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Short-term Trade or Sustainable Investment:
WTO Law Applicability to Vulnerable Economies

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Chapter One

Overview

Introduction

In the February 2015 brief, 'Advancing the Post-2015 Development Agenda Requires a Development Policy Rethink,' UNCTAD reports that a proliferation of regional international trade agreements subject developing countries to a range of rules and restrictions, at the cost of their sovereignty and with the risk of being trapped in low-value manufacturing niches (UNCTAD, 2015). Nonetheless, it is not indicated if participation in international production networks necessarily promotes economic and social development to a sustainable level, or rather instills a limited degree of industrialization, which the report coins as “thin industrialisation.” Aside from that, the WTO, being the major international trade platform, promises capacity-building of the LDCs through their integration.

This study presents and discusses both opinions. It aims to gather some evidence as to what extent international trade policies enhance the development of LDCs. How favourable is the WTO system to LDCs or would they rather adhere to other agreements on their own initiatives without the supervision of WTO; and how far are the unique features of LDCs taken into consideration while drafting a decision? WTO grants special treatment and exemptions to developing countries and LDCs *ipso iure*, meaning that those countries do not have to seek permission from a WTO body to apply them. Examples are found in the Agreement on Agriculture Article 15.2, “[...] Least developed country Members shall not be required to undertake reduction commitments” (UNCTAD, 2011).

Despite this obvious facilitation to LDCs, this particular group and not exclusively WTO members, ship only about 0.37% of global exports, according to an UNCTAD report stated in 1997 – the figures have not improved substantially until now (Wall, 1998). Developed countries and communities in the WTO have always promised to facilitate market access to developing countries, including the LDCs. However, LDCs have always complained of having less market access, especially in industries that are known for building their capacity e.g. in textile. An example can be drawn from the Agreement on Textiles and Clothing, in that it has sounded more ambitious than its own achievements since the Uruguay round.

To investigate these inquiries, the thesis examines the regulations of the WTO. It takes into account the special characteristics of LDCs vis-a-vis the special treatment WTO grants to this group of countries.

From a legal perspective, this thesis enters the WTO system, bearing in mind that the WTO is, by nature, a platform for diplomacy and negotiations through the consensus-based process its member states adopt. Hence, political and economic arguments are referred to, in order to show the depth of the legal decisions made.

The paper begins with chapter one, outlining the methodology and research plan of the thesis. It further clarifies the use of some terminology used by the WTO in relation to LDCs and the like. In chapter two, the author delves into the development of the WTO from, and before, the GATT creation in the context of globalization of trade. Following this, chapter three scrutinizes WTO's purpose and principles with regards to LDCs. Chapter four looks into the legal theoretical embedment behind the WTO system. Chapter five is dedicated to the case of LDCs in their journey and work in the WTO (from the examination period when they apply for membership until becoming a member).

Eventually, the thesis finds that the road to harness benefits for LDCs in the WTO is less tied to legal instruments and more sided towards the power-play that member states have among themselves. Despite being critical, it should be stated that it is not the WTO as an organization that is to be held accountable per se, as after all the international organization is a composite of member states that may or may not have the will to advance the agenda of LDCs more than it usually is.

Methodology

This section outlines the scientific plan behind the research.

Terminology

WTO does not embrace a definition for developed, developing countries or its sub-classifications i.e. less developed countries or small vulnerable economies. The reason being is that the WTO does not want to divide members into sub-groups among those countries. In that sense, the terminology per se does not hold a legal power. Nevertheless, countries use the term politically and economically to influence negotiations and decisions within the WTO.

For the sake of clarity, this thesis uses this terminology to align with the contextual frame and narrative of the research and its unit of analysis, which is small vulnerable countries in trade.

Research approach

The study follows a critical approach in examining the concepts it presents e.g., globalization. It aims at stimulating thoughts on how international economic and trade relations work from a legal perspective. For that reason, it utilizes a mixed approach. The thesis presents qualitative and quantitative data in order to illustrate economic figures and translate them in legal qualitative terms.

Research operationalization

In the table below, some of the key variables scrutinized in the thesis are presented. Each row represents a type of analysis.

Treaties	Sectors	Clauses	Special and differential Provisions
Multilateral	Agricultural	Trade Facilitation	▪ Longer time periods for implementing Agreements and commitments,
			▪ Measures to increase trading opportunities for developing countries,
			▪ Provisions requiring all WTO members to safeguard the trade interests of developing countries,
	Non-Agricultural	Preferential Treatment	▪ Support to help developing countries build the capacity to carry out WTO work, handle disputes, and implement technical standards.
		Most Favoured Nation	Waivers (Beyond the special and differential provisions) <i>(According to Article IX:3)</i>
		National Treatment	

Chapter Two

Contextual Frame - Globalization and International Trade

Globalization: Herald to the WTO

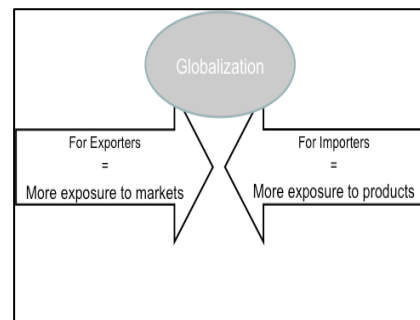
Globalization serves for the “*closer integration of the countries and peoples of the world [...] by the enormous reduction of costs [...], and the breaking down of artificial barriers to the flow of goods, services, capital, knowledge*” (Stiglitz, 2009, p. 9).¹

There has been no consensus on a precise definition for the term ‘globalization’ (Hodu, 2012). Nevertheless, the reason why globalization fits as a contextual framing for the thesis is because globalization in general terms refers to “international integration in commodity, capital and labor markets” (Bordo, Taylor, Williamson, 2003, p. 15).² In that regard, globalization is a process for increasing the flow of trade and people as well as information across borders (Europeanista, 2014).³ Since, WTO is considered a ‘global public organization,’ delinking rules WTO set from globalization would not be plausible (Hodu, 2012). After all, the WTO agreement with its various annexes was negotiated in a globalized context.

This chapter aims to explain the development of the WTO through the lens of globalization. The purpose of which is to test how beneficial it has been, in addition to the significance of the WTO system to the various stakeholders.

In a concise equation, one can deduce that liberal economic globalization for exporters provides better access to other countries’ markets and robust competition. For importers/consumers, globalization

means exposure to a wider range of products and services offered in good quality and equally lower prices (See illustration 1). Nonetheless, this equation is not that clear-cut when one takes into consideration the many capabilities’ differences hovering around states and their capabilities.



¹ Joseph Stiglitz, *Globalization and its discontents*, W.W. Norton & Company, Page 9

² P. 15

³ <https://europeanista.wordpress.com/2012/04/29/regionalisation-and-globalisation-conflicting-or-linked-processes/>

For that matter, the United Nations (UN) stressed the necessity of boosting global partnerships for development in goal number eight of the United Nations Millennium Development Goals (UNDG) (UNCTAD, 2007). To that extent, it is vital to examine development through international trade under the umbrella of globalization. It can showcase how the relationship between those developing and less privileged states and the developed ones advance in order to achieve the aspired UNDG.

⁴International trade, per se, has been around for centuries. Its seeds, and the idea of multilateralism in trade dates back even to older times (VanGrasstek, 2013) (See figure 1). The scope of international trade; however, expanded widely as well as its shape took different forms (Ekmekcioglu, 2012). Some authors go as far back as to the early Roman and Greek times. During this period, some writers at the time were suspicious about international trade, whereas others were optimistic about it. Based on the law of nations, *Jus Gentium*, Grotius, the renowned lawyer and natural philosopher, sought the resurrection of the concept of universal economy and free trade (Trebilcock, Howse, Eliason, 2013). Moving forward in time, some scholars trace “modern” globalization back to World War One (WWI). The second episode that – goes until today – commenced in the aftermath of World War two (WWII). The period between the two episodes witnessed broader integration of countries in terms of their trade (Stiglitz, 2009). By and large, the different waves of globalization were, eventually, advent to interdependence between countries – and thus, realization of international trade. This is why

c. 395 BCE	Thucydides' account of the Peloponnesian War inaugurates the Realist tradition in the theory and practice of statecraft, in which "the strong do as they will and the weak do as they must."
1532	Niccolò Machiavelli's <i>Il Principe</i> [<i>The Prince</i>] is the classic statement of realpolitik in the early modern era.
1625	Hugo Grotius's <i>De Jure Belli ac Pacis</i> [<i>On the Law of War and Peace</i>] is the first text on international law. Principally based on natural law rather than positive law, it argues for freedom of the seas.
1648	The Treaty of Westphalia ends the Thirty Years War and establishes the principle that states are sovereign and juridically equal.
1748	Montesquieu's <i>De l'esprit des lois</i> [<i>The Spirit of Laws</i>] argues for the pacific nature of commerce.
1758	Emer de Vattel's <i>Du droit des gens, ou Principes de la loi naturelle</i> [<i>The Law of Nations</i>] marks a shift from the emphasis on natural law to positive law as the foundation for international law.
1776	Adam Smith's <i>Inquiry into the Nature and Causes of the Wealth of Nations</i> is the first extended and coherent argument for the economic benefits of free trade.
1791	Alexander Hamilton's <i>Report on Manufactures</i> provides the first critique of free trade from a developing-country perspective.
1795	Immanuel Kant's essay <i>Zum Ewigen Frieden</i> [<i>On Perpetual Peace</i>] is the first call for international organizations.
1814-1815	The Congress of Vienna is the first serious attempt in the modern world to establish a system of peace based on international law and organization.
1815	Established in Vienna, the Central Commission for the Navigation of the Rhine is arguably the first regional trade organization.
1817	David Ricardo's treatise <i>On the Principles of Political Economy and Taxation</i> develops the theory of comparative advantage, providing a universal rationale for free trade.
1865	The International Telegraph Union is the first modern international organization.
1899	The International Peace Conference is held in The Hague, producing the Convention for the Pacific Settlement of International Disputes and (in 1902) the Permanent Court of Arbitration.
1919	The League of Nations and the International Labour Organization are established, both with headquarters in Geneva.

Figure 1: Key legal and political events

⁴ Figures and events in this table compiled from *The history and future of the World Trade Organization*, 2013, page 5

WTO itself promotes interdependence in trade between all states (Hodu, 2012). Carmody (2006) describes WTO law as a ‘system of interdependence.’ This is because the WTO treaty-based system combines the different interests of member states into a collective agreeable deal for all members to abide by.

The intense war-time span between WWI and WWII produced an international regime i.e., the League of Nations first followed by the United Nations in 1948 which helped to stabilize the current situation in that the world became more peaceful in general through the interdependence in international trade between states. Nevertheless, globalization connected the world in such a way that made any crisis happening in one place echo throughout the whole world’s trade system. Writing on the inter-connectedness of the world and the recent financial crisis, Shah (2014, p. 1) mentions that, “the extent of this problem has been so severe that some of the world’s largest financial institutions have collapsed.”⁵ One more feature that put developing countries in particular (and all countries in general) in a weaker position is that globalization attends to the requests of corporations and well-established investors – at least from socio-political, economic and cultural perspectives (Europeanista, 2014).

Furthermore, globalization segregated countries into two groups: developed and developing. At that time of WWII, international trade was divided primarily among three major groups. The first group were dubbed the “old” industrial economies. Countries in this group complemented market-oriented policies with liberalization under the General Agreement on Tariffs and Trade (GATT). The second group were comprised of the Soviet Union, Eastern Europe and China. Their trade regime followed a centrally-planned state-owned policy system. The third group made up the rest of the developing countries.

The third group, developing countries, comprised of many nations that had gained their political independence between 1946 and 1962. Many opted for a mixed system in which governments tended to intervene in order to encourage industrialization. In general, this led to import-substituting policies that relied on high tariffs and non-tariff barriers to protect domestic industry. It can hardly be a surprise that under these conditions the shares of industrial countries in world trade increased (above all, trade among industrial countries) while those of the centrally planned and developing economies decreased. The limited intra-regional trade links of the two latter groups could not offset the impact caused by the marginal role of international trade in these economies.

⁵ <http://www.globalissues.org/issue/1/trade-economy-related-issues> page 1

Developing countries also joined the bandwagon of international trade, in which many of them were not well-prepared to strive among the developed countries. Those less privileged nations came on board by the compelling force of globalization that instigated two world policy options: integrate or isolate. This means that a country would have to choose whether or not to join the realm of international trade to achieve integration into the world's market; if not, the country would face marginalization. In other words, those non-integrated countries would have less opportunities for attracting foreign direct investment, knowledge transfer opportunities, etc.

Despite the fast pace and ambitious path of globalization, and as a result of developing countries fictionally obliged to join the global trade movement, countries became vulnerable to external shocks, sometimes from events that they might have had no direct relation with. For instance, many well-integrated countries in global trade suffered during the two oil price shocks in 1973 and 1979 and the dotcom crisis in 2001. The problem with globalization is that it was introduced, and reinforced by modern technology and knowledge that simply was not in the hands of many countries, which is still the case today. In other words, one size fits all. In that sense, the extent to which globalization served the countries with fewer available human or technological resources is questionable. Even if at a macro-level, global estimations show positive rates of growth, some states would do better than others depending on various factors including institutional capacity, trade closeness to the world's main cities and hubs, and trade productivity.

