

Part I

The foundations of the WTO

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1 The theory and practice of the multilateral trading system

The prejudice which would either banish or make supreme any one department of knowledge or faculty of mind, betrays not only error of judgment, but a defect of that intellectual modesty which is inseparable from a pure devotion to truth.

George Boole
An Investigation of the Laws of Thought (1854)

Introduction

The thought is the father to the deed, and the multilateral trading system could never have been built if it had not first been imagined. The World Trade Organization (WTO) is not the product of just one idea, however, or even one school of thought. It instead represents the confluence of, and sometimes the conflict between, three distinct areas of theory and practice. Law, economics and politics have each inspired and constrained the capacity of countries to work together for the creation and maintenance of a rules-based regime in which members with widely different levels of economic development and asymmetrical political power work together to reduce barriers to trade. It is therefore fitting to begin this history with a review of the intellectual prehistory of the WTO, as well as the contemporary debates surrounding each of these fields.

Three major developments were required before a multilateral trading order could be created, including the emergence of two ideas and the resolution of a paradox. The first idea is that countries are sovereign, and hence have control of their own destinies, but also that the best exercise of sovereignty is to enter into binding agreements with other states by which they place voluntary and mutual limits on their exercise of that sovereignty. International law thus needed to be devised and respected, including the forms and norms of diplomacy, protocol, treaties, conferences and eventually the establishment of international organizations. The first steps towards the creation of the modern legal system date from the seventeenth and eighteenth centuries, based on speculations about natural law, but a true regime of international law was not under way until states developed a comprehensive body of positive law based on actual treaties. The WTO is an expression of that idea, but must also contend with the fact that states have created other international organizations (thus posing problems of coherence) while also jealously guarding their own sovereignty (thus setting limits on how far they are willing to go in negotiating and enforcing commitments).

The second idea, and the one that is most important for this specific aspect of international order, was the notion that countries may extract mutual gains from freer trade. Policy-makers will not liberalize markets unless they believe it is in the individual and collective interests of their countries to take advantage of an international division of labour based on comparative advantage and economies of scale. In contrast to political science and law, the systematic study of economics is quite a recent development. Given that this field emerged more than two millennia after the Greeks pioneered the scientific study of history and politics, it is remarkable how quickly trade economists devised the core ideas of their discipline (see Table 1.1). The principal intellectual arguments in favour of open markets were developed in the late eighteenth and early nineteenth centuries and overwhelmed the prevailing mercantilist doctrines that saw wealth as interchangeable with power, treating trade as the conduct of international competition through means other than outright war. The chief objective of mercantilism had been to manage trade so as to maximize exports, minimize imports, and thus build up trade surpluses in order to accumulate specie (i.e. gold and silver). Those precious metals could then be converted, when needed, into armies, navies and other instruments of power. The emergence of more cooperative economic ideas, when coupled with the establishment of a rules-based state system, gave countries both the motive and the means to negotiate treaties for closer economic relations. While the intellectual rationale behind free trade is impressive, it does not persuade all critics. Proponents of open markets have had to deal with perennial challenges to the foundations and implications of their ideas.

The third development concerned power and its paradox. The legal and economic ideas that underlie the trading system each aim to create a world order in which power would play a lesser role and in which more powerful countries would be constrained either by law or by their recognition of mutual self-interest. Power nonetheless remained indispensable to the establishment of international order. But for the actions of two successive hegemonies, each of which employed their power to create and maintain a regime of market-opening trade agreements, it is doubtful that the legal and economic ideas on which the multilateral trading system is based would ever have moved beyond speculation and into practice. Great Britain played this part from the mid-nineteenth until the early twentieth century, followed by the United States after an unfortunately leaderless and turbulent period between the world wars. The system of linked, bilateral trade agreements that countries negotiated during the period of British hegemony was replaced under US leadership by the General Agreement on Tariffs and Trade (GATT), the precursor to the WTO. These two powerful states helped to establish and enforce rules that granted judicial equality and economic opportunity to other states that would, in earlier periods of history, have been subject to much more naked and one-sided exercises of power.

Each of these three developments, and the ways that they sometimes reinforce and sometimes undermine one another, are explored in this chapter. The analysis proceeds in three steps. The first is to examine the development of the foundations in law, economics and politics, in that order, and how they led to the creation of the trading system. Each of these centuries-long developments in theory and practice converged with the creation of GATT

Table 1.1. Key events in the legal, economic and political foundations of a multilateral trading system

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 [The Prince]</i> is the classic statement of realpolitik in the early modern era.
1625	Hugo Grotius's <i>De Jure Belli ac Pacis [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 [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 [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 [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.

in 1947, and remains critical to the development of the WTO. In the current environment, they may best be seen not as foundations but as challenges, however, and the second step in this analysis is to review the legal, economic and political challenges of the WTO. The review stresses that there is more change than continuity from the *ancien régime* to the new order, to the point where one is tempted to use instead the term disorder. The years since the creation of the WTO have been marked by rapid changes in the conduct of trade and in its consequences for the distribution of wealth and power. The third and final step is to give a quick preview of how the themes explored in this chapter are developed in the rest of the book.

This is necessarily an exercise in compression, reducing centuries of debate and development to a few pages. The discussion treats the legal, economic and political issues separately, but readers will note that the boundaries between these fields are frequently blurred in both theory and practice. Examples of creative cross-fertilization abound, especially among the intellectual pioneers in these three fields. Hugo Grotius, for example, was the first scholar of international law, but he was more prone to emphasize

justice than law and might be more accurately described as a liberal than a lawyer. Similarly, those who think of Adam Smith as the consummate liberal might be shocked by just how much this very political economist was a man of his warlike time. Nor can all political scientists be considered the intellectual descendants of Thucydides and Machiavelli. A great many of them see more cooperation than anarchy in international relations, and are by nature more liberal than realist in their outlook, while others invade the turf of lawyers by taking a public-law view of institutions. In brief, the lines that are supposed to separate these disciplines are not always respected. If they were, the WTO might never have come into being.

Legal and institutional foundations

International organizations are, first and foremost, an expression of international law, and law is central to the WTO. “Most studies of WTO governance and institutional reform concur that a core purpose, if not the core purpose of the WTO,” according to one analysis (Birkbeck, 2009: 15), “should be to protect a stable, multilateral, rules-based approach to international trade.” Law provides greater certainty in relations between states and constrains what might otherwise be a chaotic and self-defeating pursuit of national interest. A country’s decision-makers should not be in doubt regarding either their own commitments or those made by their trading partners. For example, firms should know what tariff and non-tariff barriers they will need to clear in order to offer goods and services in a foreign market. That certainty rests upon the large and growing body of law generated first in the treaties that states negotiate and then in the decisions by which these agreements are interpreted and enforced.

States could theoretically liberalize trade without resorting to international law and the negotiation of binding agreements, with each of them having the option of opening their own markets autonomously. Bilateral deals could also be struck on the basis of tacit bargaining: Country B might respond in kind to the autonomous, liberalizing actions of Country A. These forms of liberalization were in vogue in mid-nineteenth century Great Britain, having been advocated in principle by the economist John Stuart Mill (1806-1873) and in practice by the industrialist and politician Richard Cobden (1804-1865). Mill argued that a country would be better off through the unilateral liberalization of trade even if its actions were not reciprocated by its partners, and Cobden found that policy-makers in other countries were more likely to open their own markets if this were not perceived as a concession to the English.¹ Great Britain’s unilateral repeal of the protectionist Corn Laws in 1846 was the first major step in the movement towards free trade in Europe and preceded the negotiation of the Cobden–Chevalier Treaty with France in 1860. That pivotal year of 1846 witnessed another, more complicated form of autonomous liberalization, with Canada and the United States engaging in a unique set of tacit negotiations by which each country enacted legislation that reduced tariffs on products of interest to its neighbour. This bargaining, which was done without any explicit agreement between the countries, preceded by eight years the negotiation of the first (and ultimately short-lived) free trade agreement between these North American partners.² The same point carries over to our own time: some countries opt to liberalize by reducing

tariffs on an autonomous basis, and these decisions may be strengthened by the widening supply chains of multinational production. As intriguing as these historical and contemporary examples are, the results of autonomous or tacit liberalization are only as secure as the continued willingness of individual countries to abide by decisions that they made freely. Any market-opening measures that are not laid down in solemn treaty obligations may prove to be ephemeral.³

The origins of international law

The development of the state system and international law predated the emergence of modern economic ideas. Even so, one of the earliest motivations for the establishment of international law was to promote peaceful economic relations. Hugo Grotius (1583-1645) is generally credited as the founder of the study of international law, and – as an advocate for freedom of the seas – was an early contributor to the free-trade tradition. Writing at a time when international law was more of an aspiration than a fact, he based his arguments largely on the existence of natural law. Grotius's *De Jure Belli ac Pacis [On the Law of War and Peace]* (1625) got a head start on the economic rationale for open markets by a century and a half. Several other political commentators of his time similarly argued that free trade exercises a pacific influence on countries, associating open markets with peace and protectionism with war.⁴

Grotius died three years before his contemporaries concluded the Peace of Westphalia, a 1648 treaty that put an end to the religious struggles of the Thirty Years War while also advancing a new conception of state sovereignty. In the Westphalian system, all states are held to be independent and juridically equal, with each of them enjoying a fundamental right of self-determination and being free of intervention from foreign powers. Those same states also have the right to enter into treaties, of which the Peace of Westphalia was just one of many, by which they establish their legal obligations to one another. While that treaty is usually remembered for its provisions on matters of war and peace, it also aimed to restore trade. In Article LXIX, for example, the signatories to the treaty agreed as follows:⁵

And since it much concerns the Publick, that upon the Conclusion of the Peace, Commerce be re-establish'd, for that end it has been agreed, that the Tolls, Customs, as also the Abuses of the Bull of Brabant, and the Reprisals and Arrests, which proceeded from thence, together with foreign Certifications, Exactions, Detensions; Item, The immoderate Expences and Charges of Posts, and other Obstacles to Commerce and Navigation introduc'd to its Prejudice, contrary to the Publick Benefit here and there, in the Empire on occasion of the War, and of late by a private Authority against its Rights and Privileges, without the Emperor's and Princes of the Empire's consent, shall be fully remov'd; and the antient Security, Jurisdiction and Custom, such as have been long before these Wars in use, shall be re-establish'd and inviolably maintain'd in the Provinces, Ports and Rivers.

