hegemonic powers which influenced the ultimate codification of the GATT. In a sense, an evaluation of the tensions and contextual constraints experienced by the negotiators as well as the sacrifices and compromises made in order to save the future of the project, is an excellent indicator of contemporary values and the extent to which they are shared on an international scale. This, in turn, provides insight into the internal logic of the text of the GATT.

The GATT's preamble describes its express objectives as improving living standards, securing full employment and developing world trade by reducing tariff and non-tariff barriers and eliminating discriminatory treatment.⁴⁶⁸ If one is to look more closely at how consensus was reached in

⁴⁶⁷ John Gerard Ruggie 'International regimes, transactions and change: embedded liberalism in the postwar economic order' (1982) 36 *2 International Organization* 379 at 382.

⁴⁶⁸ Op cit note 1 at 1996; Preamble to the General Agreement on Tariffs and Trade, 1947.

respect of non-discrimination, for example, it is possible to identify more specific power dynamics which influence the exact formulation of such agreements. As has become clear, the United States capitalised on its increasingly dominant position within the international space and attempted to exert its influence over the process to secure increased market access for its domestic suppliers without having to reciprocate with extensive tariff reductions. By comparison, the United Kingdom was suffering the impact of its declining position in world politics and so was more insistent upon retaining its imperial preferences which it perceived as giving it an advantage within international trade. Because the United States did not yet hold sufficient hegemonic influence to completely monopolise the political space at the GATT negotiations, it needed to compromise so as to salvage the proceedings.

Broadly speaking, most agree that the main motivator for the establishment of trade agreements is to boost national income by minimising trade barriers, improving terms of trade or expanding trade volumes.⁴⁶⁹ However, such decisions are often constrained by domestic factors such as the political climate and the need to maintain support from or placate powerful lobbyist groups.⁴⁷⁰ With regards to the gains of entering into trade agreements, some authors assert that a distinction should be made between smaller and larger countries.⁴⁷¹ A smaller country which cannot unilaterally dictate its terms of trade may benefit from entering into trade agreements because of the increased market access and positive effect on trade volumes.⁴⁷² However, because of its negligible bargaining power, it is probably not able to effect a substantial change to import and export prices.⁴⁷³ With a larger country, it is suggested that the gains they may obtain from free trade may be lesser in the sense that reducing their tariffs may be at the expense of sacrificing the strength of their terms of trade.⁴⁷⁴ Their

⁴⁶⁹ Op cit note 1 at 1999.

⁴⁷⁰ Ibid.

⁴⁷¹ Christian Broda, Joshua Greenfield & David Weinstein 'From groundnuts to globalization: a structural estimate of trade and growth' (2006) *NBER Working Paper No. 12512*; Op cit note 1 at 2003.

⁴⁷² Op cit note 1 at 2003.

⁴⁷³ Ibid at 2007.

⁴⁷⁴ Ibid at 2012.

superior bargaining power may, however, allow them to reap the benefits of other countries lowering tariffs without them agreeing to equivalent reductions.⁴⁷⁵ That is, a larger country could maintain its tariffs and those exporting to that country would be expected to lower their price and absorb part of the tariff, effectively reducing the price of imports.⁴⁷⁶

Some have argued that this scenario explains the desire to enter into international trade agreements which are, 'driven by a desire to internalise a terms-of-trade externality between countries.'⁴⁷⁷ While higher trade barriers are designed to strengthen terms of trade, the gains of implementing such barriers tend to be minimal when faced with similar barriers imposed by other countries.⁴⁷⁸ The volume of trade is likely to decrease with little improvement in terms of trade to offset this loss.⁴⁷⁹ It is in such a context that acting multilaterally rather than unilaterally has a great appeal as countries acting in unison can avoid this 'inefficient equilibrium.'⁴⁸⁰

Reaching the point where countries recognise the benefit of engaging in multilateral negotiations and are committed to reciprocal tariff reductions can be beleaguered with difficulties, as was observed in the GATT negotiations. Indeed, there have been criticisms of this argument put forward by Johnson in respect of the motivations for entering into international trade agreements on the basis that it assumes that governments are purely motivated by national welfare.⁴⁸¹ Theorists such as Grossman and Helpman have developed an alternative model which perceives governments as balancing and combining national welfare with political self-interest as well as with the interests of organised industries who are powerful enough to lobby political support.⁴⁸² Grossman and Helpman have further argued that trade agreements nevertheless have the potential to improve national welfare,

⁴⁷⁵ Op cit note 1 at 2012.