In this context, globalization created a sense of inter-dependency in terms of trade and economic relations among countries. Furthermore, it also created an urgency for countries to join this global trade club, with disregard to their respective individual condition. The assumption was that by pooling and sharing the various factors of endowment among the different nations, comparative advantages would be utilized in a better manner for the world to sustainably grow. An idea that has been brought to light primarily by David Ricardo in 1817⁶, and is also traced to Adam Smith (1776, p. 760) in *The Wealth of Nations*, when he says: "If a foreign country can supply us with a commodity cheaper than we can make, better buy it from them."⁷

⁶ For more information on Ricardo's theory of comparative advantage in international trade, consult his publication, *On the principles of political economy and taxation*

⁷ To access an unabridged version of *The Wealth of Nations* online, visit: <http://political-economy.com/wealth-of-nations-adam-smith/> page 760

As for Ricardo's theory of comparative advantage in the context of international trade, one could challenge his argument. In the same way as social thought, some social scientists believe that in order to generalize a theory, it must apply to all cases. Comparative advantage can only apply to its full extent beneficially to all countries in international trade if the factors of production from specialized qualified human power to institutional capacity and technology are more or less equally distributed among those participating states (Ekmekcioglu, 2012). On the contrary, real-politik is far from that (Grynberg, 2012).

That is why international organizations categorize developing countries further into "less developed", and "least developing" among other descriptions given by other bodies such as the WTO with its own group: Small and Vulnerable Economies (SVEs). To draw an example, one can look at Small Islands Developing States (SIDS), a sub-classification of countries that is characterized according to their inherent weaknesses i.e., remoteness from main commercial global hubs, weak human resources and institutional capacity (UN-OHRLLS, 2015).⁸ In other terms, economies of scale in micro-states of this group range from an extreme scarcity to an almost-complete absence. The micro-states of Kiribati, Tuvalu and Niue are used as examples expanded upon below. As for Niue, it did not really entertain a thick history in comparative advantage. It has only had minor and ad hoc exports in items such as taro (ibid). Kiribati and Tuvalu once enjoyed a comparative advantage in the production and exportation of copra; nevertheless, due to low prices of compensation, the opportunity did not pay off. The same challenges apply to larger developing island states among other land-locked states. In this regard, testing Ricardo's theory of comparative advantage *ad extremum* may not qualify as a generalized theory for developing countries.

However, in summary, we can say that there is a shared sense that globalization has already contributed to economic growth and development to many countries. On the other hand, qualified concerns have been raised as to the terms of equality or equity globalization can achieve, especially in today's world of economic and political uncertainty. For instance, a majority of respondents from a recent survey conducted in Europe indicates that globalization provides opportunities for economic growth but increases social inequalities (WTO, 2011). A German Marshall Fund (2007) survey illustrates that about half of Americans and Europeans find that the idea of "freer trade" results in more job loss than job creation.⁹ Not to forget that

⁸ There is no agreement on a comprehensive list of SIDS by all organizations. For a broader list of SIDS by the UN, please visit: <http://unohrlls.org/about-sids/country-profiles/>

⁹ For a full report, find German Marshall Fund. 2007. *Perspectives on trade and poverty reduction: A survey of public opinion*, Key Findings Report

the concept of protectionism still persists in international trade policies. It is no wonder that some authors consider globalization and international trade Pareto-optimal in the sense that one country may gain to the detriment of another.

Whichever side one takes with regards to globalization, it yields both negative and positive effects (WTO, 2011). Fountaining from this generic context, two trends emerged on the surface of international trade: regionalization and an attempt to govern international trade through WTO. The following section discusses regionalization as to whether it is a response to the drawbacks of globalization or a threat to international trade arising from the globalized regime i.e., WTO.

From globalization to regionalization of trade agreements

Regional arrangements were like street gangs, not nice, but if you live in the neighbourhood you had better join up. Director General Mike Moore (WTO, 1999).¹⁰

Regionalization has been gaining paramount weight during the last decades.

Between 1948 and 1994, GATT members reported a total of 108 regional integration

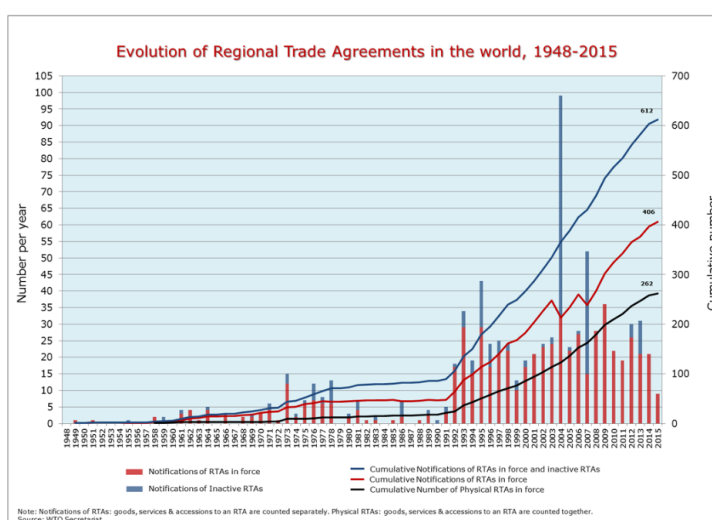


Image 1: Total RTAs notified to the GATT/WTO

agreements (RIAs) relating to trade in goods, of which 38 had been concluded in the five last years of the GATT (WTO, 2013). A 2004 UNCTAD report found that almost more than half of the world's trade takes place through regional trade agreements (RTAs) (Majluf, 2004). By the end of 2005, if all agreements planned or still currently under negotiation come into effect, the total number of RTAs might well approach or exceed 300 (WTO, 2013). Already about 52% of them have been notified to the GATT/WTO after 1995 (Majluf, 2004). Furthermore, WTO data states that up to as recent as 2014 there are 377 preferential trade agreements (PFA) in force and 200 under negotiations (WTO 2014 in Dieter 2014). For such

¹⁰ To access the full speech, please visit: https://www.wto.org/english/news_e/spmm_e/spmm03_e.htm

significant weight regionalization has (See image 1), the trend has been controversial in relation to the notion of global trade liberalization.

To give a brief historical overview of how this phenomenon came into existence, we must go back to WWII. One recalls that the policy and legal mindset that governed in the early years subsequent to WWII relied on a new major power; that is, the United States of America (USA). Exhausted from war, the European continent depended on the US to kick start its economic engine towards socio-political integration (Wang, 2010). This provided Western Europe with the support needed to come together in peace for the reconstruction of Europe. Nevertheless, after succeeding to integrate, the now European Union (EU) became politically independent and self-centered around its identity. Authors suggest that the motives behind regionalization are primarily security concerns, stability and identity (Europeanista, 2014). Those are among the most powerful reasons for countries to form a grouping.

Regionalization is also becoming a norm for developing countries. A recent example is the CARIFORUM of the Caribbean which is comprised of developing nations and small islands developing states (SIDS), even having some “least developed countries” (LDCs) among them e.g. Haiti. Another group that has most of its countries classified as high middle-income countries is Mercosur of South America (European Commission, 2014).¹¹ The reason being is that, first, those countries find in regional groupings a forum that can give them more strength when negotiating trade agreements and the legal conditions behind them (WTO, 2013). Besides, as President Frei from Chile says, when speaking about Mercosur, “there is a new concept of integration, following many years of nationalism that divided us. The entire region is characterized by one common economic strategy of opening to the world market” (ibid, p. 1).¹² On the contrary, one can argue that when a small country joins a group e.g., CARIFORUM, it loses its individual voice as it will abide by the efforts of the group. Take for instance the example of Jamaica that would normally negotiate foreign trade agreements through its Ministry of Foreign Affairs and Foreign Trade. However, it now has to align itself with the common interests of the CARICOM and may cede its negotiation powers to a regional negotiator chosen by the forum and not its ministry (Moerland, 2013).

Second, the so-called “intra-industry specialization” trend is augmenting. This means that developed countries and groupings thereof tend to trade more among and within themselves,

¹¹ For more, consult: <http://ec.europa.eu/trade/policy/countries-and-regions/regions/mercosur/>

¹² For full access, http://engagedforums.com/discussions/WTO_forum/Discussions/Regionalization_vs_Globalization/wtoforum/773.1?redirCnt=1&nav=tosReport&mobile=y page 1

since high-end production requires a capacity and high GDP that many developing countries down to LDCs and SVEs do not entertain. In fact, well over two thirds of Europe's exports and imports are now intra-west European exchanges. To the contrary, EU's trade with the developing countries witnessed decline in relative importance (UN/ECE, 1984). To some extent, this specialization trend forced developing countries to conglomerate. This allows them as groupings to offer "investment packages," thus making their position more attractive to foreign direct investments (FDI). This is a quick fix to elevate the GDP of those developing countries, even if those packages through the clusters cannot solely be a sustainable solution in itself.

The question is yet to be answered as to whether regional trade blocs resolve matters of international trade more justly or rather complicate international trade (UNCTAD, 2014b). In the 2014 *World Investment Report* by UNCTAD, a foresight on how many new bilateral investment treaties relationship was to be created from six major megaregional agreements. It projected an overlap with 140 existing International Investment Agreements (IIAs). Additionally, 200 new bilateral investment-treaties could be created. This would ostensibly marginalize third party-states or at least most likely complicate trade flow – the effect known as "Spaghetti bowl" (See image 2).¹³ Agreement-wise, the Uruguay round produced a daunting legal list of Agreements for the

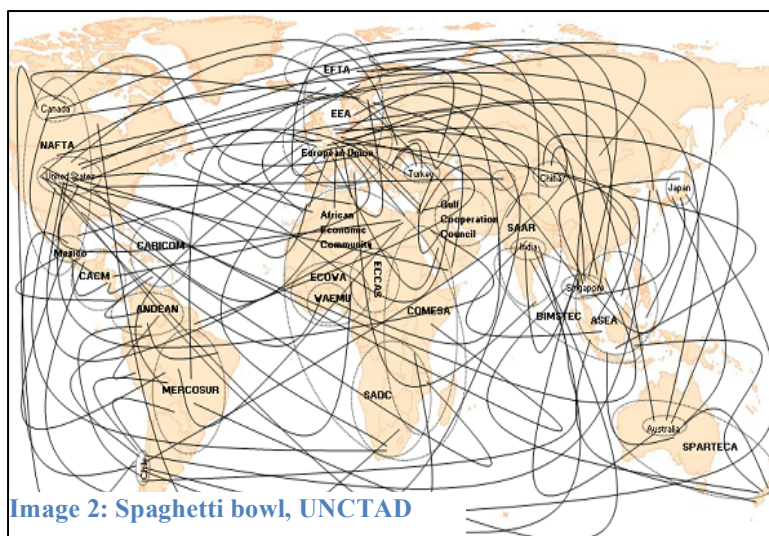


Image 2: Spaghetti bowl, UNCTAD

WTO, between services to goods to intellectual property rights (Trebilcock, Howse, Eliason, 2013). To this extent, the fear of having a mushroom-like cloud of regional blocs as well as many intersecting treaties is that this might cause a paralysis in advancing with flexible, international cross-border trade and also the development of the poorer countries. The result of which is what authors call the "maze of regulatory regimes" or "continued splintering of trading arrangements" when WTO rules might conflict with regional trade agreements.

¹³ For a comprehensive review on the Spaghetti bowl phenomenon by UNCTAD, please read this publication: http://unctad.org/en/Docs/itcdtab28_en.pdf

On that note, Paul Krugman (1991) claims that the rise of regionalization has created a fractionated global economy. He argues that regional integration, while bringing several countries together, causes trade diversion through raising external tariffs between the many trading blocs (the developed and developing ones). Nevertheless, several economists and lawyers question the extent of this model. They suggest that the more countries which have tariff-free access to another country's market, the share of the goods subject to tariffs decreases. This results in reducing the distortionary effect of a given tariff (Sinclair and Vines, 1995). In his speech in front of the WTO, DG Moore narrated that the idea of regionalism and APEC, as a case in point, are aligned with the WTO and multilateralism (WTO, 1999). WTO and its antecedent, the GATT, already partly resolved the tendency of states to regional agreements and their compliance to the international rules through 'exceptions' for regional trading agreements. Additionally, Customs Unions, which are members in their own rights, are also separately represented as individual countries e.g., the European Union, which the European Commission represents at the WTO, though all EU countries are also WTO members (WTO, 1997).

In that vein, we observe that there is a divide on how international trade progresses. International institutions such as WTO endeavours accomodating the different trends from national up to regional forms in an international structure (The international economics study center, 1998). This is why the 1979 "Decision on Differential and More Favourable Treatment" (the "Enabling Clause") permits developing Members to enter into regional or global arrangements among themselves. The reason being is to mutually reduce and then eliminate tariff. However, this could be done only in accordance with criteria prescribed by the Ministerial Conference. To this end, it is seen the compromise and flexibility WTO tries to adopt in its embracement of the different groups of countries (WTO, 2015a).

Globalization as such has many faces. Between developed and developing among the several other sub-groupings between them, goods and services in trade move from one country to the other, from one region into another. International trade is dramatically becoming centered around regional blocs. Obviously, that a total of 227 regional trade agreements including all members of the WTO, between 1995 and 2007, being signed showcases the will of many nations to trade through regional coalitions (Europeanista, 2014). Challenges persist, but more importantly benefits can spread-out across the world with the right international governance and international legal compliance.