The treaty thus inaugurated a tradition by which the states of Europe would use the occasion of peace-making after a major conflict as an opportunity either to restore the commercial freedoms that had existed in the *status quo ante bellum* or even to achieve levels of openness not reached before the hostilities. They would be far less successful when negotiating the Treaty of Versailles after the First World War, but it is this same impulse that gave birth to GATT after the Second World War. Some see the later creation of the WTO as part of the “peace dividend” that came with the end of the Cold War.

International law developed into a more systematic discipline in the century that followed the negotiation of this treaty, as exemplified by Emer de Vattel's (1714-1767) widely read *Le droit des gens, ou Principes de la loi naturelle* [*The Law of Nations*] (1758). This text would remain a guidebook well into the nineteenth century. The underlying economic concepts were still primitive, however, with de Vattel aping the mercantilist views that were prevalent among the statesmen of his time. Writing 18 years before Adam Smith published his *Inquiry into the Nature and Causes of the Wealth of Nations*, de Vattel advised that:

The conductor of a nation ought to take particular care to encourage the commerce that is advantageous to his people, and to suppress or lay restraints upon that which is to their disadvantage. Gold and silver having become the common standard of the value of all the articles of commerce, the trade that brings into the state a greater quantity of these metals than it carries out, is an advantageous trade; and, on the contrary, that is a ruinous one, which causes more gold and silver to be sent abroad, than it brings home. This is what is called the balance of trade. The ability of those who have the direction of it, consists in making that balance turn in favour of the nation (Chapter VIII, Paragraph 98).

This passage illustrates an important point about the legal perspective on the trading system: lawyers may act as effective advocates for their clients in this field as in others, but the direction that their advocacy takes will depend on the client's aims. De Vattel's promotion of mercantilism merely reflected the ideas of his time. The system of laws and treaties that countries were then developing would prove adaptable to the new economic ideas that were to come in the next generation.

The form that trade agreements took, and the very language that negotiators employ to this day, owed more to mercantilism as interpreted by lawyers than to free trade as promulgated by economists. The commitments that countries make to reduce or eliminate tariffs are invariably called “concessions”, connoting that any reduction in the tariff wall means giving up something of value – albeit in exchange for reciprocal concessions from the partner countries. Were politically savvy economists to have their way, these mutual restraints to which countries agree in trade agreements might instead be deemed “investments”.

Some of the terminology that the lawyers employ has more ancient origins. When countries began to negotiate trade treaties they borrowed a key concept that had originally been developed between towns and visiting merchants. The origins of the most-favoured-nation

(MFN) clause date to the Middle Ages, when traders would obtain franchises from municipalities defining their rights and privileges. They would typically request the same rights and privileges that might be given to the “most favoured” traders. The doctrine was then incorporated in commercial treaties between sovereign states, providing that any concession made to one trading partner (especially the reduction of tariffs) would automatically extend to all other countries to which it granted MFN treatment, and would later become a pillar of the multilateral trading system. GATT Article I provides that “any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.”

The creation of international organizations

Having devoted great energy to developing and defending what were then the radical ideas of sovereignty and independence, legal theorists were not quick to adopt the related but seemingly contradictory notion that these same countries might subordinate their exercise of sovereignty to supranational organizations. It instead fell to a philosopher to broach that idea, with Immanuel Kant (1724-1804) calling in his 1795 essay *Zum Ewigen Frieden* [*On Perpetual Peace*] for a league aimed at “an end of all wars forever.” While revolutionary for his time, Kant’s proposal envisioned a more circumscribed role for international organizations than his intellectual heirs would later promote. His ideal institution would be narrowly aimed at securing peace, and the league would not have “any dominion over the power” of the member states and there would be no “need for them to submit to civil laws and their compulsion.”

It was not until the middle of the nineteenth century that states would begin to establish formal and permanent international organizations that had broader aims and a more intrusive approach to the negotiation of commitments. Fittingly, the first of these were the product of modern technology and trade. The International Telecommunication Union, founded in 1865 as the International Telegraph Union and acquiring its present name in 1934, is often cited as the first true international organization of the modern era. The Paris Convention for the Protection of Industrial Property (1883) was another important step in this direction, and would become (by way of its incorporation into the Agreement on Trade-Related Aspects of Intellectual Property Rights) the oldest part of WTO law. A few other bodies date from the nineteenth century, notably the Universal Postal Union (created in 1874), but only with establishment of the League of Nations after the First World War did international organizations begin to achieve the numbers and acquire the importance that they enjoy in our own time.

International law was not immediately extended to countries outside of Europe and its more economically advanced ex-colonies. Other regions first had to endure generations of colonialism, gunboat diplomacy and legal concepts that formalized inequality (e.g. extraterritoriality). Consider the experience of China in the century that preceded the outbreak of the Second World War. Starting with a bilateral tariff treaty that Great Britain compelled it

to sign in 1842, China lost autonomy in setting and even in collecting tariffs. The rates were fixed in the treaties that the Western powers (and eventually Japan) imposed, with the concessions in each new agreement being automatically extended to all of the powers through MFN clauses. Nor was the Chinese case unique; European powers and the United States imposed comparable treaties at various times on the Congo, Egypt, Morocco, Muscat (now Oman), Persia (now Iran), Samoa, Siam (now Thailand), Tunis and Turkey. Over the course of the twentieth century, however, the Westphalian concepts of sovereignty and the juridical equality of states were transformed into a universal practice. Henkin (1968: 42) observed that “almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time,” and while that may be a bit of an exaggeration, it is undeniable that adherence to law has become a more prominent feature of global relations in our own time than it was in the past.

The Second World War offered the Allied Powers an opportunity to remake the world, and the post-war system of international organizations that they devised resembles the structure of national governments. In addition to creating a legislature (General Assembly of the United Nations), a judiciary (International Court of Justice), and a central bank (World Bank and International Monetary Fund), the architects of the post-war order established the equivalents of the ministries of agriculture (Food and Agriculture Organization), education and culture (United Nations Educational, Scientific and Cultural Organization), health (World Health Organization), labour (International Labour Organization) and so forth. The proposed International Trade Organization (ITO) was thus intended to perform the functions of a global trade ministry. Idealists hoped that these institutions would form something like a world government, but a series of problems prevented anything of the sort from emerging. The most significant of these were the strong attachment that all countries have to their own sovereignty, as well as the tensions and divisions that soon emerged in the Cold War. Those concerns over sovereignty compelled the diplomats who devised the ITO to pursue rather modest goals. “Neither the ITO nor GATT said a word about free trade,” Diebold (1994: 336) would later recall, and he knew “of no one involved in working out the problems of international trade at the time who thought that free trade was a realistic goal or even a reasonable aspiration for a liberal economic system that had to be operated by sovereign states.” The negotiators worked numerous protections for those sovereign states into the terms of these agreements, but not enough to satisfy their critics.

The ITO was the first casualty of the post-war political environment, with the US Congress refusing to approve the Havana Charter to this institution. Countries instead fell back on the supposedly temporary GATT, which became the centre-piece of the trading system. GATT had been intended to serve as an interim arrangement before the new trade institution came into being, and if one takes the long view, that is precisely what happened. The interim period turned out not to be a few months but was instead close to half a century. This stripped-down version of the ITO grew along three dimensions over the ensuing decades, with the number of GATT contracting parties multiplying, their tariff commitments deepening and the range of issues gradually widening from border measures to behind-the-border laws. GATT hosted

eight rounds of multilateral trade negotiations from its establishment in 1947 until subsumed by the WTO in 1995.