⁴⁷⁶ Ibid.

⁴⁷⁷ Ibid.

⁴⁷⁸ Ibid at 2017.

⁴⁷⁹ Ibid.

⁴⁸⁰ Ibid at 2021.

⁴⁸¹ Ibid; Harry G. Johnson 'Optimum tariffs and retaliation' (1953) 21 2 *Review of Economic Studies* 142 at 142.

⁴⁸² Op cit note 1 at 2025; Gene M. Grossman & Elhanan Helpman 'Endogenous innovation in the theory of growth' (1994) 8 1 *Journal of Economic Perspectives* 23.

qualified by the country's political objectives, because they are capable of addressing the issue of international terms of trade externality.⁴⁸³ Whether the terms of such trade agreements indeed serve national welfare depends on the extent to which 'joint welfare maximisation' features on the negotiating countries' agendas.⁴⁸⁴

If one considers American and British trade figures in the period preceding the GATT, it seems that their terms of trade were in a relatively healthy state and yet the volume of trade was in significant decline in the interwar period, especially during the Great Depression.⁴⁸⁵ In the aftermath of the Great Depression, domestic output recovered quite quickly whereas the volume of trade remained stagnant, most likely due to the protectionist policies of many countries in the early 1930s.⁴⁸⁶ Some authors have suggested that this negative impact on trade volumes may have prompted the United States and United Kingdom to begin thinking about entering into a multilateral trade agreement.⁴⁸⁷ That is, if countries cooperate to reduce trade barriers this may have little impact on terms of trade but may boost trade volumes to the mutual benefit of the participating nations.⁴⁸⁸ Nevertheless, conceding ground on trade barriers may not be particularly palatable to domestic audiences, despite the reciprocal benefits secured as a result thereof.⁴⁸⁹

An additional example of such motivations manifesting in the GATT negotiations would be the narratives that were widely expressed at the Bretton Woods conference where the transatlantic negotiators disagreed about the continued appropriateness of imperial preferences.⁴⁹⁰ American officials were ultimately concerned about how such preferential arrangements inhibited American suppliers from entering colonial markets

⁴⁸³ Op cit note 1 at 2029; Gene M. Grossman & Elhanan Helpman 'Endogenous innovation in the theory of growth' (1994) 8 1 *Journal of Economic Perspectives* 23.

⁴⁸⁴ Op cit note 1 at 2029; Gene M. Grossman & Elhanan Helpman 'Endogenous innovation in the theory of growth' (1994) 8 1 *Journal of Economic Perspectives* 23.

⁴⁸⁵ Op cit note 1 at 2046.

⁴⁸⁶ Ibid at 2050.

⁴⁸⁷ Ibid at 2055.

⁴⁸⁸ Ibid at 2061.

⁴⁸⁹ Ibid.

⁴⁹⁰ Ibid.

and wished for their wholesale elimination.⁴⁹¹ Their determination to push the British to eliminate imperial preferences was based on the hope that it would minimise discrimination against American exports in the markets of their biggest trading partners, the United Kingdom and Canada.⁴⁹² For example, consider Canadian import tariffs in 1946 which were 6.6 per cent vis-à-vis British imports and 12.9 per cent vis-à-vis American imports.⁴⁹³ The United States was greatly motivated by this situation and perceived the establishment of the GATT as a possible means to address the discriminatory tariff treatment it faced.⁴⁹⁴

The United Kingdom, however, was unwilling to sacrifice their preferential access without securing what they considered to be an equivalent concession in the form of a substantial reduction in American tariffs. While the United States wished to capitalise on its strong bargaining position, it was not able to exert sufficient influence to shift the British negotiators from their position.