Chapter Three

WTO: An attempt for international peaceful trade

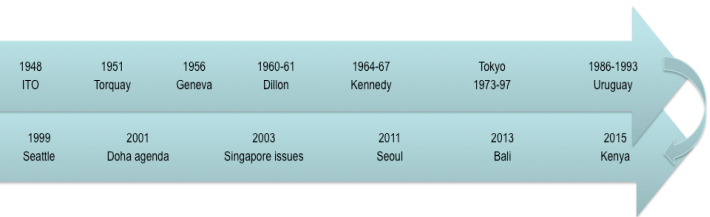
Historical Overview: From GATT to WTO

“The WTO’s creation [...] marked the biggest reform of international trade [...]. It also brought to reality — in an updated form — the failed attempt in 1948 to create an International Trade Organization” (WTO, 2015b, p. 1).¹⁴

In order to comprehensively understand the evolution of WTO, one has to go back to its predecessor, the General

Agreement on Tariffs and Trade (GATT) (See illustration 2).

In 1948, GATT was created alongside the International Monetary Fund and the World Bank. While GATT had a much narrower focus, as its name already implies i.e. tariffs (See illustration 3)¹⁵, WTO came as an ambitious over-arching body to govern international trade.



Year	Subjects covered
1947	Tariffs
1949	Tariffs
1951	Tariffs
1956	Tariffs
1960-1961	Tariffs
1964-1967	Tariffs and anti-dumping measures
1973-1979	Tariffs, non-tariff measures, “framework” Agreements
1986-1994	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO, etc.

Illustration 3: GATT Rounds and subjects covered

Also, GATT focused on trade in goods unlike the WTO, which regulates trade in goods and services (Anderson and Cavanagh 1997). Notwithstanding, WTO stills wishes to maintain a particular focus on trade goods and services-related issues rather than expanding its mandate. A good example here is the US which tried to integrate labor rights in the WTO during the Uruguay round. It should be noted; however, that despite the uni-dimensional focus of GATT, its Tokyo round produced a wider series of actions to the credit of GATT (The international economics study center, 1998) (See table below).

GATT Activities in addition to tariffs	Enforcement
Subsidies and Countervailing Measures	Binding

¹⁴ To access the full article, https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm page 1

¹⁵ For more information on GATT, please click on https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm

Anti-dumping	Binding
Technical Barriers to Trade	Binding
Government Procurement	Binding
Import Licensing Procedures	Binding
Bovine Meat Arrangement	Plurilateral/non-binding
Trade in Civil Aircraft	Plurilateral/non-binding
Customs Valuation	Plurilateral/non-binding

During the Geneva session in 1947, member states planned to accomplish two tasks: to work out a draft of the Havana Charter of the International Trade Organization (ITO) and to progress on the tariff negotiations, which fell under the mandate of GATT. 23 countries signed the GATT, which came to life, on the contrary, the Havana Charter was never to materialize (The international economics study center, 1998).

Due to the fact that the Havana Charter and its robust ITO threatened US sovereignty, according to the US Senate, the US Congress refused to ratify it. This made the GATT, an “interim” living creature for decades in a hope that the Havana Charter of the ITO would be ratified (Toye, 2003; Stanley, 2009). The legal threat that hindered the Charter from passing was caused by provisions under Chapter V regulating anti-competitive policies of private businesses. It has to be added; however, that prior to fading out, the US backed the ITO Havana charter. But, it was then that the charter got rejected by other European countries due to the extensive rights it bestows upon investors. For instance, the Czech government voted against giving German investors the same treatment as investors of other countries (Singh, 2003).

We will see, nevertheless, that in comparison to what the WTO provides, “the scope of investment policies under the Havana Charter was rather limited” (ibid) (See table). The charter, for instance, did not incorporate performance requirement rules and a dispute settlement mechanism between countries and foreign investors.

	GATT	WTO
Name	General Agreement on Tariffs and Trade	World Trade Organization
Year of establishment	1948	1995
Purpose	To strengthen international trade.	To govern GATT and international trade practices.
Framework	No permanent structure or framework.	Has a permanent structure.
Scope	Trade in goods.	Trade in goods; trade in services and trade-related aspects of intellectual property rights.
Dispute resolution	Has a permanent appellate body to review findings and settle disputes.	Disputes Settlement Mechanism is set with time frame for resolving disputes.

Eventually, had the ITO been established and mandated, it would have played a decisive role in international trade including contentious issues e.g., foreign direct investment (under article 11 and 12).¹⁶ This could have happened, had it come at the time of the internationalist Roosevelt/Truman era. However, the McCarthy era was beginning to cast its shadows when the US Congress did not ratify it.

In all cases, humble in its mandate, GATT became the governing agreement for international trade for several decades to come. The agreement had four fundamental principles holding it, which are mentioned briefly below:

- I) Most-Favoured-Nation Treatment (MFN) Art. I – Member states are bound to grant the same treatment to foreign products no less favourable than those they provide to their national ones;
- II) National Treatment Principle Art. III – This principle entails that once a product enters into a country, it must be treated equally to domestic ones. Hence, for instance, no obstacle should hinder the flow of the products or confiscate them once they are inside the market;
- III) Anti-Non-Tariff Barriers Principle – As protection is sometimes vital to economies but can also negatively impact trade, this principle states that protection should be exclusively given – in limited cases – through customs tariffs and not through other commercial measures; and
- IV) Tariff Concession Principle – These concessions are sometimes referred to as "bindings." They include time-plan to tariff reductions through to the elimination of non-tariff trade restrictions. This principle is intended to facilitate trade.

Each of these principles implied a rule that must be implemented by all member states of the GATT. They were intended to benefit both developing and developed countries. Particularly, the MFN has been a welcomed principle by developing countries which through this principle should have good trading conditions regardless of the location.

The passing of heritage from GATT to the new ambitious WTO

To arrive at what is now the WTO, members of GATT entered into a multi-year conference – eight years of negotiations – until 1995 when the Uruguay round replaced GATT with the WTO. Today, the WTO has 160 member states (MS).¹⁷ WTO rules apply to over 90% of

¹⁶ For a full text of the Havana Charter, please visit: https://www.wto.org/english/docs_e/legal_e/havana_e.pdf

¹⁷ The full list of members of WTO are accessible through:
https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

international trade (Ekmekcioglu, 2012). Certainly, with such wide coverage, WTO has been criticized on its mechanism (Toye, 2003).

It was questioned whether WTO was necessary or GATT-like focused institutions could have continued more effectively. On that note, Anderson and Cavanagh (1997) compared the tariff reduction effect pre and post GATT to measure its international significance on trade. They wrote that resulting from the Uruguay round, for developed countries the average tariff reduction was stated to be 38%, thus reducing the worldwide average to 3.9% from its 6.3% following WWII. Whereas, on the other hand, WTO has been constantly blamed for favouring the powerful countries against the developing and poor ones (Stanley, 2009).

Notwithstanding the argument posed by Anderson and Cavanagh in 1997, the counter-argument is that GATT was also perceived as the “rich men’s club.” Not that it did not include developing or rather the poor countries as members, but because there was less incentive for them to join (Toye, 2003). Furthermore, not only GATT was narrower in scope than WTO, but it was also primarily a yield of American and British efforts (The international economics study center, 1998). In that sense, developing countries’ voices were not really widely represented – particularly in comparison with the latter WTO. It is for the same reason positively stated hereabove that GATT solely focused on reducing the tariffs of industrial/manufacturing goods. This was not of a major importance; however, to under-developed countries which yet had a long way to industrialize.

Principles of the WTO

WTO provides *"the common institutional framework for the conduct of trade relations among its members in matters related to the agreements and associated legal instruments included in the Annexes"* (WTO, 1995, p. 1).¹⁸

Just as GATT had its four fundamental principles, WTO is also bound by principles. Nonetheless, given the wider mandate of WTO, it is charged with more complexity in its principles. These are:

- Non-discriminatory - MFN and NT principles must apply;
- Reciprocal – Granting automatic access in markets among members;
- Liberalization - by reducing tariffs and other trade barriers;

¹⁸ Full article, https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm page 1

- Predictable – A very unique principle, by means of which countries have to compensate members if they renege, should they breach "bind" their commitments by raising tariffs;
- Fair – Competition practices have to be fair. Thus, export subsidies and dumping prices are discouraged; and
- Assistance to developing countries – Preferences are given to those less developed countries whereby more time and flexibility is given to them until they adapt to the agreements.

We can see in comparison with the GATT principles that WTO already inherited some essential principles from GATT e.g. MFN and NT. However, in order to attract wider participation of developing countries, WTO placed particular emphasis on fairness and specific provisions for developing countries.

Purpose of the WTO

“WTO deals with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible” (WTO, 2015b, p. 1).¹⁹

When one accesses the website of the WTO, he/she will notice a text in the bottom-left corner stating, how far did WTO succeed in making trade flows without obstacles. In a certain manner, this comment will be scrutinized later. Nonetheless, the fact that WTO aims at what we can call “trade freedom” or the most normative, also legal, word “trade facilitation” sends out a strong appeal to member states to support the WTO.

To facilitate and liberalize trade, according to article III of the WTO, the organization carries out a multitude of actions (WTO Public Forum, 2007) – from administration to resolving disputes, as enumerated below:

1. Administratively, WTO manages its agreements;
- 2A. Politically, WTO undertakes various hefty and lengthy negotiations to reach consensus on trade rules;
- 2B. Cooperation and coordination with other regional and international bodies
3. WTO also monitors transparency regulations within member states trade policies vis-a-vis their obligations towards WTO agreements;

¹⁹ To access the WTO agreement, please click on: https://www.wto.org/english/docs_e/legal_e/04-wto.pdf page 1

4. WTO also provides technical assistance in areas related to trade e.g. training, legal advice, research, capacity-building; and
5. Dispute settlement – WTO mediates and settles trade disputes for its Member States.

To mention some of the points stated hereabove, WTO has several agreements in various trade fields – ranging from goods to services and from clothes to agriculture to investment. In terms of negotiations, WTO has several trade negotiation groups, usually recognized legally e.g. LDCs and some used for research, economic or negotiations' purposes e.g. SVEs (See table below) (WTO, 2014). In the table below, we can easily notice how the WTO, unlike its predecessor, has evidently more developing countries vis-a-vis developed ones.

Groups	Description	Countries
ACP	African, Caribbean and Pacific countries with preferences in the EU Nature: geographical Issues: preferences, etc www.acpsec.org	WTO members (60): Angola, Antigua & Barbuda, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Rep., Chad, Congo, Côte d'Ivoire, Cuba, Congo (Democratic Rep.), Djibouti, Dominica, Dominican Rep., Fiji, Gabon, Gambia, Ghana, Grenada, Guinea, Guinea Bissau, Guyana, Haiti, Jamaica, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Papua New Guinea, Rwanda, St Kitts & Nevis, St Lucia, St Vincent & the Grenadines, Samoa, Senegal, Sierra Leone, Solomon Islands, South Africa, Suriname, Swaziland, Tanzania, Togo, Tonga, Trinidad & Tobago, Uganda, Vanuatu, Zambia, Zimbabwe WTO observers (8): Bahamas, Comoros, Equatorial Guinea, Ethiopia, Liberia, São Tomé and Príncipe, Seychelles, Sudan Not WTO members or observers (11): Cook Islands, Eritrea, Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Palau, Somalia, Timor-Lesté, Tuvalu
African group	All African WTO members Nature: regional Issues: general	WTO members (42): Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Rep., Chad, Congo, Congo (Democratic Rep.), Côte d'Ivoire, Djibouti, Egypt, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Swaziland, Tanzania, Togo,

Groups	Description	Countries
		Tunisia, Uganda, Zambia, Zimbabwe
Asian developing members	Asian developing WTO members. Announced in document WT/GC/COM/6 of 27 March 2012 Nature: regional Issues: general	WTO members (31): Bahrain, Bangladesh, Brunei Darussalam, Cambodia, China, Hong Kong China, India, Indonesia, Jordan, Rep. Korea, Kuwait, Kyrgyz Rep., Laos, Macao China, Malaysia, Maldives, Mongolia, Myanmar, Nepal, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Singapore, Sri Lanka, Chinese Taipei, Thailand, Turkey, United Arab Emirates, Viet Nam
APEC	Asia Pacific Economic Cooperation forum Nature: regional Issues: general www.apec.org	WTO members (21): Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong China, Indonesia, Japan, Rep. Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Chinese Taipei, Thailand, US, Viet Nam
ASEAN	Association of Southeast Asian Nations Nature: regional Issues: general www.asean.org	WTO members (10): Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam
EU	European Union, in the WTO officially called the European Communities Nature: customs union Issues: general ec.europa.eu	WTO members (29): Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom + European Union
Mercosur	Common Market of the Southern Cone (Mercosul in Portuguese) Nature: customs union Issues: general www.mercosur.int	WTO members (4): Argentina, Brazil, Paraguay, Uruguay
G-90	African Group + ACP + least-developed countries Issues: general	WTO members (69): Angola, Antigua & Barbuda, Bangladesh, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cambodia, Cameroon, Cabo Verde, Central African Rep., Chad, Congo,