GATT gradually evolved from an exclusive club to an essential attribute of global citizenship. Nearly all of the countries that were not yet contracting parties to GATT by the end of the Uruguay Round (1986-1994) were either in the process of accession or were seriously exploring that possibility. The body nonetheless had some notable imperfections, not least being the fact that it was not a *bona fide* international organization. GATT was a contract to which countries were parties rather than an organization in which they were members, and in that contractual arrangement their commitments were applied on a provisional rather than a definitive basis. These shortcomings threatened to be even more troublesome if, as the United States advocated, the multilateral trade regime were expanded in the Uruguay Round to cover new issues such as services, investment and intellectual property rights. Other developed countries came around to support the US proposals on these issues, but a few years into the round they proposed that the new issues be complemented by a change in the legal basis of the regime. As advanced by Canada and the European Community in 1990, and adopted after four years of negotiations, the new WTO would be a true international organization in which laws were applied definitively and enforced by a stronger dispute settlement mechanism.

International organizations after the Cold War

The establishment of the WTO coincided with the end of the Cold War. This was seen in some countries as an opportunity to cash in the “peace dividend” and reduce the burdens of leadership, but some idealists more grandly proclaimed an “end of history” and saw an opportunity to devise a more cooperative world system. Some advocated greater reliance on international organizations as deliverers of “global public goods” (see Box 1.1). The Commission on Global Governance reflected this mood. In the same year that the WTO came into being, this UN-backed commission published its report on *Our Global Neighbourhood*, arguing that a “multifaceted strategy for global governance is required.” The authors observed that this would require “reforming and strengthening the existing system of intergovernmental institutions” and –

the articulation of a collaborative ethos based on the principles of consultation, transparency, and accountability. It will foster global citizenship and work to include poorer, marginalized, and alienated segments of national and international society. It will seek peace and progress for all people, working to anticipate conflicts and improve the capacity for the peaceful resolution of disputes. Finally, it will strive to subject the rule of arbitrary power – economic, political, or military – to the rule of law within global society (Commission on Global Governance, 1995: 5).

The report also hailed the establishment of the WTO as “a crucial building block for global economic governance” (*Ibid.*: 167).

Box 1.1. The WTO and public goods: the legal, economic and political dimensions

One concept that cuts across all three areas of thought examined here is the notion of public goods. This economic idea has important — although not always consistent — implications for the multilateral trading system. It helps to explain why open markets are difficult to establish, how that difficulty can sometimes be overcome as a general rule and what specific exceptions are then proposed.

As first described by Samuelson (1954), public goods share two key characteristics. The first is that they are non-excludable, meaning that no one can be prevented from enjoying them. Roads and national defence, for example, are available to everyone if they are available to anyone. Second, they are non-rivalrous in consumption, meaning that one person's use of that good does not diminish its availability to others. The information that one motorist receives from reading a road sign does not interfere with anyone else's ability to navigate. From the standpoint of public policy, the most important aspect of public goods is that they are highly susceptible to market failure. A rational, self-interested actor will normally perceive a great disincentive to supply a public good when other, equally rational and self-interested actors can "free ride" on that investment. This barrier to the provision of public goods by private parties thus becomes a rationale for the state to step in as a provider, acting on behalf of the community.

One school of thought applies public-goods reasoning to answer the "big picture" question of why global markets are sometimes relatively open and sometimes relatively closed, a conundrum that is — together with the question of why countries are sometimes at peace and sometimes at war — one of the two great topics in international relations. According to the theory of hegemonic stability, an open world market is a public good and hence tends to be under-provided, with each country pursuing its own self-interest through selective protectionism while also being prepared to free-ride on any other country's openness. The public good has historically been provided only when there is one large country that has both the motive (a competitive, export-oriented economy) and the means (military power, political prestige and economic leverage) to lead or coerce other countries (see Kindleberger, 1973; Krasner, 1976; and Gilpin, 1987). As discussed at length in Chapter 2, Great Britain played this role in the nineteenth century and the United States in the twentieth century.

Another school of thought applies similar reasoning to argue more broadly for global governance through international organizations. The advocates of global public goods stress the collective gains over the individual costs of cooperation, and contend that institutions such as the WTO need to be established and strengthened as a means of dealing with the world's problems. This will, they hope, provide a more enduring, equitable and cooperative basis for democratic global governance than reliance on hegemony. In this environment, states "will witness continuing erosion of their capacities to implement national policy objectives unless they take further steps to cooperate in addressing international spillovers and systemic risks" (Kaul et al., 1999: 451).

Public-goods concepts can also illuminate the domestic politics of trade, including the differing levels of activism on the part of pro-trade and trade-sceptical interests. If all interested parties felt the same incentive to act upon their interests we might expect trade liberalization to be a political "no-brainer" in most democracies, as consumers — the ultimate beneficiaries of an open market — would greatly outnumber the protectionist industries that conspire against their interests. Consumers face a public-goods problem to mobilization, however, just as the protection-seeking industries benefit from the organizational advantages of small numbers.

Consider the case of sugar. If millions of consumers are told that they can each shave US\$ 1 per week off their grocery bill if only they band together to fight the sugar lobby, and the half-dozen members of that lobby know that they each earn millions of dollars in rents from the inflated prices of a closed market, it should not surprise us if the few producers prove better able to overcome the public-goods barrier to organization than do the many consumers.

The logic of public goods also affects the willingness of countries to liberalize in sectors other than goods. Whereas there are few countries where government is directly involved in the production and sale of goods, states have been encouraged by public-goods considerations to become providers of health, education and other social services, as well as electricity, other utilities, postal services and transportation. That brings a new level of complexity to negotiations over trade in services, as these are sectors in which both workers and consumers are better able to overcome the public-goods barriers to organization. State-run enterprises tend to be more heavily unionized, and people who benefit from state-supplied social services were among the most active recruits for anti-globalization activists at the turn of the twenty-first century.

This rush of post-Cold War enthusiasm, which might be seen as the third attempt in the twentieth century to remake world order after hostilities end, did not fully achieve the desired redefinition of global society. Perhaps the most serious constraint it faced was the differing degree to which the member states of international organizations consider global governance to be desirable or feasible. As Sandler (1997: 13) noted, nations are loath “to empower a supranational body with the authority to collect taxes to regulate transnational externalities, to provide international public goods, to assign property rights or to redistribute income”. That loathing is more intense in some countries than it is in others, with the differing political cultures and traditions of the two most influential participants in the trading system being especially consequential.⁶ Policy-makers in the European Union and the United States often demonstrate fundamentally diverging views of the value of international law and their willingness to cede some degree of sovereignty to regional or global institutions. As Petersmann (2007: 143) put it, US policy-makers are prompted “to oppose the idea of relying on international and international tribunals as means of changing domestic laws” by “the US conception of national constitutionalism, democratic self-government and self-sufficiency, and the US view of intergovernmental organizations as being irremediably anti-democratic.” By contrast –

European integration demonstrates that – in a globally interdependent world – individual and democratic self-determination, enjoyment of human rights across frontiers and peaceful international cooperation cannot be ensured without international law: a state open to international law is therefore not limiting its democratic life and national sovereignty, but rather realizes new dimensions of democratic self-government and democratic responsibilities in an interdependent world (*ibid.*: 144).

These transatlantic differences influenced both the establishment of the WTO and its development as an institution. Whereas the European Union was among the earliest and most enthusiastic proponents of a new international institution to replace the outdated and

underpowered GATT, the United States was at times indifferent or even hostile to the notion of creating a new global body. And while Brussels was the principal advocate of launching what was to become the Doha Round, Washington has proven at some critical points to be less enthusiastic about the enterprise.

The differences in EU and US approaches to trade liberalization may also be traced to their distinct domestic experiences. Economic integration was the original motivation for union in both cases, but arose in different times and proceeded at different speeds. This was achieved in one fell swoop in the United States, with the Constitution of 1788 prohibiting internal barriers to commerce and establishing a common external tariff. The process of integration in Europe was much slower and politically difficult. Once Europeans achieved a common market, however, they tended to be even stronger advocates than their US counterparts had been.

Many European policy-makers see economic integration at the international level as a natural progression from their regional achievement. The same kinds of initiatives that have helped deliver peace and prosperity to the European continent, they hope, can do the same for the world if scaled up to that level. Problems can nevertheless arise when seeking to balance regional goals against international ones, especially on agriculture. Any European negotiator who is so bold as to offer significant concessions on agricultural matters within the WTO can expect to face difficult questions, or worse, from those EU member states that are most protective of the social contract that Europe has made with its farmers.

The expanding scope of trade policy exacerbated the problems of coherence and governance. While trade in most goods fell squarely in the jurisdiction of GATT, the WTO now deals with matters that impinge on the jurisdictions of other international organizations and agreements. The distinct authorities of these institutions can encourage “forum shopping” by national governments. Countries that wish to see the rules in a particular area remain voluntary, or not be strongly enforced, will generally argue that the topic should be left to some other, relevant international organization. This was why developing countries preferred in the 1980s that intellectual property rights be dealt with in the World Intellectual Property Organization rather than GATT, for example, and are equally insistent today that labour rights are handled in the International Labour Organization rather than the WTO. Conversely, *demandeurs* propose that the WTO have jurisdiction over issues that are new or imperfectly covered precisely because they want these disciplines to be backed by the power of the WTO dispute settlement system. This would mean promoting the role of the WTO over the United Nations Educational, Scientific and Cultural Organization in matters of cultural trade, and over the World Health Organization on issues related to trade in health-related goods and services, and so forth.