This example is useful to the extent that it demonstrates the manner in which each nation wished to retain the strength of their terms of trade and were unwilling to relinquish their existing advantages. In doing so, the potential gains to be made in maintaining trade barriers would be somewhat inconsequential when faced with similar trade barriers in other markets. It is because the United States was not yet sufficiently powerful to completely dictate the nature of the proposed world trading order so as to maintain its tariffs and indirectly coerce others into absorbing the additional cost that they needed to compromise. Despite the United Kingdom's declining power, it had sufficient influence to effectively contest the proposed text of the GATT resulting in the inclusion of certain exceptions to the most-favoured-nation clause. Perhaps most importantly, the multilateral character of the proposed trade regime was such that it allowed nations to feel secure in agreeing to reductions in trade barriers without fearing that other nations would not

⁴⁹¹ Op cit note 1 at 2061.

⁴⁹² Ibid at 2066.

⁴⁹³ Ibid.

⁴⁹⁴ Ibid.

reciprocate and would instead establish an anticompetitive trade environment.

Baldwin has asserted that, indeed, the motivators behind the GATT were political and economic.⁴⁹⁵ In this regard, Kindleberger has argued that one may attain a stable international economic order if there is a hegemonic power willing to bear some of the costs of providing certain public goods, including a liberal trade regime, in order to prevent conflict from arising.⁴⁹⁶ Some have questioned this portrayal of a supposedly altruistic hegemonic power as being misleading and, in fact, such powers are more likely to structure policies to serve their own interests rather than the interests of others.⁴⁹⁷ Certainly, in respect of the participation of the United States in the GATT negotiations, many felt that the free trade regime would disproportionately favour the United States as their goods would benefit from greater market access and yet they would not need to make any substantial concessions in respect of lowering their own tariffs. This is echoed in the argument that free trade policies are often favoured by nations experiencing significant economic growth as they increasingly seek more expansive market access.⁴⁹⁸ Nevertheless, the United States' ability to capitalise on their role as a strong hegemonic power was limited in some respects.

If one examines the United States' participation in the negotiations preceding the GATT, it is clear that they were emerging as an important international leader.⁴⁹⁹ American hegemony arose following the conclusion of the Second World War as the level of conflict as well as the absence of organisation grew to such an extent that a vacuum was created, requiring a new set of rules and norms.⁵⁰⁰ Because of this increasing demand for order and because the United States emerged from wartime in a greater shape

⁴⁹⁵ Op cit note 1 at 2145; Robert E. Baldwin 'The economics of the GATT' in Peter Oppenheimer (ed) *Issues in International Economics* (1980).

⁴⁹⁶ Op cit note 1 at 2149; Charles P. Kindleberger *The world in depression, 1929 – 1939* (1973); Charles P. Kindleberger 'Dominance and leadership in the international economy: exploitation, public goods, and free rides' (1981) 25 *2 International Studies Quarterly* 242.

⁴⁹⁷ Op cit note 1 at 2166; Stephen D. Krasner 'Are bureaucracies important? (Or Allison Wonderland)' (1972) 7 *Foreign Policy* 159.

⁴⁹⁸ Op cit note 8 at 37.

⁴⁹⁹ Op cit note 1 at 2166.

⁵⁰⁰ Giovanni Arrighi 'The three hegemonies of historical capitalism' in Stephen Gill (ed) *Gramsci, historical materialism and international relations* (1994) 151.

than other competing core states, such as the United Kingdom, it was in a position to fulfil that demand and therefore take on a more prominent role.⁵⁰¹ An interesting feature of American hegemony at this time was that it was characterised by norms and values which had become widely acceptable.⁵⁰²

Nevertheless, they were seldom able to exploit such leadership in any practicable sense and instead were obliged to compromise on many different issues including the United Kingdom's retention of imperial preferences.⁵⁰³ Framing this as the United States' attempt at flexing its international economic muscles to establish a trade agreement that purely served its own interests is an oversimplification of the power dynamics and, in fact, overlooks the widespread belief that the interdependency necessitated by free trade was key to international political stability.⁵⁰⁴ Such trade agreements necessarily arise out of negotiations, disagreements and compromises and encompass various diverse interests, both self-serving and altruistic.