Groups	Description	Countries
		Côte d'Ivoire, Cuba, Congo (Democratic Rep.), Djibouti, Dominica, Dominican Rep., Egypt, Fiji, Gabon, Gambia, Ghana, Grenada, Guinea, Guinea Bissau, Guyana, Haiti, Jamaica, Kenya, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Morocco, Mozambique, Myanmar, Namibia, Nepal, Niger, Nigeria, Papua New Guinea, Rwanda, St Kitts & Nevis, St Lucia, St Vincent & the Grenadines, Samoa, Senegal, Sierra Leone, Solomon Islands, South Africa, Suriname, Swaziland, Tanzania, Togo, Trinidad & Tobago, Tunisia, Uganda, Vanuatu, Yemen, Zambia, Zimbabwe WTO observers (10): Afghanistan, Bahamas, Bhutan, Comoros, Equatorial Guinea, Ethiopia, Liberia, São Tomé & Príncipe, Seychelles, Sudan Not WTO members or observers (12): Cook Islands, Eritrea, Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Palau, Somalia, South Sudan, Timor-Lesté, Tuvalu
Least developed countries (LDCs)	Least developed countries: the world's poorest countries. The WTO uses the UN list (pdf) available here: www.un.org/en/development/desa/policy/cdp/ldc_info.shtml Issues: general Official website: www.ldcgroups.org	WTO members (35): Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Rep., Chad, Congo (Democratic Rep.), Djibouti, Gambia, Guinea, Guinea Bissau, Haiti, Laos, Lesotho, Madagascar, Malawi, , Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Samoa, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, Vanuatu, Yemen, Zambia WTO observers (8): Afghanistan, Bhutan, Comoros, Equatorial Guinea, Ethiopia, Liberia, São Tomé & Príncipe, Sudan
Small, vulnerable economies (SVEs) — agriculture	This list is based on sponsors of proposals. See also: list in Annex I of the 6 December 2008 revised draft agriculture modalities, and footnote 11 (paragraph 65) and paragraph 157–159. Issues: agriculture	WTO members (15): Barbados, Bolivia, Cuba, Dominican Rep., El Salvador, Fiji, Guatemala, Honduras, Maldives, Mauritius, Mongolia, Nicaragua, Papua New Guinea, Paraguay, Trinidad & Tobago

Groups	Description	Countries
Small, vulnerable economies (SVEs) — non-agricultural market access (NAMA)	This list is based on sponsors of proposals. See also: definition in paragraph 13 of the 10 July 2008 revised draft NAMA modalities Issues: NAMA	WTO members (20): Antigua & Barbuda, Barbados, Bolivia, Dominica, Dominican Rep., El Salvador, Fiji, Grenada, Guatemala, Honduras, Jamaica, Maldives, Mongolia, Nicaragua, Papua New Guinea, Paraguay, St Kitts & Nevis, St Lucia, St Vincent & the Grenadines, Trinidad & Tobago
Small, vulnerable economies (SVEs) — rules	Sponsors of TN/RL/W/226/Rev.5 Issues: Rules (fisheries subsidies)	WTO members (15): Barbados, Cuba, Dominica, Dominican Rep., El Salvador, Fiji, Honduras, Jamaica, Maldives, Mauritius, Nicaragua, Papua New Guinea, St Lucia, St Vincent & the Grenadines, Tonga
Recently acceded members (RAMs)	Recently acceded members (RAMs), ie, countries that negotiated and joined the WTO after 1995, seeking lesser commitments in the negotiations because of the liberalization they have undertaken as part of their membership agreements. Excludes least-developed countries because they will make no new commitments, and EU members Issues: general	WTO members (20): Albania, Armenia, Cabo Verde, China, , Ecuador, FYR Macedonia, Georgia, Jordan, Kyrgyz Rep., Moldova, Mongolia, Oman, Panama, Russian Federation, Saudi Arabia, Chinese Taipei, Tajikistan, Tonga, Ukraine, Viet Nam
Low-income economies in transition	Seeking to secure the same treatment as least-developed countries. (Georgia formally withdrew, but in the agriculture draft the full list is: Albania, Armenia, Georgia, Kyrgyz Rep, Moldova) Issues: Agriculture	WTO members (3): Armenia, Kyrgyz Rep., Moldova
Cairns	Coalition of agricultural	WTO members (20): Argentina, Australia,

Groups	Description	Countries
group	exporting nations lobbying for agricultural trade liberalization Issues: agriculture	Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, Uruguay, Viet Nam
Tropical products group	Coalition of developing countries seeking greater market access for tropical products Issues: Agriculture	WTO members (8): Bolivia, Colombia, Costa Rica, Ecuador, Guatemala, Nicaragua, Panama, Peru
G-10	Coalition of countries lobbying for agriculture to be treated as diverse and special because of non-trade concerns (not to be confused with the Group of Ten Central Bankers) Issues: agriculture	WTO members (9): Chinese Taipei, Rep. Korea, Iceland, Israel, Japan, Liechtenstein, Mauritius, Norway, Switzerland
G-20	Coalition of developing countries pressing for ambitious reforms of agriculture in developed countries with some flexibility for developing countries (not to be confused with the G-20 group of finance ministers and central bank governors, and its recent summit meetings) Issues: agriculture www.g-20.mre.gov.br	WTO members (23): Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela, Zimbabwe
G-33	Also called “ Friends of Special Products ” in agriculture. Coalition of developing countries pressing for flexibility for developing countries to undertake limited market opening in agriculture	WTO members (46): Antigua & Barbuda, Barbados, Belize, Benin, Bolivia, Botswana, China, Congo, Côte d’Ivoire, Cuba, Dominica, Dominican Rep., El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Rep. Korea, Madagascar, Mauritius, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, St Kitts & Nevis, St Lucia, St Vincent & the Grenadines, Senegal, Sri Lanka, Suriname,

Groups	Description	Countries
	Issues: agriculture	Tanzania, Trinidad & Tobago, Turkey, Uganda, Venezuela, Zambia, Zimbabwe
Cotton-4	West African coalition seeking cuts in cotton subsidies and tariffs Issues: agriculture (cotton)	WTO members (4): Benin, Burkina Faso, Chad, Mali
NAMA 11	Coalition of developing countries seeking flexibilities to limit market opening in industrial goods trade Issues: NAMA	WTO members (10): Argentina, Brazil, Egypt, India, Indonesia, Namibia, Philippines, South Africa, Tunisia, Venezuela
‘Paragraph 6’ countries	Group of countries with less than 35% of non-agricultural products covered by legally bound tariff ceilings. They have agreed to increase their binding coverage substantially, but want to exempt some products. (In paragraph 6 of the first version of the NAMA text, later paragraph 8.) Issues: NAMA	WTO members (12): Cameroon, Congo, Côte d’Ivoire, Cuba, Ghana, Kenya, Macao China, Mauritius, Nigeria, Sri Lanka, Suriname, Zimbabwe
Friends of Ambition (NAMA)	Seeking to maximize tariff reductions and achieve real market access in NAMA. (Some nuanced differences in positions.) Issues: NAMA	WTO members (35): Australia, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Rep., Denmark, Estonia, EU, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Rep., Slovenia, Spain, Sweden, Switzerland, UK, US
Friends of Anti-Dumping Negotiations (FANs)	Coalition seeking more disciplines on the use of anti-dumping measures Issues: Rules (anti-dumping)	WTO members (15): Brazil, Chile, Colombia, Costa Rica, Hong Kong China, Israel, Japan, Rep. of Korea, Mexico, Norway, Singapore, Switzerland, Chinese Taipei, Thailand, Turkey
Friends of	Informal coalition seeking	WTO members (11): Argentina, Australia, Chile,

Groups	Description	Countries
Fish (FoFs)	to significantly reduce fisheries subsidies. From time to time other WTO members also identify themselves as “Friends of Fish” ⁴⁴ Issues: Rules (subsidies)	Colombia, Ecuador, Iceland, New Zealand, Norway, Pakistan, Peru, US
‘W52’ sponsors	Sponsors of TN/C/W/52 , a proposal for “modalities” in negotiations on geographical indications (the multilateral register for wines and spirits, and extending the higher level of protection beyond wines and spirits) and “disclosure” (patent applicants to disclose the origin of genetic resources and traditional knowledge used in the inventions). The list includes as groups: the EU, ACP and African Group. * Dominican Rep. is in the ACP and South Africa is in the African Group, but they are sponsors of TN/IP/W/10/Rev.2 on geographical indications Issues: Intellectual property (TRIPS)	WTO members (109): Albania, Angola, Antigua & Barbuda, Austria, Barbados, Belgium, Belize, Benin, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Rep., Chad, China, Colombia, Congo, Côte d’Ivoire, Croatia, Cuba, Cyprus, Czech Rep, Congo (Democratic Rep.), Denmark, Djibouti, Dominica, Dominican Rep.*, Ecuador, Egypt, Estonia, EU, Fiji, Finland, FYR Macedonia, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guinea, Guinea Bissau, Guyana, Haiti, Hungary, Iceland, India, Indonesia, Ireland, Italy, Jamaica, Kenya, Kyrgyz Rep., Latvia, Lesotho, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritania, Mauritius, Moldova, Morocco, Mozambique, Namibia, Netherlands, Niger, Nigeria, Pakistan, Papua New Guinea, Peru, Poland, Portugal, Romania, Rwanda, St Kitts & Nevis, St Lucia, St Vincent & the Grenadines, Senegal, Sierra Leone, Slovak Rep., Slovenia, Solomon Islands, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, South Africa*, Tanzania, Thailand, Togo, Tonga, Trinidad & Tobago, Tunisia, Turkey, Uganda, United Kingdom, Zambia, Zimbabwe
Joint proposal	Sponsors of TN/IP/W/10/Rev.2 proposing a database that is entirely voluntary Issues: TRIPS GI register	WTO members (20): Argentina, Australia, Canada, Chile, Costa Rica, Dominican Rep., Ecuador, El Salvador, Guatemala, Honduras, Israel, Japan, Korea, Mexico, New Zealand, Nicaragua, Paraguay, Chinese Taipei, South Africa, US

Table 2: WTO negotiation groups per issues and countries/regions. Source: WTO website

As good and comprehensive for the WTO as it might look, the organization happens to witness recurrent challenges throughout the years (VanGrasstek, 2013). For example, countries, by virtue of their different individual characteristics, may prefer to choose a unilateral route in trade negotiations or preferential trade agreements (PTA). This paradoxical nature of WTO goes beyond the nature of WTO itself. It has to do with the nature of trade per se. After all, trade is a bilateral occurrence. The conditions negotiated in the WTO intend the opening up of markets from one country into another for a product (good or service). The necessity of WTO emanates especially from the fact that more than two countries may be involved in manufacturing the respective product. Rules of origin, for that matter, do exist, to trace back and specify the origin of this product. Therefore, it can be concluded that WTO, conflictually but understandably, is a multilateral treaty imposing rights and obligations of a bilateral nature (Y. M. Wu, 2009).

Tentative conclusion

In previous parts of the study, we have discussed international trade through the lens of globalization. We have also followed through on the discussion of how far globalization has evolved: into fragmented regional foras or a uniform international regime (WTO/GATT). We have seen that WTO has brought a much broader voice to developing nations, with even more sub-groupings e.g., SVEs, which is one reason why those less-privileged countries became convinced of joining the WTO. The open question now concerns how member states – and particularly developing countries amongst them – comply with WTO and the legal theoretical rationale behind their compliance. Furthermore, how do they approach WTO as an international organization when they cede their national law power to the WTO law. This is the subject matter of the coming chapter.

Chapter Four

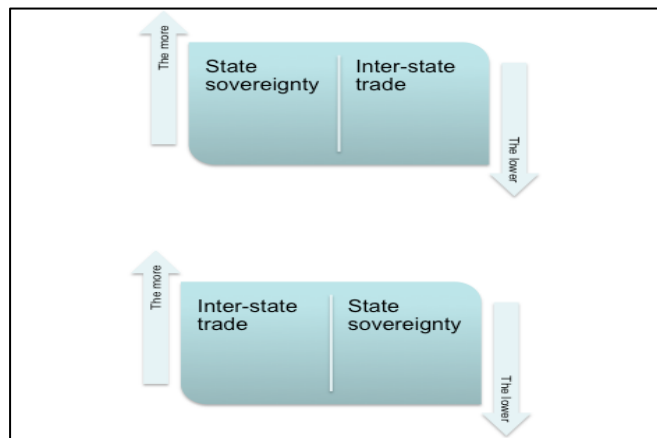
A Vice or A Virtue: WTO Theories of Compliance

Once eloquently said by Thucydides in c.395 BC, “*The strong do as they will and the weak do as they must*”²⁰ (VanGrasstek, 2013, p. 5)

Does the same apply when states follow WTO rules? We will investigate this statement in this chapter through the notion of sovereignty in relation to international trade. The purpose of which is to see if WTO challenges states’ domestic systems or reinforces a winning compromise for all. In doing so, we will see how the body of WTO law has developed within the legal theoretical context. The importance of this chapter comes from the fact that a huge body of academia focuses on comparing empirical data when it comes to WTO, as such skipping scholarly discussions on the essence of the principles WTO stands upon. Thenceforth, we saw it relevant to bring the theoretical approaches of WTO. In doing so, we will be able to see how developed vis-a-vis developing countries perceive the organization.