The economic foundations

The three most remarkable things about trade economics are how long it took for this field of thought to emerge, how quickly its core ideas developed and how enduring those ideas have been. Alfred North Whitehead (1928: 39) vastly overstated the case when he asserted that

the “European philosophical tradition ... consists of a series of footnotes to Plato”, but one would be much better justified in making a similar claim with regard to trade economics after Adam Smith (1723-1790) and David Ricardo (1772-1823). Even so, the footnotes – or what might better be termed the corollaries, controversies, exceptions and elaborations – have had important implications for the development of the trading system. Economists disagree over the merits of discriminatory liberalization, for example, and on the advisability of extending the scope of trade rules into new subject matter. They have also had to contend with political, social and moral challenges to the foundations and implications of their theories.

The economic rationale for open markets

Adam Smith's arguments for free trade were based on specialization and the absolute advantage that individuals or countries may enjoy in the production of goods. His thesis can be distilled by aggregating the opening of each of the first three chapters of *The Wealth of Nations*: “The greatest improvement in the productive powers of labour ... seem to have been the effects of the division of labour,” which stems from man's natural “propensity to truck, barter, and exchange one thing for another,” but “the extent of this division must always be limited by ... the extent of the market.” In short, by extending the scope of the market to reach across borders, we may exploit an international division of labour, allowing each country to specialize in those industries to which it is best suited and to trade these products with other countries specializing in their own *métiers*. Smith's concepts of the division of labour and absolute advantage offered about three quarters of the rationale for open markets, especially for those countries that have clear natural advantages in the production of certain goods.

Ricardo's concept of comparative advantage supplied the rest of that rationale, explaining why even countries that are the best at nothing can still gain by exporting those things in which they are comparatively more productive and importing those things that they produce least efficiently. As explained in his famous example of wine and cloth traded between England and Portugal (see Box 1.2), Ricardo demonstrated how trade could improve welfare in both countries. In Smith's conception, this bilateral trade would be advantageous if England were better at producing cloth and Portugal were better at producing wine. Ricardo explained why trade could make both countries better off even if Portugal were better than England at producing *both* goods, provided that there was a difference in each country's relative levels of productivity in cloth vis-à-vis wine.⁷ Englishmen may be inefficient producers of cloth compared to the Portuguese, yet the English cloth-makers are more efficient by comparison with the hapless English vintners. If England moves out of wine and wholly into cloth, Portugal does just the opposite, and the two countries trade with one another, the net result will be more efficient production of both goods. This should enhance consumer welfare all around, with clothing and wine becoming more affordable in London as well as Lisbon. The concept of comparative advantage remains counter-intuitive for anyone who is instinctively mercantilist in orientation, viewing exports as good and imports as bad, but the mathematical logic is inescapable. It is arguably the most significant and influential idea ever developed in the social sciences.

Box 1.2. Ricardo's illustration of comparative advantage: trading wine and cloth

From David Ricardo, On the Principles of Political Economy and Taxation, third edition (1821).

If Portugal had no commercial connexion with other countries, instead of employing a great part of her capital and industry in the production of wines, with which she purchases for her own use the cloth and hardware of other countries, she would be obliged to devote a part of that capital to the manufacture of those commodities, which she would thus obtain probably inferior in quality as well as quantity.

The quantity of wine which she shall give in exchange for the cloth of England, is not determined by the respective quantities of labour devoted to the production of each, as it would be, if both commodities were manufactured in England, or both in Portugal.

England may be so circumstanced, that to produce the cloth may require the labour of 100 men for one year; and if she attempted to make the wine, it might require the labour of 120 men for the same time. England would therefore find it her interest to import wine, and to purchase it by the exportation of cloth.

To produce the wine in Portugal, might require only the labour of 80 men for one year, and to produce the cloth in the same country, might require the labour of 90 men for the same time. It would therefore be advantageous for her to export wine in exchange for cloth. This exchange might even take place, notwithstanding that the commodity imported by Portugal could be produced there with less labour than in England. Though she could make the cloth with the labour of 90 men, she would import it from a country where it required the labour of 100 men to produce it, because it would be advantageous to her rather to employ her capital in the production of wine, for which she would obtain more cloth from England, than she could produce by diverting a portion of her capital from the cultivation of vines to the manufacture of cloth.

While the argument is sound, it is not universally accepted, and the advocates of free trade perennially face objections that have taken similar forms ever since the time of Smith and Ricardo. The opposition of protectionist industries need not detain us here; the resolution of the struggles between free-traders and traditional protectionists fall more in the category of domestic political practice than international economic theory. The more difficult challenges come from critics who oppose or present alternatives to the ideas themselves. The advocates of multilateral free trade, both in the WTO period and before, are engaged in perennial debates with those who question the materialist basis of the doctrine, or object to the expanding scope of trade negotiations into other spheres of public policy, or contend that special provision must be made for developing countries, or argue instead for targeted and discriminatory approaches to trade liberalization.

Objections to materialism and the market

The most fundamental and recurring challenge comes from critics who object to the materialist assumptions that underlie modern economic thought and policy, questioning the

implicit assertion that the market is the best mechanism for deciding what goods and services will be produced and who will consume them. Modern economics in general, and trade in particular, often raise the hackles of those who associate its foundations with greed and exploitation, and who believe that unfettered markets perpetuate or exacerbate inequality within and between countries. The doctrine of free trade is more attractive to those who focus on the prospects for creating new wealth than it is to those whose principal concern is with how that wealth is distributed. Free trade arguments made little headway with conservatives and churchmen when they were first advanced, and in our own time they do no better with environmentalists for whom concerns over sustainability defy the casual assumption that more is always better.⁸

What is really at issue for many critics is not the transnational character of trade but the question of whether these exchanges should be conducted on a market basis in the first place. Groups that oppose the inclusion of new issues or sectors within the scope of market disciplines will typically urge that the item not be treated as a commodity. “Water is a basic human right,” according to an official of the Canadian Union of Public Employees, “not a commodity to be bought, sold and traded,”⁹ just as Rosset (2006) insisted that “[f]ood is not just another commodity, to be bought and sold like a microchip, but something which goes to the heart of human livelihood, culture and society.” Critics also point out that a “cultural heritage is not a commodity” (SANGONeT, 2010), criticize newspapers that “report on education as a commodity” (Van Leeuwen, 2000), and opine that “information’s epiphenomenal character is fundamentally inconsistent with commodity treatment” (Babe, 1996: 303). The international bodies that have jurisdiction over these matters tend to adopt similar terms. The very first principle in the Declaration Concerning the Aims and Purpose of the International Labour Organization (a 1944 annex to the ILO Constitution) is that “labour is not a commodity.” Similarly, the World Health Organization stresses that “[e]ssential drugs are a public good and not simply just another commodity.”¹⁰ Critics fear that bringing the more politically sensitive sectors within the orbit of international trade rules will lead to indiscriminate commodification, operate to the detriment of ordinary workers and consumers and reduce the extent to which the production and allocation of goods and services can be controlled by means other than a decidedly impersonal and possibly unfair market. These concerns are among the principal motivations for anti-globalization activists.

The range and intensity of these critiques rose with the establishment of the WTO and the expansion in the scope of trade rules. Until late in the GATT period the only recognized tradeables were tangible goods, “trade” meant only the movement of goods across borders, and the only available instruments of “trade policy” were tariffs, quotas and other measures that directly regulated these transactions at the border. Due both to advances in technology and to the demands of major players in the system, trade policy now deals with other articles of commerce such as the cross-border movement of services, capital (i.e. investment), ideas (i.e. intellectual property) and even people (i.e. the presence of natural persons as service providers). That expanding definition of trade means in turn that trade rules affect a much greater array of policy instruments and regulatory authorities, and non-tariff measures have gone from being supplementary to central issues in trade negotiations. Trade policy has also

come to be linked to many other issues, including some that are related to the production, distribution and use of goods (e.g. labour and environmental matters) and others in which the relationship is controversial and will be determined in large part by politics (e.g. the observance of human rights in the country of origin).

With these issues now on the table, there are more stakeholders who either demand a seat or hope to overturn that table altogether. Anti-globalization activists should not be confused with simple protectionists, as the basis for their criticism is not economic in the traditional sense. As Henderson (2000: 16) noted, what is significant about the newest participants in trade debates is that they stand “not for particular sectional interests, but for causes” and “are often given the tactically useful label of ‘public interest’ groups”. The self-styled consumer groups bear little or no resemblance to the idealized focus of liberal economists’ attention. If they were, one would expect these groups to be strong advocates of open markets that enhance consumer welfare through lower prices and broader choices. Eschewing a narrow focus on pocketbook issues, these groups focus instead on the deregulatory damage that they fear might be done if trade liberalization were to interfere with laws intended to protect workers, consumers and the environment. The General Agreement on Trade in Services (GATS), for example, is sometimes portrayed as a threat to the democratic provision of essential services. In this context, the term “democracy” connotes sectors that are heavily regulated or state-owned and hence are more answerable to government officials and organized interests – including labour unions and consumer organizations – than they are to corporate directors and shareholders.