Indeed, both these parties were pursuing international peace and stability for which they were willing to make certain economic concessions.⁵⁰⁵ This idea was vigorously supported by Cordell Hull who said that, 'The truth is universally recognised that trade between nations is the greatest peace-maker and civiliser within human experience.'⁵⁰⁶ Indeed, this idea garnered extensive support in the international community, especially from those countries who had suffered significant losses during World War II and wished to avoid such conflict in the future.⁵⁰⁷ Sir Stafford Cripps of the United Kingdom similarly perceived the GATT and the ITO as constituting a significant step away from hazardous unilateral policies and towards

⁵⁰¹ Op cit note 500.

⁵⁰² Robert W. Cox 'Structural issues of global governance' in Stephen Gill (ed) *Gramsci, historical materialism and international relations* (1994) 264.

⁵⁰³ Op cit note 1 at 2166.

⁵⁰⁴ Ibid at 2170.

⁵⁰⁵ Ibid at 2170 - 2174; Arthur A. Stein 'The hegemon's dilemma: Great Britain, the United States, and the international economic order' (1984) 38 *International Organization* 355 at 359.

⁵⁰⁶ Memorandum by Cordell Hull, Cordell Hull Papers (Library of Congress) as quoted in op cit note 1 at 2178; Arthur W. Schatz 'The Anglo-American trade agreement and Cordell Hull's search for peace, 1936 - 1938' *The Journal of American History* 57; Cordell Hull *The memoirs of Cordell Hull* Vol I & II (1948).

⁵⁰⁷ Op cit note 1 at 2185.

multilateral cooperation.⁵⁰⁸ Wilcox of the United States echoed these sentiments and perceived with optimism the role of the multilateral trading system in bringing forth a new era of international stability.⁵⁰⁹

It would seem that there were in fact diverse factors motivating the establishment of a free trade regime including to increase trade volumes, internalise terms of trade externalities and promote a more stable international order.⁵¹⁰ As the emerging hegemonic power, the United States had an important role in giving institutional form to such ideals. To the extent that it wished to unilaterally impose its own vision of the multilateral trade regime which served its own domestic interests, it was constrained as it needed other nations to accept this vision within the hierarchical and hegemonic structure of international decision-making.⁵¹¹ Indeed, as has been argued, while the United States could control certain elements of this decision-making process, it still required support from the other nations. To that extent, it can be said that the meaning of the GATT is truly intersectional and contested and, ultimately, reflects a negotiated compromise within contemporary power hierarchies. These are the types of insights which can only be gained through a thorough investigation of the historical context in which principles such as the most-favoured-nation principle are incorporated into legal texts.

CHAPTER SIX

6.1 Conclusion

The GATT emerged in the wake of the Second World War when international leaders were intent on securing a more stable world order.⁵¹² It was thought that the introduction of such an institution which regulated the

⁵⁰⁸ Op cit note 1 at 2189.

⁵⁰⁹ Ibid at 2194.

⁵¹⁰ Ibid at 2261.

⁵¹¹ Op cit note 9 at 63.

⁵¹² J. Michael Finger 'Introduction to the new edition' in Robert E. Hudec (ed) *Developing countries in the GATT legal system* (2011) 1 at 5.

liberalisation of trade would increase commercial interconnectedness and shared prosperity, ultimately discouraging further conflict through interdependency.⁵¹³ The manner in which it went about doing so was through negotiating the mutual reduction of tariffs between member states, complemented by a set of rules controlling the manner in which such states could intervene in international trade.⁵¹⁴ This involved eliminating many forms of non-tariff trade barriers, committing to reduce tariff barriers and ensuring that all member states benefit from most-favoured-nation treatment.⁵¹⁵

Ultimately, it has been determined that the GATT has, 'encouraged governments to take a more international approach and ... strengthened the hands of outward-looking leaders in dealing with domestic political opposition.'⁵¹⁶ Many of the points of conflict which seemed near insurmountable in the heat of the negotiations would later diminish in importance owing either to changes in British or American domestic politics or to being overtaken by more pressing events.⁵¹⁷ While each nation's negotiators often stubbornly insisted on certain self-serving principles to satisfy domestic public opinion, the GATT was later supported by sufficient common interest which facilitated the practical implementation of its policies.⁵¹⁸

It is clear from the historical arc outlined in Chapters 3 and 4 that the GATT forms an integral part of the evolution of the ideas of internationalism and multilateralism which developed alongside greater economic integration. In order to fully understand its nature, this dissertation has embraced a contextualised approach that acknowledges and accounts for the manner in which the GATT evolved from, 'the intersection of customs, traditions, values and perceptions of reality...of the persons and groups who are prominent in the events that make up this evolution.'⁵¹⁹ In doing so, this author has

⁵¹³ Op cit note 512.