Sovereignty vs. International trade

The issue we explore here is the question of sovereignty of the state in relation to inter-state trade. To begin with, throughout the history of nations, states have been the prime and superior actor in governance and law making and enforcement. In fact, at one point, Michael Zürn in the 1990s noted that it is impossible to regulate international trade beyond the state, the reason being is the power states enjoy (Dieter, 2014). Not so long ago, in 1994 during the *Great Sovereignty Debate*, US government officials emphasized that, ‘*no international body can require the US to do anything.*’ The US Congress



furthermore declared that it would not accept ratifications to section 301, that authorises the US Trade Representative (USTR) to react against trade barriers imposed by other countries. Even the European Community (EC) failed at that time, under the GATT, to challenge the US based on Article 23 of the DSU.

Thus, it is clear that nations entertained higher degrees of integrity and power over their relations. However, with economic cost-benefit calculations, this balance shifted. Inter-state

²⁰ Craig VanGrasstek, History and Future of the World Trade Organization, 2013, p. 5

trade and economic interests became the panacea-like route for opposing countries and regions to come together through regional/international forums to reach a peaceful settlement of disputes. This was seen as a more prudent way rather than invading or bombarding a place for its resources. WTO was an expression of this idea or better to say this hard balance between states' sovereignty and trade liberalization. At the WTO itself, the strict national concept of sovereignty was criticized. Arbitrators of the *EC-Bananas* challenged the rigidity of sovereignty as a concept that nations can sometimes use as a protection shield, especially in relation with countermeasures that the Arbitrators viewed as an instrument of coercion.²¹ Not to forget also, the Agreement on Sanitary and Phytosanitary Standards (SPS) that relates to country's domestic food supply. It has been criticized for the centrality of the state's own sovereignty, that is translated into its own justification and allowable risk in maintaining levels of protection (Trebilcock, Howse, Eliason, 2013). This is to name few examples.

The intersection between trade and sovereignty in international trade law dates back to long before the WTO was established. In the 18th and the 19th centuries, opening up the markets was encouraged, as is similar nowadays. Nevertheless, the motive behind trade was different. The mercantilist doctrine explains this well. In these mid-centuries, trade was seen as interchangeable with power (VanGrasstek, 2013). The more exports a country can make, while importing as little as possible can help a country accumulate wealth i.e. gold and silver which will then translate into a greater army. Therefore, trade was opened half-way between countries, with a desire to minimize imports. Time passed and the British hegemonic empire enforced its bilateral legal manifestation upon the world. Moving closer to the present, the US lead the world into the GATT, the precursor to the WTO as we earlier discussed. This narrative signals more than one important message. First, trade and sovereignty have always been linked. Second, the most powerful countries/empires lead the way in shaping international trade.

In general terms, this vignette allows us to imagine the frustration, as well as the tension many less developed and developing countries have had due to the control powerful countries have over the process within which dynamics of trade operates. This can be amplified through DS when often "small claims" from small countries come. As a result, many small states, e.g., the micro-states of the western Pacific, envisaged to use their own domestic sovereignty as a trade service. For instance, domain names for internet (ex. .tv for Tuvalu, .nu for Niue) as well as flags of convenience for shipping as in the Marshall Islands have been sold out. Some

²¹ EC-Bananas Arbitration Report, WT/DS27/ARB/ECU, paragraph 76.

small countries even use their sovereignty to run attractive financial centers for private businesses. The Cook Islands and Vanuatu are two significant examples in their region, the Pacific, in this context. Despite this, there is a debate surrounding the legality of many financial activities taking place there; in many instances island countries are used as hubs for money laundering, among other nefarious activities (Unger, Ferwerda, 2008), which is why WTO tries to limit making too many concessions before a country enters into it (UNCTAD, 2001). This picture shows how various attempts by small countries were exercised using their “controllable” sovereignty due to their weaker international stance vis-a-vis big countries.

For this reason, throughout the 20th and 21st centuries various attempts were made so that all states, big or small, developed or developing would enter into equally-binding trade treaties; thus, waiving some of their powers to share the common good with others. As such, globalization, internationalism of law, and particularly trade law had to be devised in such a way that governments would respect, trust and hence comply to (VanGrasstek, 2013). Key principles were stipulated in international law, and subsequently in WTO law, to ensure the obligation of countries in abiding – fairly and peacefully – by the international trade agreements.

The first principle: *Pacta Sunt Servanda*

To deconstruct the rigid power states covered themselves with, Article 26 of the Vienna Convention on the Law of Treaties (VCLT) provided that states cannot invoke a state-provision or enact a domestic legislation based on a failure to comply with an international agreement.²² In other words, no more is the state’s own will the sole source of law in its relation with other states; hence, a form of “non-consensual law” has to be recognized by all states when they participate in international trade agreements. Even then, the only time when a state can override an agreement is being *jus cogens* i.e., a peremptory norm of general international law. Article 53 of the VCLT reads, “*a treaty is void [...] if it conflicts with peremptory norm of general international law.*” Hence, this principle that is enshrined in international law and equally in WTO law was intentionally set to limit the discriminatory power of the state from violating international agreements. The reason behind this carefully scripted principle is that by entering into multilateral agreements, states have to enter into negotiations that must lead to compromises, thus implying less privilege for the individual

²² To access the full VCLT, please visit <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>

state for the sake of maximizing the value for all parties.²³ In the context of how this principle redraws the boundaries of state sovereignty, it is regarded as *la norme suprême*.

The second principle: *Good faith*

“If there is no good faith, there should be bad faith” (Hodu, 2012, p. 50).

In a 2008 international conference in Geneva, Judge Bejaoui stated that without good faith in inter-state relations the entire order of international law, including the WTO, would collapse (Hodu, 2012). The underlining precept behind this principle finds its roots in the old Roman times – if not before. At first sight, good faith may seem self-explanatory; however, the principle can be interpreted differently according to how one sees it. According to Black’s Law Dictionary, good faith performance is when parties fulfill their obligations faithfully according to an agreed purpose (Garner, 1999). Without good faith, states would never come to trust any international legal instrument. Consequently, the first principle would have never succeeded. Good faith is a principle existing in the majority of international treaties; it is found in almost all domestic legal systems as well (Hodu, 2012). This explains its agreeability by states to be incorporated in WTO law. But, even before WTO, GATT also included the principle, albeit implicitly, particularly as the GATT dispute settlement mechanism (DSM) was primarily a diplomatic initiative rather than a legal initiative as in the case of WTO (ibid). This explains the significance of the first principle to WTO more than with GATT.

A fortiori is a word meaning that once states enter into a relationship with each other, they must abide by a code of good faith; that is, one of honesty and a refrain from defraudment. As previously stated, it is hard to judge what is fair or not in an individual state’s behaviour; nevertheless, the acts of governments in maintaining the *legitimate expectations* their counterparties have can indicate the abundance or absence of good faith. This is why the concept of legitimate expectations is highly respected in WTO law domain, particularly in dispute settlement. Translating what Article 3.2 of the DSU reads, the AB explains, that GATT and WTO panel reports [...] “*create legitimate expectations among WTO Members, and, therefore, should be taken into account*” (WTO, 2015b, p. 1). Hence, we see how the concept of legitimate expectations derives itself from the less-materialistic concept of good faith. No wonder why good faith permeates the entire international proceedings – that is related to WTO as well as to others. Article 26 of the VCLT implies that, “*The principle of good faith obliges the parties to apply it in a reasonable way and in such a manner that its*

²³ Economically speaking, game theory would have thus to be abandoned if constructive international agreements would or are to be concluded.

purpose can be realized” (Hodu, 2012). This means that no matter what the purpose of the treaty, the actions of parties should adhere to good faith at all times to meet their agreed upon expectations.

In spite of the seemingly well-established principles, WTO members still follow their own individual interests in pursuing their goals from new applicant countries, and thus, in some way exploiting the weaker party. An example to draw from is the case of Vanuatu at the time of its accession to WTO. The Pacific country had disagreements with the United States due to the fear that the concessions it might offer to Vanuatu might end up being a precedent for extension to other WTO applicants (UNCTAD, 2001). For negotiators from developed countries, a state like Vanuatu is considered a collateral damage to the international trade system. It is *mea culpa* explanation when developed countries posit why unreasonable one-size-fits-all demands are being placed on an LDC that is of no economic significance.

Reflection on the principles: Contract theory

Despite emphasizing how vital both principles (*Pacta Sunt Servanda* and good faith) are in guiding inter-state trade relationships, how steady are those principles against contract theory of the WTO? To begin with, contemporary scholarship often perceives WTO as an *incomplete contract* (Schropp, 2008). Understandably, this is due to the complicated and wide nature of WTO agreements and the elements of future nature that the WTO cannot seal e.g., a shock in a country. This is what the WTO Appellate Body (AB) in the case of Japan-Alcoholic Beverages commented, “the WTO Agreement is a treaty – the international equivalent of a contract” (WT/DS 8,10,11/AB/R: 16). Second, the contract is incomplete in important areas.”

This is why WTO has eventually escape clauses and flexibilities which we will delve into in the next chapter. Therefore, the idea behind the *Pacta Sunt Servanda* principle can be challenged on the ground that WTO is not an equivalent to a full contract. In other words, it can be breached beyond what Article 53 of the VCLT stipulates when a country, based on its cost-benefit analysis, finds it better to violate the agreement as opposed to keep complying with it. Even so, it will be forced to pay the compensation for its act at a later stage. In that sense, a state still enjoys some sovereignty over its inter-state trade agreements. To that extent, whether it is a vice or a virtue to comply with WTO agreements when a state rationally calculates its interests remains a hot topic.

Skillfully, the AB of the WTO stated that, “*It is self-evident that in an exercise of their sovereignty, and in pursuit of their own respective national interests, the Members of the WTO have made a bargain. In exchange for the benefits they expect to derive as Members of*

the WTO, they have agreed to exercise their sovereignty according to the commitments they have made in the WTO Agreement” (Sacerdoti, Yanovich, Bohanes, 2006, p. 341).²⁴ In this vein, WTO endeavours balancing the appetite of states to maintain their sovereignty while equally reminding them that they have to safeguard what they themselves originally agreed on. Otherwise, there might have been no WTO at all. Going back to the time of the Havana Charter, this was clearly understood. Article 86 of the prospective ITO reads that the ITO “*should not attempt to take action which would involve passing judgment in any way on essentially political matters,*” and that no action taken for “the maintenance or restoration of international peace and security, shall be deemed to conflict with the provisions of this Charter.” This shows us how flexible and flexible WTO was, and is, in balancing out the quest between sovereignty and trade.

WTO legal discourses

This is the perspective of the WTO. This brings us now to examine how WTO is conceptually theorized from a legal philosophical standpoint. This is to understand how member states approach it within but more importantly beyond the question of sovereignty. Whereas, WTO is an expression of international law that is based on internationally agreed principles, WTO has been captured through a variety of legal lenses, from realism to constructivism to institutionalism.

Realism: No room for small players

How developed and developing countries theoretically operate within the WTO and how they fit within this environment depends on various factors. Sovereignty and state power is one of them.

WTO conceptual theories	Indication
Institutionalism	Focuses on WTO as an institution of rules
Realism	Focuses on states’ interests
Constructivism	Focus on actions of member states

Having a wide mandate, WTO has been studied through various disciplines, from international relations and politics to law. The theoretical embedment underlining the structure and mechanisms of WTO intersects through the above disciplines. It has always

²⁴ The WTO at Ten: The Contribution of the Dispute Settlement System, Sacerdoti, Yanovich, Bohanes, 2006, p. 341, Cambridge

been the case that the realist school of thought sees WTO as a subordinate to states' own strategic interests and power. The behaviour of the state in its relations with other states for this school is the ultimate determinant of how international trade moves (Koskenniemi, 2004). One logic behind this emphasis realists give to state over international law is that if history has always shown us that it is only when the few powerful states come together into a peaceful settlement that international law arises; in turn, those states still remain in control of the dynamics of international policy-making. However, it is the classical realists that reduce international order to states. More moderately, structural theoreticians of the same school relatively downplay the role of sovereignty in inter-state trade governance, hence giving more importance to WTO law as an independent creation of the states themselves. In other words, with structuralists, states have to comply more with WTO law than the case with realists (Kelly, 2004). Nevertheless, all in all, realists believe that the center of trade negotiations is more about power than it is law. Therefore, the extent to which this power issue versus compliance with WTO can turn out fair, particularly for LDCs and the majority of SIDS, is then questionable. No wonder then, that the gravity of the two principles listed respectively, is to remind all states to act in a more rational manner for the sake of the common good and not purely the individual interests each will have. This is what Kelly (2004) eloquently describes when she says that once states accede to the international regime of family of nations, they must all come in and resolve their issues of sovereignty.