The expanding scope of negotiations creates greater friction between WTO members who hold differing views about the role of the state, whether in the domestic or international form. The new issues raised the prospect that the goals of negotiators might move from the limited aim of liberalization at the border to the more ambitious objectives of privatization (i.e. getting government out of the business of providing goods and services directly) and deregulation (i.e. getting government out of the business of directing how private industry may produce and distribute goods and services). The debate over these options carries over to disputes about the proper role of international organizations. Whereas most of these institutions are devoted to building the capacities of governments either indirectly (through technical assistance and the funding of government policies) or directly (through the delivery of services by the organization itself), the principal function of the WTO is the negotiation and enforcement of commitments that generally reduce the state’s level of intervention.

Trade, development and discrimination

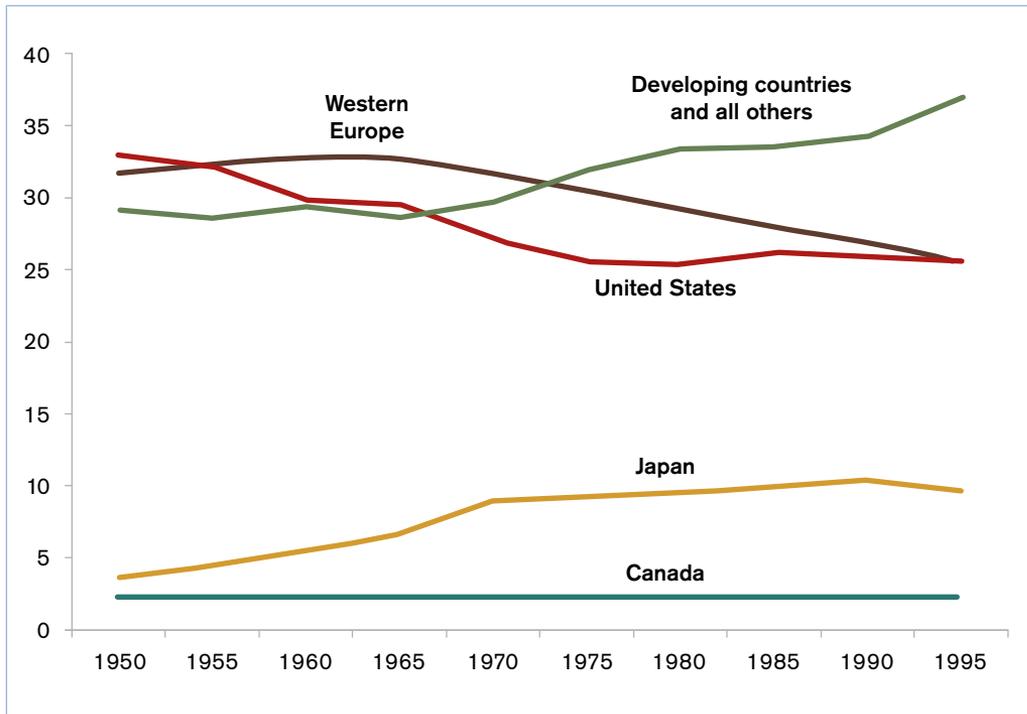
These questions concerning the proper role of the state are also a key part of the recurring controversy over the application of free-trade doctrine to developing countries. The field of development economics might appear to be relatively new, but can be traced at least as far back as the emergence of the very first developing country in our modern sense of that term.

The United States was the original post-colonial, trade-dependent, commodity-exporting, capital-poor country and, as such, it is not surprising that it spawned the first reasoned critique of classical economics. Writing just 14 years after Smith's *Wealth of Nations* – which happened to be published the year that the United States declared its independence – US Secretary of the Treasury Alexander Hamilton (1755-1804) anticipated in his seminal *Report on Manufactures* (1790) much of the rationale and the programme of developing country thinkers who came after him. More than a century and a half before Raúl Prebisch (1901-1986) and others developed the arguments in favour of import-substitution industrialization and called for a New International Economic Order, Hamilton pointed to the dangers of monocultural dependence, the declining terms of trade for exporters of primary commodities and the inability of infant industries to compete with well-established producers in larger, richer countries. Many of the specific steps he advocated, including import protection and a guiding role for the state, would be familiar to modern advocates of industrial policy.

The core question in the debate over trade and development is whether the received wisdom of trade economics applies equally to all countries at every level of economic and political development, or if the arguments in favour of open markets need to be modified by other considerations that perennially arise in developing countries. Policy-makers and opinion leaders in countries that are poor, dependent on trade and that often have legacies of colonialism are, like Hamilton, more prone than their counterparts in developed countries to have misgivings over the consequences of pursuing a development strategy that lets the market decide what will be produced, traded and consumed. Some fear that doing so means being consigned to the least attractive denominators in the global division of labour. These concerns have often led such countries to favour a much stronger role for government, both domestically (in the form of import protection and industrial policy) and internationally (in the form of foreign assistance, commodity cartels, and obligatory forms of special and differential treatment for developing countries, among others).

The rise of the developing countries elevated the significance of these arguments for the trading system. As can be seen from the data in Figure 1.1, the major participants grew unequally during the GATT period, with the relative shares of the global market economy that were controlled by North America and Western Europe gradually declining and those controlled by Japan and the developing countries gradually rising. Policy-makers in many developing countries perceived Japan to have benefited from an interventionist development strategy, and its success inspired emulation on their part in the 1960s and 1970s. The Japanese resurgence also frightened policy-makers in the United States and Western Europe into adopting protectionist policies in the 1970s and 1980s.

The mood of the early 1990s was quite different, being marked by the pro-market Washington Consensus. Named for the propinquity of institutions that favour a market-oriented approach to development, including the International Monetary Fund, the World Bank, the InterAmerican Development Bank, the US Treasury and think tanks, the Washington Consensus stressed

Figure 1.1. Shares of GDP of the global market economy, 1950-1995, in %

Source: Calculated from data in Maddison (2001).

Notes: Does not include Eastern Europe, China and the Soviet Union.

the value of open markets as an engine of growth (Williamson, 2004). Several trends contributed to the emergence of this consensus, including the sharp spike in oil prices, the Latin American debt crisis, a slowdown in Japanese growth, severe fiscal constraints and the collapse of the Soviet Union. It was also inspired by a reconsideration of what works, with the Asian “tigers” and other countries that had embraced trade having done better than those that tried to manage it (Harris, 2006). The consensus also coincided with a more activist approach on the part of developing countries that “began to perceive that the positive discrimination received under [special and differential] treatment had become outweighed by increasing negative discrimination against their trade,” and that turned towards “defend[ing] the integrity of the unconditional MFN clause, obtaining MFN tariff reductions, and strengthening the disciplines of GATT” (Gibbs, 2000: 75). These events led many developing countries to recognize that protectionism (under whatever name) had not served them well, and among the reforms that the consensus inspired were the negotiation of free trade agreements with developed countries, a new wave of accessions to GATT, and more active participation in the Uruguay Round. The pro-market reformation has since been followed by a statist counter-reformation in some countries, and the renewed popularity of interventionist policies has been

among the factors making the Doha Round more contentious than its predecessor. While the consensus might therefore have marked only a brief period in time, the WTO was one of its lasting products.

Another perennial debate among economists concerns the relative value of trade preferences and discriminatory trade agreements. The oldest view is that non-discriminatory free trade is the first-best option, and that countries should ideally reduce or eliminate their barriers to trade without favouring one set of partners over another. Others insist that developing countries ought to be given preferential access on either a non-reciprocal basis (as in the case of “one-way” arrangements such as the Generalized System of Preferences) or on a reciprocal basis (especially in free trade agreements). Whether preferences are granted through autonomous and non-reciprocal arrangements or negotiated through reciprocal agreements, they always imply two potential problems for the multilateral trading system. One is the economic problem of distortion. Discriminatory liberalization will create new trade by switching some purchases from less competitive producers at home to more competitive producers in the partner country, but may also divert trade by switching some purchases from more competitive producers in third countries (which remain subject to tariffs) to less competitive producers in the partner country (whose goods are now made cheaper by eliminating tariffs). Any agreement in which the amount of trade diversion exceeds the amount of trade creation will lead to a net reduction in global welfare. The other problem with discriminatory programs and agreements is that they may create a disincentive to multilateral liberalization, with countries being more focused on the need to preserve the margins of preference that they enjoy in these agreements than they are in negotiating new, non-discriminatory reductions in trade barriers.

Economists have debated the merits of discriminatory arrangements since the mid-twentieth century, but they have come to no consensus on whether, on the whole, these arrangements can best be seen as building blocks or stumbling blocks for the multilateral trading system (Lawrence, 1991). The only point on which there is absolute agreement is that discrimination proliferated far more rapidly in the WTO period than it did in the GATT period, with agreements expanding both in number and in significance. One especially notable development is the breaking of the “glass ceiling” that had long prevented the four largest members of the WTO from negotiating free trade agreements with one another. For decades China, the European Union, Japan and the United States had confined their discriminatory negotiations to other, smaller partners, but at time of writing some of the potential pairings between these countries are under negotiation or active consideration (see Chapter 13).