⁵¹⁴ Robert E. Hudec *Developing countries in the GATT legal system* (2011) 23.

⁵¹⁵ *Ibid.*

⁵¹⁶ Op cit note 38 at xxix.

⁵¹⁷ *Ibid* at xxxii.

⁵¹⁸ *Ibid.*

⁵¹⁹ Op cit note 512 at 4.

engaged with the paradigm of Gramsci's concept of historical materialism (and Robert Cox's subsequent extension of this concept to accommodate the emergence of international institutions) so as to assess the manner in which legal concepts such as the most-favoured-nation clause are a product of the circumstances in which they were drafted and reflect a negotiated compromise between hegemonic interests.⁵²⁰

In applying this theoretical framework to the historical developments traversed in Chapters 3 and 4, it became clear from the discussions in Chapter 5 that the final codification of the GATT as well as the incorporation of the most-favoured-nation clause more specifically constituted a negotiated compromise between the United States' desire to expand market access for domestic suppliers and the United Kingdom's insistence upon retaining the benefits of its imperial preferences. While American policy-makers and politicians hoped to capitalise on the United States' increasing power, it was not able to unilaterally impose its opinions upon the text of the GATT. This is, of course, just one of many contextual nuances which may be drawn from the nature of the negotiations but it proves particularly interesting because of what it reveals about the respective nations' trajectories. On a broader theoretical level, it also provides insight into the degree to which the GATT, as an institution and as a legal text, is embedded within particular social, economic and political structures which may, to varying degrees, reflect global hegemonic strategies.⁵²¹

History-making constitutes, 'a complex and dialectical interplay between agency, structure, consciousness and action.'⁵²² As such, any attempt to assess a legal text such as the GATT in isolation of contemporary international political dynamics as well as relevant domestic factors which either empower or constrain political actors to make certain decisions would be of limited value. It is unfortunately this flaw which has characterised some mainstream works. It is hoped that this dissertation has evaded such superficial discourse and has instead engaged with the negotiating history of

⁵²⁰ Stephen Gill 'Gramsci and global politics: towards a post-hegemonic research agenda' in Stephen Gill (ed) *Gramsci, historical materialism and international relations* (1994) 4.

⁵²¹ *Ibid* at 30.

⁵²² *Ibid* at 9.

the GATT in a critical and holistic manner so as to uncover a more nuanced understanding of the most-favoured-nation clause and the GATT. In addition, such an analytical exercise exhibits the utility of engaging with the historical origins of legal texts more generally so as to better comprehend the intentions with which they were created.

And what of the nature and interpretation of the GATT and its most-favoured-nation clause today? The limited scope of this dissertation does not permit a detailed consideration of the current state of the multilateral trade regime, but suffice to say that it is facing serious legitimacy challenges in a world where many nations are reverting to more nationalist and protectionist foreign policies. Mazower, for example, has commented that, 'We have moved from an era that had faith in the idea of international institutions to one that has lost it.'⁵²³ The continued relevance of many international trade mechanisms has been seriously contested and there is no longer the same political impetus driving adherence to the principles of reciprocity and non-discrimination within the international trade space. Far from the forward-looking optimism which characterised the initial drafting of the GATT, more recent narratives instead bemoan the disintegration of the underlying principles of free trade.

Because international instruments such as the GATT are both the result of the contemporary hegemonic forces at play during its conception as well as a further facilitator of such forces, they have a remarkably malleable character which is an endless source of academic inspiration. This evolving role of the GATT and of the most-favoured-nation clause offers an interesting opportunity for subsequent research into the contested nature of legal concepts and the manner in which their interpretation is dependent on incumbent hegemonic forces and their respective historical trajectories.

⁵²³ Op cit note 81 at xiii.

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