Constructivism: All states are welcome

This view takes us to a more dynamic approach, that of constructivism. Constructivists hold high the “spirit of the WTO” (Hodu, 2012). Contrary to realists as well as liberals, constructivists attempt to balance the role of the state vis-a-vis the ‘collective legitimisation’ WTO has. The Panel (WT/DS152/4, paragraph 7.73, 27 January 2000) in US section 301-310 of the Trade Act found the the spirit underlining the necessity of maintaining the international legal personality/identity of the WTO is that it creates market conditions conducive to both the global and individual economy. In other words, a win-win situation for states, provided their application and continuous compliance with the law of WTO. In short, under the umbrella of constructivism, game theory would not apply, contrary to the neorealist scenario. Another reason for that matter is the appropriate attention this school of thought gives to the notion of equity in negotiating treaties and solving inter-state disputes. This was reiterated in many international tribunals e.g., in maritime as well as in trade. For instance, terms such as “equitable share of the market” are used in WTO legal manuscripts. A case in point relates

the level of subsidies to legally permitted primary products in GATT Article XVI:3. To illustrate further, anti-dumping rules under WTO law is another case. In fact, it shows how this theoretical approach might be more admired by the vulnerable states within the WTO family. Article 17.6 (ii) of the Anti-dumping Agreement only requires members to adopt the principles which each state – individually – regards as best suitable for their domestic characteristics. The idea of one-size-fits-all would not apply here, thanks to the special scheme-like rules WTO provides to states. Notwithstanding, this Article as well as others in other WTO covered Agreements such as the Agreement on Agriculture were criticized. The basis of the criticism is that states may wander in exercising their interpretation of WTO law beyond what is best for the sum of all countries together, in the name of enhancing their domestic trade regime. Thenceforce, what constructivism cannot reconcile is the excessive discretion it endowes upon states, that may not always align with the WTO spirit as well as its Agreements (Hodu, 2012). It is worth pointing out however, that the aspiration of constructivists, thanks to the principle of non-violation ingrained in WTO system, members would have less justification to impose certain trade restrictions against each other, as in the case of deviation from general obligation allowed to member states arising from their commitments to market access as long as they preserve the rights of other states (GATT Article XX).

Institutionalism: *WTO par excellence*

Institutionalists link the behaviour of an institution around which expectations converges. In that sense, they build a bridge that constructivists, as well as realists lack. They see rules as the crux upon which an institution exists. In other words, without the law WTO stipulates, it is a creation without a beating heart. This discourse implies that states are rational-beings. They have the capacity to come together and agree on setting an international system. Hence, to judge on the efficiency of the WTO, institutionalists would see as to how far states respect existing commitments. The more application and continuous compliance to WTO, the greater the institution can function. Like the various strands realists have, institutionalism has three distinct discourses. These are the historical, rational and sociological. Rational institutionalists focus on the strategic interactions of states within the organization producing eventually the ruling (Zucker, 1991). Thus, the more consolidated the goal within the organization, the higher probability of the decision to pass. The historical angle concentrates more on the conventions or mandates promulgated by the organization. The last; the sociological trend, emphasizes more the role of culture within the organization as the power behind the

institution itself (Hodu, 2012). Beyond these rather philosophical conceptions, a more practical definition by Mearsheimer (1994) is that institution is the set of rules within which member states cooperate or compete with one another.

What makes the institutionalist school by and large viable is that it admits the importance of the anarchical conditions of the world within which rules and regulations are stipulated for member states to abide by or to compensate upon violation. To its credit, this school postulates that by preserving an institution like the WTO, inter-state hegemony will reduce given the reputational cost each state will have to pay should they renege from the system.

Institutionalism and single undertaking

Institutionalism also fits the context of WTO as to the consensus principle and single undertaking. WTO Agreement Article IX (1) clearly demonstrates the fact that it is only when all member states agree to a package that it would be binding for all. Otherwise, a negotiation reaches a bottle-neck situation. This notion can play well when it comes to developing countries and LDCs, given their high number – as previously stated, they are the majority in the WTO. Nonetheless, this makes negotiations more fierce, equally for them, given their fewer resources. This also implies that without reaching an agreement, using trade as a development tool to push forward the poorest members of the WTO would not materialize until a common package is signed (Hodu, 2012). In other words, what actually happens during the trade round (even if the result seems favourable for poor countries) is actually fictional until it is either fully accepted or not. Here, institutionalists make a strong point in showing how states' interests do not always diverge, provided that a strong culture of *common intentions*²⁵ i.e., legitimate expectations exists; concurrently, this culture can be seen as “the spirit” according to the constructivists. In both cases, the essence of realism here can not apply. In these lines, a WTO Doha Ministerial Declaration read, *‘the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking.’*²⁶

On the other hand, we are able to note that as a result of the consensus principle, states may hold on to a rigid position, meaning that a deal is not sealed – a realist would win on that account. Ehlermann and Ehling (2005) argue that mathematically speaking the more members that accede to the WTO, the higher the probability of one refusing a condition, leading to a

²⁵ Appellate Body Report, European Communities – Customs Classifications of Certain Computer Equipment WT/DS62/AB/R, (22 June 1998) Paragraph 84

²⁶ Para. 47, WTO Doha Ministerial Declaration

stalemate. However, a seminal report from 2005 called '*Future of the WTO*' observed that only through a treaty-based organization such as the WTO can international trade stability be assured. To put it simply, without WTO law and rules, the developed and developing world would deplete individually and collectively. Maintaining the WTO and negotiating trade under its auspices may in all cases require patience so that all members can capitalize on their individual interests, especially the developing nations that wish to take a greater share in the global market with less obligations tied to them.

Critique to the discourses

We have introduced three discourses which contend for the greatest relevance to contextualize the WTO. There may not be a complete answer as to to which discourse can completely absorb the depth of the WTO; Nonetheless, each discourse shows how the WTO legal system can be viewed from different angles. In other words, WTO is a complex international body; thus, it is holistically pertinent to the many aspects of international trade law. Its processes and work trickles down not only to multilateral treaties, but also to bilateral ones. The ripple effect WTO creates is because of its internationally legitimate respect it possesses, as well as the compliance member states agreed on in exchange for the expectations they await. In whichever theoretical approach one adheres to, the practical question that opens is how far the Geneva headquartered organization itself benefits those states in order for them to comply with its rules.

Tentative conclusion

In this chapter, we have looked at the legal theories and schools of thought behind the principles of the WTO. By dealing with the question of sovereignty, we were able to understand the necessity of two main principles acting as a glue to hold member states rationally to the rules of the WTO. The extensive debate on the theorization of the WTO will continue. It is important to constructively instill issues to the delegates of member states, as well as those involved in trade. By virtue of state behaviour, what remains challenging to legally comprehend is the fact that eventually big states have more leverage to rift from WTO. Developing countries, and increasingly LDCs, are more likely prefer holding onto the WTO as it is an international forum that can give them a collective voice vis-a-vis the big countries. An effect such as social pressure can be exercised on a developed country or community, in the name of common intentions and goals all members (including the larger ones) abide by. Ultimately, however, between the principle of fairness and equity to the principle of

consensus there lies a practical gap by means of which a whole trade negotiations' package can be put on a halt should one state abstain.

Chapter Five

WTO and The Developing World: *Preferential or Peripheral*

We have seen in previous chapters how WTO was formed with the aspiration to bring together the developing and developed countries, particularly at a time when fragmentation of the global economic landscape was accelerating. In this chapter, we scrutinize the standing of WTO and its legal provisions, particularly those attributed to the developing world, with an emphasis on the LDCs/SVEs amongst them. The purpose of which is to map out where in the realm of WTO those less privileged countries are supported. The main question we answer here is the extent to which provisions granted to those developing countries really meet their “expectations” in sustainable growth, and not just economic growth. Are the so-called preferential clauses really preferred?

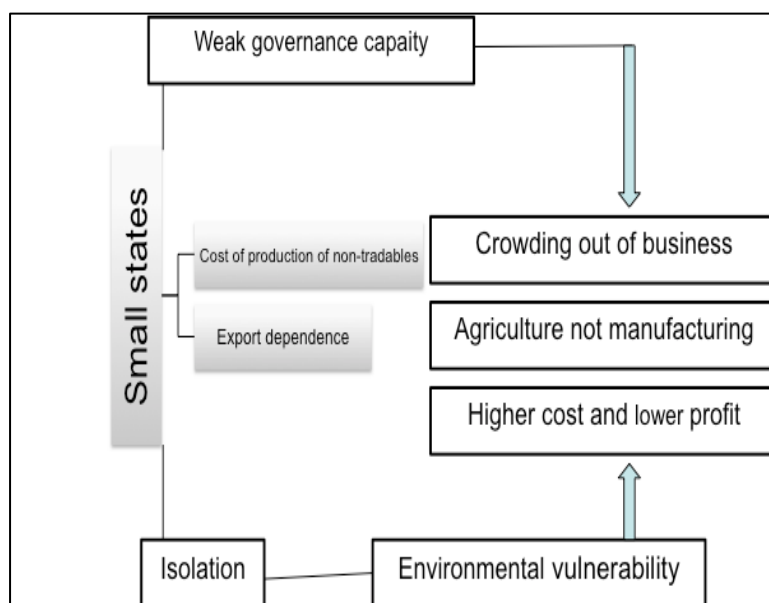
In chapter two, we elaborate on the theory of comparative advantage. Despite the economic soundness behind the theory, LDCs may not profoundly enjoy it. We mentioned erstwhile the examples of Kiribati and Tuvalu and how even those two small Pacific economies with a considerable economic advantage could not last for long (Grynberg, 2012). What we observe from that rationalization i.e., comparative advantage that paved the way for the WTO to arise is that eventually economic theories and legal acts based thereupon may well have suited the developed countries, and even bigger developing countries. Even so, this would not have automatically placed those countries lower in the global economic chain. That being said, some authors and institutions such as the IMF might argue the contrary; for instance, a 2014 IMF working paper talks about how small nations in the Pacific enjoy comparative advantage in tourism (IMF, 2014). Nonetheless, looking at the broader picture, tourism as a service is seasonal and is very much tied to political stability and environmental hazards that Pacific countries such as Fiji frequently face.

To that end, one can say that LDCs share some characteristics. In order to examine the special entitlements those countries have from the WTO multilateral trade regime, we first must introduce the hindering features they generally share. The reason being to really see whether those geopolitical challenges are properly treated from a legal perspective. Features are:

- 1) Small size of population;
- 2) Remoteness from major trade hubs; and
- 3) Small geographic size;
- 4) Small resource base; and

5) Prone to natural disasters.

The interplay between those undesirable features make those countries “structurally weak.” This label was described in an UNCTAD paper (2007). In other words, they are already given the nature of defiances they occasionally meet, and are also hindered in many ways by developed as well as large, developing countries. These challenges were well-



Flow diagram showing causalities and challenges of small countries. Illustration of the author

highlighted during the WTO Hong Kong Ministerial Round 2005 (WTO, 2005). By and large, those countries have a higher dependency on agriculture vis-a-vis a low production rate in industry and manufacturing. The result of these negative issues is that small and vulnerable countries face are less able to compete with other comparatively larger countries.

As a further consequence, when we look into the trade and services of many of the small countries, we can see how the generation of surplus or quasi-rent is necessary in order to cover the inherent cost disadvantage due to those countries' remoteness. For instance, in export trade, many private investors choose to locate in small nations, especially on the islands amongst them. Nonetheless, the necessary rent is provided through instruments such as tax concessions and subventions to investors. In terms of services, some LDCs enjoy a high-quality service in tourism, as mentioned thereabove. Most of them have a niche market e.g., wreck diving, and cannot be considered as a major desintation, with some exceptions e.g., Fiji that can compete internationally. In this vein, we can see some commonalities as well as a margin of differentiation both service and sector-wise in small developing and less developing countries.

Tailor-made trade

Having outlined the challenges less privileged countries face, the international trade regime led by the WTO has had to devise legal mechanisms through which the special situation of

these countries is taken into consideration while multilateral trade expands. One of the issues that was unequivocal was that, particularly for LDCs as well as all other developing countries, the integration of trade into their systems would require being accompanied by sustainable development measures. Not that trade would be for purely economic purposes, but it would also be for supporting developing countries and the poor ones amongst them to prosper (WTO, 2006). WTO deals with the special needs of the developing countries generally speaking through three channels:

- The special provisions within the WTO agreements;
- The Committee on Trade and Development; and
- The technical assistance through the WTO Secretariat.

The special provisions to developing countries within the GATT and WTO agreements has a long history. As for the GATT, it allows for some preferential treatment to developing countries. The Agreement enlists in a special section (Part 4) on Trade and Development the concept of 'non-reciprocity' in trade negotiations between developed and developing countries. In this framework, developing countries are not expected to make matching efforts in return to trade concessions granted by developed countries.

WTO went deeper on all levels. It established a Committee on Trade and Development (CTD) that tackles priorities related to measures taken by developed members in favour of products from developing countries. It handles the generalized system of preferences (GSPs) that lower tariffs towards developing countries. It also manages the preferential arrangements concluded between developing countries, through communities such as MERCOSUR.

In terms of special provisions, WTO agreements offer:

- Extra time for the developing world to fulfil their commitments;
- Provisions giving greater market access to increase developing countries' trading opportunities (e.g. in textiles, services). GATT also echoed the same in its article XXXVII of GATT 1994;
- Provisions to safeguard the interests of developing countries in the case when WTO members adopt some domestic measures or collectively international measures (e.g. in anti-dumping, safeguards);
- Provisions for helping developing countries to deal with (e.g. commitments on animal and plant health standards); and
- Support measures to help developing countries build their capacity to engage within

the WTO, enabling them to for instance to handle disputes and implement technical standards.

Beyond the explicit list of S & D provisions, WTO designates what is known as “waivers.” As stated in Article IX: 3, waivers are an exemption from the general obligations set by WTO to developing countries, as granted by the General Council to developing countries. WTO goes even further and specifies a specific scope of waivers to LDCs, not only from developed countries but also interestingly from developing countries (adopted in the WT/L/304). As the decision on the waiver reads that the purpose of these waivers is to “ensure that developing countries, and especially the least-developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development” (WT/L/304, 1999). This shows indeed the differentiation WTO sets when dealing with the various groups of countries according to their unique economic characteristics.