The political foundations

If the multilateral trading system had to be reduced to a single sentence, it might be this: it receives its inspiration from economists and is shaped primarily by lawyers, but it must operate within the limits that the politicians set. The advocates of the legal and economic ideas discussed above were motivated by the desire to create a world in which relations between states were not conducted exclusively as exercises of raw power, and to some

degree both international law and free trade have succeeded in that enterprise. Asymmetrical power nonetheless remains a fundamental consideration in all areas of international relations, a point that is just as true for trade as it is for other questions that are reserved for presidents and prime ministers. Analysts who see the distribution of power as a critical variable in the international system often attribute the very existence of international organizations such as the WTO, as well as the rules they enforce and the outcomes that they promote, to the interests and objectives of the most powerful states in the system. That is a point shared in common by those who take a positive view of the largest states as well as those who see the most powerful states in less benign terms. Where some recognize enlightened leadership, others perceive self-interested bullying.

Trade, power and independence

Scholars and practitioners who adopt a political view of the system differ from the disciplines reviewed above not so much in what they examine as in how they choose to see it. Where legal theorists and lawyers look for principles, and economists and business people see interests, political scientists and statesmen focus on power. The two most salient characteristics of power set it apart from the ways that lawyers and economists prefer to view the world. Power may be defined as the capacity of one actor (be that a person, party, country etc.) to compel another actor do something that it would not otherwise do. Power is also notable for its zero-sum distribution, such that whatever amount of power that one actor has can be measured only relative to that of other actors, and any increase in one actor's power necessarily comes at the expense of all others. These notions of compulsion and asymmetry set those who think in political terms apart from the lawyers who emphasize the concepts of juridical equality and justice, as well as from the economists who favour cooperation and positive-sum gains.

Power dominates political relations within countries and between them, whether or not they establish intermediary institutions such as the WTO to help manage these relations.¹¹ From this perspective, the creation and operation of an international organization that is intended to open markets is as much an exercise of power on the part of its members (and especially the most powerful ones) as it is a manifestation of international law and the embodiment of an economic idea. This point is exemplified by the theory of hegemonic stability, the basic premise of which holds that an open global market is a public good that tends to be underprovided unless there is someone willing to undertake that expensive task (see Box 1.1). Markets were more open, or were progressing in that direction, when Great Britain and the United States, respectively, were each at the height of their competitiveness and exercised their leadership.¹² Conversely, markets were more closed in the unhappy period that came between British and US hegemony. According to this theory, it is no mere coincidence that the creation of GATT in 1947 came when the United States was at the height of its economic competitiveness, military power and political influence. Realist premises also form the foundation of the Rational Design school, which starts from the assumption that states are rational and self-serving. This school of international political economy seeks to tease out the implications of the central proposition that "states use international institutions to further their own goals, and they design institutions accordingly" (Koremenos et al., 2001: 762).¹³

The economic control of borders, no less than their military security, is an exercise of sovereignty and an expression of power. An agreement that permits or encourages closer economic relations between states will always have implications for political relations between the parties to the agreement. This point might best be understood by considering the critical role that economic integration has played in stitching separate states into unified nations. The need for commercial unification inspired the US Constitution of 1788, as well as the establishment of customs unions that preceded and facilitated the creation of the Italian (1861), German (1871) and Romanian (1881) states. Economic integration also played a key role in promoting broader political cooperation and security in such diverse regions as Western Europe, East Africa, Central America and Southeast Asia. Conversely, the fear that trade liberalization may threaten political sovereignty can sometimes discourage countries from engaging in trade negotiations or adopting their results. Worries of this sort led the Canadian public to reject a trade agreement with the United States in 1911, for example, an experience that was nearly repeated in 1988, and have been a recurring issue in the expansion and consolidation of the European Union. The perceived challenges to independence are less severe in the case of multilateral liberalization, but these initiatives can still raise concerns in some quarters.

The fear of foreign domination through trade runs like a red thread through history, and has come in many varieties. These include the military concern that dependence on trade will sap a country's strength, a preoccupation shared by such diverse personalities as Lycurgus (the law-giver of ancient Sparta) and the Tokugawa shoguns of early modern Japan; or the economic challenge of tying one's destiny to decisions made in faraway capitals, as the Anglophobes of the nineteenth century and the *dependencia* theorists of 1960s-era Latin America expressed; or the cultural anxiety that a dominant foreign power could overwhelm one's own heritage and traditions, as seen in Jean-Jacques Servan-Schreiber's *Le Défi Américain [The American Challenge]* (1967) and as some of our contemporary globophobes assert.

A frequent subtheme in these critiques is the suspicion with which smaller and less competitive states view the enthusiasm of larger, richer states in promoting open markets. From the perspective of a sceptical, nationalist German such as Friedrich List, Great Britain's advocacy of free trade in the nineteenth century was an effort to "erect a universal dominion on the ruins of the other nationalities" (List, 1841: 294). Germany came under harsh criticism for its own use of trade as an instrument of power when Albert Hirschman used the example of Nazi commercial diplomacy to demonstrate "why and how relationships of dependence, or influence, and even of domination can arise out of trade relations" (Hirschman, 1945: 13). These objections were echoed in the 1950s and 1960s, albeit from a different political direction, when it became fashionable in post-hegemonic Great Britain to characterize the country's nineteenth century policies as the "imperialism of free trade".¹⁴ Today critics describe as "kicking away the ladder" the sequence by which developed countries that once employed protectionist measures of their own now seek to prevent others from employing comparable policies.

Power and politics in GATT and the WTO

Even the most casual observer will recognize the vast shifts in power among states and regions from the middle to the end of the twentieth century. Ford (2003: 68) argued that the creation of the WTO reflected this fundamental change in the international distribution of power, characterizing the institutional transference from GATT to the WTO as “a structural or cultural shift from limited multilateralism to superlateralism” in which the new regime “embodied new socio-economic and organizational norms, based on disembedded liberal principles and legalism”. She attributed that change largely to an erosion in the hegemonic role of the United States and to the founding of a new order in which other actors, and above all developing countries, stepped forward to help create a more cooperative, collective regime based on shared responsibilities.

Ikenberry (2001: 50-51) presented an altogether different view, portraying the end of the Cold War as an opportunity for a reinvigorated United States to remake the global order. This is part of a larger, recurring pattern in statecraft that Ikenberry saw in the historical aftermath of major wars, whereby the winning state has “opportunities to establish new basic rules and organizing arrangements that are likely to persist well into the future”. “In general,” he argued, “a leading state will want to bind weaker and secondary states to a set of rules and institutions of post-war order,” but “to get the willing participation and compliance of other states, the leading state must offer to limit its own autonomy and ability to exercise power arbitrarily.” This act of “strategic restraint” allows that country to conserve its power. It is in that context that, for Ikenberry, “creation of the WTO in 1995 is perhaps the clearest and certainly most controversial example in the post-Cold War era of the United States binding itself to an international institution” (*Ibid.*: 244). The WTO can thus be seen as a manifestation both of continued US power, with victory in the Cold War playing the same role here as victory in the Second World War did for creation of GATT, and also as an example of the calculated limits that victorious powers are well-advised to place on their exercise of authority.

Between the Ford thesis and the Ikenberry antithesis is Ostry's synthesis. By her account, the creation of the WTO was a shared enterprise in which both a diminished giant and its major partners had roles. Sylvia Ostry, a Canadian trade diplomat, observed shortly after the WTO came into being that “the end of the Cold War has greatly lessened the ‘high policy’ constraints on American trade policy” (Ostry, 1997: xvi), such that the “glue that bound the Western powers within a broad and consensual policy template has dissolved.” Those powers nonetheless managed to collaborate in the creation of a new, post-Cold War regime. “Without US leadership, the Uruguay Round would simply not have happened,” Ostry argued, “[b]ut the WTO would also not exist without the cooperative efforts of a number of middle powers and, in particular, the major power of the EU” (*Ibid.*: 238).

Political issues infuse the operation of the WTO, even if the economic and political spheres appear to be sharply demarcated in its day-to-day operations. While members generally seek to limit the degree of political interference with trade, it would be unrealistic to expect countries to subordinate all political concerns to the rules and norms of this economic institution. It would also be unwise to demand that they do so. If countries were prevented altogether from using trade as an instrument of foreign policy, they would be forced to choose

between WTO membership and the free exercise of their sovereignty, in which case there would probably be no WTO at all. This was explicitly understood in the negotiations over the Havana Charter. In Article 86, the prospective members recognized 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.” There is no comparable provision in GATT 1947, which was expected to be only a stop-gap measure, but that agreement nonetheless contains two articles that carry over into the WTO regime. One provides an exemption from WTO rules for otherwise illegal, trade-restricting measures that states take in pursuit of their essential security interests (GATT Article XXI and GATS Article XIV *bis*). Another provision allows members to refrain from applying WTO treatment to specific members from which they are politically estranged (GATT Article XXXV, replaced by WTO Article XIII). These provisions help to demarcate the divisions between the high politics of diplomacy and security and the low politics of trade, but do not prevent them from meeting. All countries have interests that extend beyond trade policy, and many of them are attracted by the ways in which they might employ the hard edge of soft power.