Since the inception of the WTO and throughout the various trade rounds, not only have decisions offered wider support to developing countries, but also to LDCs in equal measure. In the 1996 Singapore round, WTO ministers agreed on a “Plan of Action for Least-Developed Countries.” It marked the legal recognition of the special situation of LDCs. This plan of action provided technical assistance to those LDCs. Besides, it pledged from the developed countries to improve market access for LDCs’ products. Furthermore, the CTD has a sub-body; that is, the sub-committee on LDCs. It works on two issues of prime concern to LDCs: to give constant technical support and to seek simple methods to integrate LDCs in the multilateral trade system. The sum of all these efforts were considered a breakthrough, given that there are 48 LDCs listed by the UN, with 32 of these already members of the WTO. Additionally, 10 other LDCs are in the process of acceding to the WTO. To name a few: Bhutan, Comoros, Equatorial Guinea, São Tomé & Príncipe. Since then, many decisions were drawn throughout the trade rounds, focusing on:

- Implementation of duty-free and quota-free market access for LDCs;
- Preferential rules of origin for LDCs;
- Operationalization of the LDC services waiver; and
- Covering both trade and development assistance aspects in the area of cotton.

Moreover, the so-called enhanced integrated framework (EIF) on LDCs was produced. It was a program by six institutions including the Bretton Woods institutions i.e., IMF and WB as well as UNDP and the WTO. The framework aimed at taking the recognition given to the LDCs to an operational level, from which LDCs can benefit from international trade. The EIF

was, however, modest in its benefits to those countries. The Hong Kong round, and the year 2006, marked substantive discussion among the task force on improving the EIF. It produced two main recommendations: 1) Mainstream trade into poverty reduction strategy of those countries; 2) Provide technical assistance related to trade-delivery to those countries. To demonstrate, at a CTDs session, a report to the General Council was adopted, which entitled small economies the use of regional bodies to help them meet their obligations toward the TRIPS, SPS and TBT (W/COMTD/SE/5). This was intended to support those countries integrate in the multilateral system of trade (WTO, 2006). At that time, the task force itself stated in its recommendations that despite the importance of trade liberalization, it does not automatically lead to healthy growth without being conducted in a sustainable manner. This was the mission of the WTO EIF; that is, to link trade to development in order to liberalize while reaching the United Nations Millenium Development Goals (UNMDGs) of poverty reduction. Moving forward in time, during the Doha declaration in paragraph 35, a Work Programme on Small Economies was launched in order to achieve “fuller integration of small, vulnerable economies into the multilateral trade system.”

Accession as a key to integration

Of course, when we speak about the various trade measures tailored by the WTO in order to support LDCs, the logically speaking accession of those small economies to the WTO would be a natural and legitimate step for them to apply WTO regulations and benefits attached thereto. However, one should realize the difference between small developing countries in their wish to be a WTO member and their bigger counterparts. For small countries, the purpose of being in the WTO does not relate with their immediate goal but rather their desire to overcome the weakness they have in their trade capacity in the future. For them, it can be marketed as an effort to invite foreign investment or to showcase their will in transforming into market economies, and hence benefit from special treatment. Contrary to the larger developing countries, those would come into the WTO with their current standpoint to avoid any discrimination against their export products, particularly in some services and natural commodities (UNCTAD, 2001). In light of this, in 2002 the WTO investigated trade concerns of LDCs (WTO, 2013). The reason of which was to facilitate their accession to the forum. A plan was approved accordingly in 2012 to strengthen the accession guidelines of LDCs. Celebrating the event, Director General (DG) Pascal Lamy at that time said, “these improved guidelines provide a simpler framework for the entry of LDCs into the WTO family. It is another example of positive action in favour of the world’s poorest countries” (WTO, 2012).

The benefit of the guidelines is that it set benchmarks for LDCs throughout the process. It operationalizes the restraints from the acceding LDCs while seeking their commitment and compliance. The guidelines as contained in the WT/COMTD/LDC/21 decision document have five elements:

- 1) Benchmarks on goods;
- 2) Service market access;
- 3) Transparency in accession negotiations;
- 4) Special and differential treatment (S & D); and
- 5) Transition periods, and technical assistance [also found in Article XXIV of GATT].²⁷

On the first point, like other WTO members, the LDC applicant will bind its agricultural tariff lines at an average of 50%. As for industrial goods, tariff lines must be bound by 95% at an average rate of 35%. Exercising the notion of flexibility, LDCs reserve the right to retain 5% of their industrial tariff lines unbound. Given the special nature of LDCs with regards to industrial goods, and in line with the principal of asymmetrical options to LDCs, should the acceding LDC desire comprehensive binding coverage, an average bound rate higher than the 35% overall average rate will be permitted to them. Besides this, a transition period would be granted of up to 10 years, for a maximum of 10% of their industrial tariff lines. Looking only at the first point, we can see how the interplay of the WTO special treatment to LDCs actively applies; from flexibility to transition periods.

On the second point, it is interesting to note that unlike the benchmarks on goods, member states here only agreed on broad parameters rather than a carefully detailed plan as in the first point. The decision stipulates that similar to the commitments undertaken by pre-existing LDC WTO members, new LDC members shall not be asked to commit to service sectors and sub-sectors beyond those undertaken by the existing LDC members. What is also significant is that those new LDCs shall not be bound by commitments in sectors and sub-sectors that do not correspond to their individual development and trade needs. From this point, we see the idea of individualism shapes some WTO policies rather than the normative collectivism.

On the third element, what is important about the transparency of the process is that it serves to collectively ensure that the process of accession, once agreed, is followed and not reopened again or somehow abused.

²⁷ To access the full article: https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_09_e.htm

On the fourth point, members reiterated that incoming LDCs would be able to enjoy all of the special and differential treatment provisions from the day they adhere to the WTO. It is important to note that the request of many LDCs for additional transition period terms greater than those foreseen under WTO agreements, was met with acceptance on a case-by-case basis depending on the individual conditions of each LDC (WTO, 2012).

In addition to those clarified guidelines, in 2001, 32 WTO states set up an Advisory Centre on WTO Law. The legal advices and services are funded by contributions and countries receiving legal advice. All LDCs are nonetheless automatically eligible for advice ‘gratis.’ It should be said, however, that other developing countries have to pay a fee. The services of this centre is managed by the WTO Secretariat.

Accessing a forum such as the WTO does not come without hardships, particularly to LDCs (UNCTAD, 2001). Several cases can show this issue. Take for instance, Vanuatu²⁸ – a country with a population of less than 300 thousand. At the time of its accession, the Pacific island state was asked to join plurilateral Agreements on Government Procurement and Trade in Civil Aircraft – which in fact does not benefit the small country that evidently. On the other hand, benefits derived from the S & D provisions available to the other 29 original members of the WTO from the LDC club were curtailed. The experience of Vanuatu leaves two important impressions; first, accession to the WTO is primarily a power and sovereignty game rather than a rule-based process; second, Article XII of the Marrakesh Agreement is flawed. The reason why this article is inconvenient is because as it reads: “Any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this agreement, on terms to be agreed between it and the WTO.” Meaning that rules are not really apparent in the process but rather the politics involved in the individual candidate country’s negotiation. This is why perhaps several authors on WTO reflect on the origin of the legal system of the WTO by saying that it is based on “standards not rules” (Trubek and Cottrell, 2009). In other words, despite the common terminology of “WTO legal system,” the extent of its validity can be questioned.

At the time of examination of its entry to the WTO, the United States did not agree on the two-year transition period for Vanuatu. In another example from Article XVI of GATS: “If a member undertakes a market access commitment in relation to the mode of supply referred to in subparagraph 2(a) of Article I and if the cross-border movement of capital is an essential

²⁸ For more on Vanuatu: <https://www.cia.gov/library/publications/the-world-factbook/geos/nh.html>

part of that service itself, that member is thereby committed to allow such movement of capital . . .” Applicants to the WTO usually do not find this article clear in the sense of its interpretation that WTO members use. Meaning that for a country like Vanuatu, at the time of examining its foreign trade policy for entry, it was asked to significantly reform its investment regime, which is rationalized if a country would want to participate in international trade; Vanuatu subsequently found this intrusive as it was not made clear and also not in a manner respecting its particular nature. Another reservation for the WTO was the question of land protection and ownership. The organization found that the law of lands needs reformation in such a way that makes investors confident to come and use the land. Nevertheless, neither the governments of Vanuatu nor can any Melanesian government really force this change, due to the unique cultural ties the population have with their land.

Having seen non-agricultural issues, Vanuatu also entered into battles with agriculture, particularly regarding its export subsidies. Some WTO members considered that Vanuatu has to have an export subsidies commitment, whereas, as a matter of fact, Article 9 of Agreement on Agriculture allows export subsidies. Moreover, Article 15 excludes LDCs from all reduction commitments under the agreement.

The Doha round recognized the substantial financial and human resources a country has dedicated in order to go through the process of accession to the WTO successfully, besides the inherent flaws in the WTO legal system. In that sense, it tried to facilitate the process on LDCs. In order to do this, the WTO encouraged acceding countries to submit requests transmitted through their trading partners so that the accessing country does not seem isolated or have mutual interests with third parties i.e., without a coalition, given the nature of multilateral negotiations in the WTO.

Openness and integration via the preferential agreements route

Having seen how the multilateral trade system operates for the SVEs and LDCs. We now examine the implications of multilateral liberalization on the preferential agreements that LDCs have with communities such as the EU.

When small countries started liberalizing their trade, not all of them could successfully manage to open up their markets (Grynberg, 2012). A story that is considered successful is Mauritius. The island country started developing Export Processing Zones (EPZs) that encouraged fast development of industrial production. It attracted investors through duty-free access to import inputs and labor market rules, in addition to tax incentives. The example of

Mauritius has been viewed as a good example thanks to the preferential access it enjoyed early to the EU market for its high quality exported sugar. Another example we can draw comes from the Tariff Rate Quotas (TRQs) system the EU grants under the PTAs to the ACP (De Benedictis and Salvatici, 2011).

Since the early Lomé convention, a certain amount of rice imported from ACP enters at a lower tariff than the MFN one. This benefited developing countries and LDCs, with the cases in point being Guyana, Bangladesh and Suriname. The account of rice imports from these countries to the EU for the period 2000-2008 was 65%, 47%, 40% respectively. It is of importance to mention that since the 1990s under the GATT, TRQs were introduced to improve market access where agricultural protection was very high. To the contrary, the EU rice imports did not include TRQs. Nonetheless, after 1998, and in accordance with article XXIV of the GATT, the EU accorded TRQs. Guyana enjoyed this prerogative under the “country-specific” TRQ. Other countries also were covered but under the umbrella of “non-country specific” TRQ. For instance, Bangladesh benefited within the generalized system of preferences (GSP) from TRQ of 4,000 tons (ibid).

Despite this positive outlook, agriculture – known as a major source of income in those small countries – is frequently negatively tied to development (ibid). In other words, the more a country adheres in its trade relations to agriculture, the less likely a country grows sustainably. This provokes the logic to ponder whether special treatment to developing countries in relation to agriculture is just a means of mere integration into the global economy or a profound reforming mechanism that invokes development in those less advanced countries. This question is posed as an observation given the various privileges developing countries have in this area, which might in the end become an incentive for them to stay as an agricultural-based economy and not much more. The special provisions in this domain include but are not limited to:

- I) Investment subsidies available to agriculture for low-resource producers, the de minimis percentage;
- II) The de minimis percentage of Aggregate Measurement of Support (AMS) under which developed countries are permitted to only 5% of no reduction needing be made for products vis-à-vis 10% as for developing countries;

The reason why Mauritius was seen as a successful model is the policy mix it deployed; the same success Cape Verde also enjoyed due to its mixed policy of liberalization and modernization. The noticeable problem in PTAs is that many of the SVEs rely on preferential

treatment in fields that might not simultaneously lead to their prolonged development. Eventually, it is found that usually LDCs rely on almost only three products in their international trade, thus showing the susceptibility to external shocks they might suffer from (OECD and WTO, 2011). As seen previously, special treatment might be given to agriculture, while more vital issues such as infrastructure, research and development etc. are not on the international trade radar (Gutierrez, 1996). Not to mention that, the more a multilateral trade system is internationally favoured, the more eroded trade preferences get. This has already been happening in the case of the EU and developing countries. In fact, in an economic simulation study, it was seen that the exports, particularly from rice to the EU from ACP-OCT countries are extremely dependent on trade preferences. This is to say, should trade preferences disappear, many of those countries may not be able anymore to access the EU market (De Benedictis and Salvatici, 2011).

Having discussed the success of Mauritius, at the time Vanuatu was entering into the WTO, its government had to abolish the import licence on rice among other products. Nevertheless, despite doing so, there was little effect visible on the change of market behaviour as the same monopoly of the market was maintained to an Australian exporter and prices did not really change. The contrast between both small countries tells us that a policy-mix is essential in safeguarding the interests of a respective small state – and not to be fully reliant on the international trade system. As a result, it can be concluded that Article IIX does not take into account the individual characteristics of the country but rather the idea that only when a country complies with WTO regulations can it only proceed to enter into the forum. (Trubek and Cottrell, 2009).