Legal, economic and political challenges for the WTO

The preceding review has focused primarily on the legal, economic and political foundations of the GATT system, much of which carries over into the WTO period. It would, however, be a serious error to see the WTO simply as a chronologically sequential and incrementally larger version of GATT. The new system represents more than just a higher stack of agreements, a widened base in the membership and a multiplication in the number of dispute settlement cases. The changes have been qualitative as well as quantitative, both for the trading system and for trade itself, and reflect the profound differences in the world as it was in the second half of the twentieth century versus the world as it is in the first half of the twenty-first century.

There are many ways that the apparent similarities between the WTO of today and the GATT of 1994 can be deceptive. One may start with the seemingly superficial matter of where they are housed. GATT and the WTO share the same address, and a hurried pedestrian on Geneva’s Rue de Lausanne might be forgiven for concluding from a quick glance that the building is little changed. Were that passerby to enter the grounds he would find not only that the WTO now occupies the entirety of the Centre William Rappard – of which the old GATT had only half – but that the much-renovated building has been modernized from top to bottom, expanded with a new wing, and complemented by a spacious new conference centre. Just as the WTO headquarters is superficially similar to but fundamentally different from its GATT predecessor, so too has the institution itself retained similar appearances while undergoing profound changes. The head of the organization goes by the same title as did his GATT predecessors, for example, but the WTO directors-general have higher profiles (if also shorter tenures) than did their forebears. Where the GATT directors-general were technocrats who came from the ranks of ambassadors and civil servants, the WTO directors-general up to mid-2013 were all politicians who had previously been ministers or prime ministers. That same

pattern in which the differences rest beneath a deceptively similar surface can be found in the structure and functions of the Secretariat, the composition of the membership, the conduct of its dispute settlement mechanism, the place that the institution holds in debates over globalization and – above all else – the issues that are taken up in the WTO.

The issues that arise in the WTO, whether in negotiation or litigation, range far beyond the simple border measures that dominated most of the GATT period. That reflects changes in the actual conduct of trade. John Maynard Keynes once waxed eloquent about the integrated world economy that existed immediately before the outbreak of the First World War, when “[t]he inhabitant of London could order by telephone, sipping his morning tea in bed, the various products of the whole earth, in such quantity as he might see fit, and reasonably expect their early delivery upon his doorstep” (Keynes, 1920: 11). For all that changed between 1914 and 1994, a latter-day Keynes could have used those very same words to describe a like transaction in the concluding year of the GATT system. That would no longer be true just two decades later. One may start with how the order is placed and the purchases are fulfilled. Today that recumbent shopper would use a smartphone or similar device rather than a plain old telephone, and that same piece of multitasking technology might even replace the doorstep as the delivery site – provided that the purchases in question can be digitized. Whether the merchandise is virtual or physical, it is more likely now than in the past to be the product of intricate and integrated supply chains whose operation and ownership stretch across more borders. Perhaps the most important change is in the consumer. In 1914, that picture of snug domesticity played out in Keynes’ London and a few other upmarket locales in Europe and North America, and by 1994 it had spread much farther among the developed countries, but in our own time those same luxuries are enjoyed by a rising middle class throughout the developing world. The share of the workforce in these countries whose livelihood is dependent on trade has also risen.

The gap between consumer welfare in Beijing and London has closed rapidly in the WTO period, as have the levels of productivity in their respective firms. The same may be said of the capacities and influence of the governments to whom these consumers and companies pay taxes. That point is true for the narrow field of trade policy as well as for the larger economic and political environment in which it is conducted. For all of the changes that had taken place in the global division of power from before the First World War to the end of the Cold War, most of it entailed a reshuffling in the relative positions of the same seven or eight countries, coupled with one consolidation that lasted (the European Union) and one that did not (the Soviet Union). Similarly, the main difference from the start to the end of the GATT period was a shift from one transatlantic “Group of Two” (G2) to another. What started as a G2 between the Great Britain and the United States was eventually replaced by a G2 between the European Union and the United States. The years since then have seen wealth and power diffuse into altogether new regions, a change that has been more fully reflected within the WTO than the changing balance of economic and political power had been in the GATT echo chamber. The G20 today has ten times as many members as the G2, and is composed of a much more diverse array of countries whose interests are not as easily reconciled.

These economic and political changes in the wider world place the WTO in a different position than was GATT and pose new difficulties for its members and the Secretariat. The three topics reviewed above each help to define the new environment, but have moved from foundations to challenges.

The legal challenge

The WTO faces two sets of legal challenges. The first concerns its ability to fulfil the core task of bringing trade within the rule of law – an area in which GATT made a good but incomplete start. Related to this problem is the need to strike a proper balance between the legislative (negotiations) and judicial (litigation) functions of the institution, which will be a recurring theme throughout this book. The second challenge comes from the conflicts that may arise between trade law and other areas of theory and jurisprudence.

Scholars disagree on the extent to which the WTO has achieved the GATT objective of bringing trade within the rule of law. The negotiation of new agreements in the Uruguay Round and beyond has extended the scope of international law, but the meaning of those agreements has not always been clear. That is due in part to the common practice of “constructive ambiguity”, in which negotiators who find themselves stymied on some point may devise compromise language that manages to get them past the immediate problem but does not actually settle their differences. They sometimes try to resolve those ambiguities through quantification, but there too they can slip into vague formulations. This is one respect in which the WTO shows little change from its GATT predecessor. As one astute observer of the problem stated it:

Consider the centuries of controversy and debate over how to apply the injunctions: “Thou shalt not kill” and “Thou shalt not covet thy neighbor’s wife”. How more difficult the interpretation of the commandments would have been had Moses returned from Mount Sinai with something looking like: “Thou shalt seek to avoid to kill” and “Thou shalt not take more than an equitable share of thy neighbor’s wife taking into account shares during a previous representative period and not precluding shares for new participants” (Plank, 1987: 81).

These shortcomings were especially notable during the GATT period, but did not disappear with the advent of the WTO. Schropp (2009: 4-5) described the WTO as an incomplete contract, pointing to its “formal, *de iure* trade policy flexibility mechanisms” as well as “various informal, *de facto*, flexibility tools,” resort to which “is often in contravention of the letter of the law, or at least the spirit of the Agreement,” but that “happen more or less in the shadow of the law.”

Where negotiators are unable to resolve their differences they sometimes leave it to litigators to finish the job. Some stress what Davey (2012) termed the “judicialization” of the WTO, or Weiler (2001) called “juridification,” while others emphasize those aspects of WTO law that allow for discretion, exceptions and conflict. The most persuasive evidence for the greater

judicialization of the WTO is in the stronger dispute settlement rules of the new institution. That strength encouraged members to bring more cases against one another in the WTO than they had in GATT. The growing docket of the WTO Dispute Settlement Body is not troubling to some lawyers, but other observers do not fully share that optimistic interpretation. Many commentators note that the WTO's enforcement powers are now so strong, and negotiations have proven so difficult to conduct, that the judicial function of this institution can overshadow its legislative function.

The legal issues surrounding trade cannot be seen solely through the lens of trade law itself, as they face challenges from other areas of international law. Here Lang (2011: 243) identified "an emerging post-neoliberal legal imagination" that developed "as a result of the WTO's legitimacy crisis of the late 1990s". As he sees it:

In response to criticisms that the WTO disciplines on domestic regulation constitute overreaching and trespassing into value-sensitive areas more appropriately dealt with through domestic democratic institutions, this new legal imagination is self-consciously cautious and modest in the role that it seeks to define for the trade regime. It seeks to draw new boundaries around the operation of trade law and the trade regime, so as to ensure that WTO law does not become a mechanism for the global projection and entrenchment of a single form of state-market relations, and a single vision of appropriate and legitimate regulatory intervention.

This alternative legal vision, which challenges trade law and the WTO, necessarily brings one back to the political sphere. Only there can countries decide how far they wish to allow trade law to go in defining the relations between them. That is a topic to which we will return in Chapter 5, when examining the issues of coherence and relations with other international organizations. Countries also need to consider differing views of relations within states, and what roles they wish to assign to the state and to the market. That returns us to the economic side of the debate.

The economic challenge

"The great events of history are often due to secular changes in the growth of population and other fundamental economic causes," Keynes once observed (Keynes, 1920: 14-15), which "escaping by their gradual character the notice of contemporary observers, are attributed to the follies of statesmen or the fanaticism of atheists." The rate of change during most of the GATT period was leisurely enough that one might easily have fallen into that bad habit of misattribution, especially at a time when participation in the system was limited, but not so in the WTO period. The speed with which the world changes has become far too rapid to escape notice, especially with respect to the relative decline of the developed countries and the concurrent rise of developing nations. Those shifts have made the WTO system more difficult to manage than its predecessor.