Generally speaking, small countries benefit from entering into preferential agreements with big groupings such as the EU. It will be, however, worth exploring, policy-wise, the possibility of expanding the fields of cooperation and balance between the different short and long-term interests. Fair to note, that hinderance to development of small countries does not just arise in relation with developed countries. To the contrary, it also happens in South-South trade relations. Schiff (2001) examines the pros and cons of small countries being members of custom unions. Although small countries can greatly benefit from cooperation on public goods e.g., infrastructure, they witness welfare reduction due to creation of custom unions as in the case of CARICOM.

Evaluation: Erosion of preferences both ways in Multilateral and PTAs

In summary, we can safely assume that despite the fact the WTO system set the stage for preferences to the less-privileged countries, in some PTAs such as that of the EU with ACP, it tried to offer a wide scope of preferences while maintaining its obligations of MFN under the WTO, which itself weakens the special treatment to these countries. The relation between the multilateral/international trade system and PTAs is very interesting. Manchin (2006) already writes that benefits derived from trade preferences to developing countries dwindle as a result of the erosion of the preferences to uphold the MFN principle. The reduction of the well-known MFN tariffs lowers the cost advantage of those countries with respect to developed and well-established competitors.

Of course, a big part of the developing world can manage, if we are speaking for instance about Brazil or India. But, in our particular case, LDCs find market access to the developed world increasingly challenging. To relate this with the work programme launched in 2012 to facilitate access of LDCs, one could even debate the extent to which it applies, especially when we read in its manuscript that the WTO encourages better-off countries to lower barriers on exports from LDCs. Also, we cannot forget that even the remaining preferences under the WTO system are not legally “bound” under the WTO agreements. This is to say that they can easily change and are given at the will of the importing well-off country to a respective particular LDC or any case they are subject to phasing-out (Grossrieder, 2007). An example that can be recalled on that case is from the Non Agricultural Market Access (NAMA), which was launched at the Doha round. It aimed “to reduce, or as appropriate, eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on 10 products of export interest to developing countries” (WTO, 2001).²⁹ As a result of the erosion of preferences, LDCs such as Bangladesh suffered, even though they had unilateral preferential access. Bangladesh, one of the poorest countries in the world, with a rich textile and clothes industry that employs many faced losses coming from two sources: a reduction in tariffs under NAMA negotiation represents lesser income, as a result of the decrease in tariff revenues for imports entering developed markets and preference erosion. Also, exposing LDCs such as Bangladesh to more competitive producers from other markets results in loss of market share due to the the quota free access phasing-out Bangladesh and the like originally enjoyed (Grossrieder, 2007). All in all, erosion of preferences might create an unpredictable trade circulation in comparison with the regular

²⁹ https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm

bound rates that are already pre-anticipated and defined. Hence, the extent for which LDCs have the opportunity to cultivate benefits from preferences as accorded to them detracts with time.

Free trade versus protectionism

As the saying goes, “to add fire to the oil”, the positive effect of special preferences to LDCs can even diminish further when taking into account the practices of protectionism or those that have the effect of protectionism, e.g., this was exemplified in the ministerial decision on export competition, “We recognize that all forms of export subsidies and all export measures with equivalent effect are a highly trade distorting and protectionist form of support.”³⁰ Protectionist policy is one of the major reasons why trade liberalization, despite being a key to economic development, rendered many poor countries unable to sufficiently benefit (Lester, Mercurio, Davies, 2012). Advocates of protectionism argue that through this policy, producers in developed countries can protect their know-how while ‘infant industries’ in developing countries learn through practice. This is not how various developing countries see it.³¹ Eventually, the argument that comparative advantage can work in different contexts may not apply that easily when the starting point and the gap between developed and LDCs is huge.

On the same lines, given the space of freedom all WTO members individually have to protect their industries, they could often set tariff ‘peaks’ or ‘escalation,’ the result of which eventually hurts LDCs. The term, “tariff peaks,” refers to the protection governments of developed or major developing countries can exercise on “sensitive” products. This way they protect their domestic producers and keep tariffs high, thus hindering exports from the less privileged countries. Tariff escalation happens when an importing country wants to protect its produced goods. It keeps tariffs low on materials imported for the use in that domestic industry. When this happens, developing countries and those producers of raw materials – found in many LDCs – find it more difficult to continue producing cost effectively. As Hoekman points out, developed countries could usually have lower tariff peaks on goods up to less than 5%, but in products that are more effective to developing countries they have much higher peaks – only to show the contradiction in the international system (Thomas and Trachtman, 2009) and the fact that the priorities of LDCs are not taken into account. It is rather the interest of the more powerful countries.

³⁰ For a full text on the decision: https://www.wto.org/english/thewto_e/minist_e/mc9_e/desci40_e.htm

³¹ In various interviews with Geneva-based diplomats from developing countries e.g., Sierra Leone and Nigeria, they argued contrary to what advocates of protectionism say.

Tentative conclusion

This chapter offered a special focus on the specific clauses WTO grants to LDCs on the basis of their nature as vulnerable economies. It finds that WTO did a lot for the case of LDCs; however, this does not always effectively benefit this group of countries due to the lack of power they have to transform their own concerns into decisions taken by WTO members. From the time a LDC wants to access the organization until its engagement with the work of the system, uncertainty surrounds the process and the outcome. Additionally, even with the formulated preferences LDCs have, there is an increasing trend of erosion of these privileges.

Conclusion

The Doha Ministerial Council stipulated that the agenda of the Doha round “*shall take fully into account the special needs and interests of developing and least developed country participants*” (WTO Doha Declaration, 2001, Para 16). The declaration states further that, “*We recognise the particular vulnerability of the least-developed countries and special structural difficulties they face in the global economy [...] We recognise that the integration of the LDCs into the multilateral trading system requires meaningful market access, support for the diversification of their production base, and trade-related technical assistance and capacity building.*” In conclusion, we wonder if this has really been the case in the reality of implementation.

Surely, the WTO, more than its predecessor, catered for the needs of LDCs. Nonetheless, the manner in which the WTO operates – as a diplomatic forum rather than a legal forum – made it hard on LDCs to reserve their own rights. Furthermore, it allowed for power politics to interfere in the supposedly legal process through which a LDC can claim its membership and privileges attached thereto. This of course led to a growth in treaties and agreements on a regional and bilateral basis for the various communities and groups of countries in a desire to meet their needs and not merely the one-size-fit-all requirements and obligations that developed members in the WTO may impose on the less significant economies.

The fact that developing countries, including LDCs entertain Generalised System of Preferences (GSP) Schemes operated by developed countries does not mean that LDCs are reaching their sustainable growth. Eventually, erosion of preference to preference-dependent countries such as the many LDCs surely destabilizes their economic system. The many challenges LDCs face, from reduction of MFN tariffs in developed countries to stringent rules of compliance requirements e.g., the origin of utilisation, the value of preferences falls (Rahman and Bin Shadat, 2006).

In spite of this gloomy trend, there is a growing prospect of the WTO focusing on advancing the needs of LDCs. The Bali round shows two trends produced therefrom, first: WTO created a monitoring mechanism on the the S & D implementation to “review all aspects of implementation of S & D provisions with a view to facilitating integration of developing and least-developed Members into the multilateral trading system” (WTO, 2013). It goes on to state, “where the review of implementation of an S&D provision under this Mechanism identifies a problem, the Mechanism may consider whether it results from implementation, or

from the provision itself.”³² As read, the mechanism will scrutinize whether a problem results from implementation or a provision in itself. Second, WTO members are encouraged to facilitate trade in sectors that concern LDCs. An example that demonstrates this point is the Trade Facilitation Agreement, which was produced following the Bali round 2013.³³ It aims at capacity-building of LDCs to allow them to grow sustainably. It enumerated provisions to support developing countries as well as LDCs on a more individual basis taking into consideration the characteristics within each of these countries. It stated:

“Assistance and support for capacity building should be provided to help developing and least-developed country Members implement the provisions of this agreement, in accordance with their nature and scope. The extent and the timing of implementing the provisions of this Agreement shall be related to the implementation capacities of developing and least developed country Members. Where a developing or least developed country Member continues to lack the necessary capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired. Least developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.”

In summary, although the journey of developing countries generally, and particularly LDCs in the WTO is neither easy nor pleasant, it is interesting to follow and observe closely. LDCs such as Cape Verde succeeded in its battle to enter into the WTO and cumulate benefits of legislative and policy reforms in addition to aid from various donors within the WTO (OECD and WTO, 2011). Nonetheless, this case can neither be generalized nor fully seen as exceptional, as with the right policy mix and clear WTO instructions and recommendations to LDCs they can integrate effectively in the international trade system for the sake of sustainable development and not become unequal members in the WTO. Thence, WTO should embark on a mission of first setting norms and standards, followed by rules and finally by laws. The reason why the author suggests this sequence emanates from the fact that being a diplomatic forum, WTO surely struggles in finding the right balance between representing the different interests and equally reaching consensus. In the same vein, agreements such as the Preferential Rules of Origins for LDCs recognizes the need to have “simple and

³² For the full text on the mechanism, https://www.wto.org/english/thewto_e/minist_e/mc9_e/desci45_e.htm

³³ For all Bali decisions, please consult https://www.wto.org/english/thewto_e/minist_e/mc9_e/balipackage_e.htm

transparent rules of origin may take into account the capacities and levels of development of LDCs.”

In sum, LDCs can play a catalyst role in the overall economic growth of the world; nevertheless, developed members of the WTO must provide the platform for such growth to come about. Eventually, LDCs did not reach the 7% annual growth target as established by the Istanbul Programme of Action (IPoA, para.28a) (UNCTAD, 2014; United Nations, 2011). In light of this, how would one then expect LDCs to attain their own sustainable development if stand-alone economic growth is not met.

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Abstrakt

Zahlreiche Diskussionen wurden abgehalten, und umfassende Literatur im allgemeinen ueber die Entwicklungslaender der WTO und das internationale Handelssystem verfasst. Was nur zaghaft ausgesprochen wird, ist die Situation der am wenigsten entwickelten Länder ('Least Developed Countries' LDC's) in der WTO. Jedoch bieten sich neue Möglichkeiten fuer die LDC's, während die Welthandelsrate zurueck geht, bei der Gestaltung neuer Formen im Handel mitzuwirken. Es ist erwahnenswert, dass die Anwendung der Vorschriften der WTO auf Entwicklungslaender und LDC's sich auf 48 Laender bezieht, von welchen bereits heute 32 Laender Mitglieder der WTO sind. Angesichts der Herausforderungen fuer diese These, der beschraenkten Literatur und gut dokumentierten Fallstudien zu LDC's, sind nur einige wenige Beispiele daraus analysiert. Diese Studie will thematisch hervorheben, wie die WTO innerhalb der Klassifizierungen von Industrie- und Entwicklungslaendern zustande kam. Dazu bewegt sich diese These entlang des breiten Spektrums der WTO-Rechtsordnung, und präsentiert die Interaktion der Länder im Rahmen der WTO; argumentiert, dass trotz der verschiedenen Vorteile der WTO fuer das Internationale Handelssystem, die Grundsätze der Gerechtigkeit nicht vollständig fuer die weniger privilegierten Ländern gelten. Generell kann gesagt werden, dass die WTO-Normen und Befugnisse der Verhandlungen berücksichtigten nicht die Einzigartigkeit der LDC's, die in der Regel vom Handel mit Ware von weniger entwickeltem und verarbeitendem Gewerbe abhängen. Zusaetzlich sind die differenzierten Verhandlungsformen nach WTO-Regeln fuer diese Länder eine schwierige Basis. Präferenzieller Marktzugang garantiert nicht automatisch den Zugang zum Markt. Der Weg zum Eintritt in die WTO für interessierte Staaten ist oft mit großen Herausforderungen und Zugeständnissen verbunden.

Abstract

Numerous discussions and rich literature have been presented on developing countries in the WTO and the international trade system in general. What has been timidly spoken about is the situation of the Least-Developed countries (LDCs) in the WTO. While the world rate of trade is in decline, the role of LDCs in shaping new trade forms can provide various opportunities.³⁴ Furthermore, what is significant about the application of WTO regulations to developing countries and particularly LDCs is the fact that this group comprises of 48 countries from which 32 are already WTO members. Given the constraints on the thesis, alongside the scarce literature and well-documented case studies on LDCs, only few examples are alluded to therefrom. Thematically, this study intends to highlight how WTO came about within the classifications of developed and developing countries. To do so, the thesis moves along the wide spectrum of WTO legal system in a narrative manner. Hence, it presents how countries interact within the WTO, arguing that despite the various benefits WTO brought to the international system of trade, the principles of equity do not fully apply to those less privileged countries. Eventually, WTO standards and powers of negotiation tend not to take into account the unique nature of LDCs, whom are usually commodity-dependent with the less-developed manufacturing sector.³⁵ This makes the special and differential treatment under the WTO rules to those countries not automatically favourable. In fact, preferential market access does not guarantee entry into a market.³⁶ In effect, vulnerable economies often go through various challenges from the outset before becoming a WTO member. The innovation behind the WTO system as a diplomatic forum has its benefits; nevertheless, becoming more rules-based can increase the benefits of the less significant members.

³⁴ UNCTAD, 2014, The Least Developed Countries report 2014, Growth with structural transformation: A post-2015 development agenda, UNCTAD/LDC/2014

³⁵ WTO, 1996, Participation of developing countries in World Trade: Overview of major trends and underlying factors https://www.wto.org/english/tratop_e/devel_e/w15.htm accessed 3 June 2015

³⁶ OECD and WTO, 2011, Aid for Trade and LDCs: Starting to show results