As summarized in Table 1.2, the combined share of global gross domestic product (GDP) of the Quad (Canada, the European Union, Japan and the United States) fell from three quarters to less than three fifths from 1995 to 2011. During that same period the eight emerging economies shown in the table grew from less than one tenth to over one fifth of the global economy. In 1995, the Quad as a whole was 8.1 times larger than these eight, and one country in the latter group was not yet in the system; the multiple had fallen to 2.7 by 2011, and all of them were members. To draw the most consequential comparison, the ratio of the US share of global GDP to that of China was just over ten-to-one at the start of the WTO period, but by 2011 it was just two-to-one.¹⁵

Table 1.2. Shares of global GDP, 1995-2011, in %

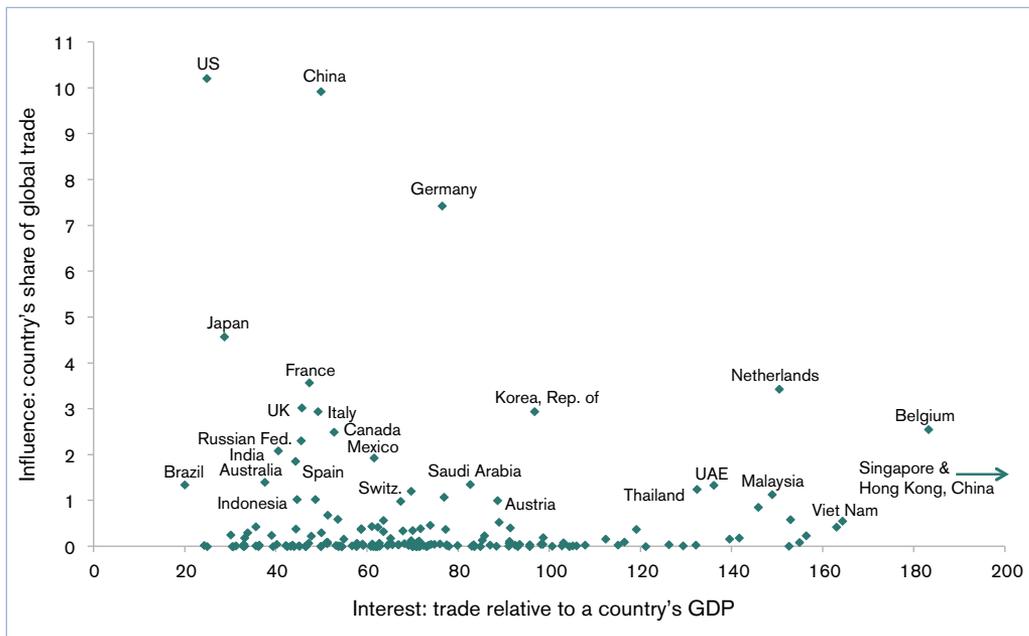
	1995	2000	2005	2010	2011
Quad	75.4	73.7	70.1	59.7	57.4
European Union	30.9	26.2	30.1	25.6	25.1
United States	24.6	30.6	27.5	22.9	21.4
Japan	17.9	14.6	10.0	8.7	8.4
Canada	2.0	2.2	2.5	2.5	2.5
Selected countries	5.3	4.5	5.9	6.6	7.2
Russian Federation	1.3	0.8	1.7	2.4	2.7
Australia	1.2	1.3	1.5	1.8	2.0
Korea, Republic of	1.7	1.6	1.8	1.6	1.6
Switzerland	1.1	0.8	0.8	0.8	0.9
Emerging economies	9.3	11.0	13.0	20.4	21.5
China	2.4	3.7	4.9	9.4	10.5
Brazil	2.6	2.0	1.9	3.4	3.5
India	1.2	1.5	1.8	2.7	2.6
Mexico	1.0	1.8	1.9	1.6	1.6
Indonesia	0.7	0.5	0.6	1.1	1.2
Turkey	0.6	0.8	1.1	1.2	1.1
South Africa	0.5	0.4	0.5	0.6	0.6
Malaysia	0.3	0.3	0.3	0.4	0.4
Selected developing regions	5.3	6.1	6.2	8.2	8.6
Other Latin America and Caribbean	2.5	2.6	2.3	3.2	3.2
Middle East and North Africa	2.3	2.9	3.2	4.0	4.4
Least-developed countries	0.5	0.6	0.7	1.0	1.0
Rest of world	4.7	4.7	4.8	5.1	5.3
World	100.0	100.0	100.0	100.0	100.0

Source: Calculated from World Bank data at <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>.

One of the most serious problems in the multilateral trading system is the growing divergence between the interests and the influence of leading countries in that system. In the GATT period, the Quad, and especially the United States, had not only economic interests that motivated them to create and maintain the system but also the influence needed to achieve this aim. We have already seen how that influence has waned over time, as measured by their declining shares of the global economy. Developing countries have captured ever-greater shares of that economy, with trade playing no small role in their rise, but their willingness and ability to shoulder the burdens of the system remain uncertain.

The data in Figure 1.2 plot the importance of specific countries to the trading system (a measure of influence) and the significance of trade to those countries (a measure of interest). The first of those factors is gauged simply by countries' shares of global merchandise trade. The second factor is trade dependence, defined here as a country's trade relative to its GDP.¹⁶ All other things being equal, we should expect there to be greater impetus for the system to move forward, and for new trade agreements to be negotiated, when the countries with the greatest amount of influence in the system also have high levels of interest. While there are indeed some examples that broadly fit that pattern, especially in Europe, for most of the prominent countries in the WTO their levels of interest are not commensurate with their influence.

Figure 1.2. Relative values of countries' merchandise trade, 2011



Sources: Shares of global trade calculated from WTO data on imports and exports of merchandise at <http://stat.wto.org/Home/WSDBHome.aspx?Language=E>. Merchandise trade as a percentage of GDP from World Bank data at <http://data.worldbank.org/indicator/TG.VAL.TOTL.GD.ZS>.

Notes: Countries' percentage shares of global trade in merchandise and trade in merchandise relative to countries' GDP.

The positions of the European Union and its member states are especially complex and represent in microcosm the larger problem of the trading system. The data on trade dependence show that Germany is, in addition to being the largest trader in the group and the third-largest in the world, also the median country in the trading system: at 76.4 per cent, its trade dependence is exactly equal to that of the global average. As a general rule, the other large EU member states tend to be less trade-dependent than Germany, as in the case of France, Italy and the United Kingdom, while smaller members such as Belgium, the Czech Republic, the Netherlands and the Slovak Republic are among the most trade-dependent countries in the world. With trade having been the original area of competence for the EU machinery, and having played such a central role in the bloc's existence, it is not surprising that the European Union places a higher priority on this area of public policy than the other large players do. The differing interests of EU member states nonetheless make for a sometimes unstable negotiating stance, not least on divisive and sensitive issues such as agriculture, and it is the larger and less trade-dependent members, such as France, that are more prone to apply the brakes even when smaller, more trade-dependent members would prefer to step on the accelerator.

Compared with their EU counterparts, US policy-makers place a lower priority on this subject. The United States is one of a handful of countries that are more important to the trading system than the trading system is to them. Whereas this country accounted for 10.2 per cent of global merchandise trade in 2011 (the highest of all), US trade in goods was the equivalent of just 24.8 per cent of the domestic economy (the third-lowest of all). The relative share of trade vis-à-vis the domestic economy was about three times greater in the average country than in the United States, and for many of them it exceeded 100 per cent. The situation of Japan is similar to that of the United States. Whereas this country was the fourth-largest trader in 2011, controlling 4.6 per cent of the total, trade was the equivalent of just 28.6 per cent of the Japanese economy.

Some of the more prominent emerging and transitional economies share that same characteristic of being more important to the trading system than the trading system is to them. Consider Brazil, China, India, the Russian Federation and South Africa. These five countries collectively controlled 16.3 per cent of global merchandise trade in 2011, and individually ranged from 0.6 per cent (South Africa) to 9.9 per cent (China), but for each of these countries the value of total trade in goods (imports plus exports) in 2011 was equivalent to a smaller share of GDP than the global average of 76.4 per cent. That point is especially notable in the case of Brazil. It was in fact the least trade-dependent country in the world in 2011, with merchandise trade being equivalent to just 19.9 per cent of its GDP. Trade-dependence was also below the 76.4 per cent global average in India (40.5 per cent), the Russian Federation (45.5 per cent), China (49.8 per cent) and South Africa (53.5 per cent). To be sure, not all emerging economies meet this description: Malaysia, for example, is among the most trade-dependent of all economies (148.8 per cent). On average, however, the largest emerging economies are, together with the United States and Japan, among the least trade-dependent.¹⁷

These figures are not meant to suggest that trade is unimportant to the largest emerging economies, nor to Japan and the United States. It is nonetheless reasonable to conclude that the perceptions of policy-makers in each of these countries might differ from those of their counterparts in smaller, more trade-dependent countries. It is less costly for these countries to walk away from any deal that is not to their liking, or even to abstain from trade negotiations altogether, just as each of them may be more attracted by the prospects of negotiating bilateral or plurilateral trade agreements in which smaller partners' desire for access to their markets can be leveraged for other *desiderata* (not all of them economic). They might also be more likely than others to use trade as a means of cementing alliances with other countries with whom their interests are compatible but not identical.

The political challenge

The political challenge stems directly from the economic issues reviewed above. Economic and political power are more widely distributed in the WTO period than was the case in the GATT period, and the configuration of power in this system may be less conducive to multilateral liberalization than was the case in the old days of top-down leadership. While GATT owed its existence to the interests and influence of a few, large powers, shares of the global economy are more diffuse in the WTO era. That requires a much higher level of cooperation between countries not just with different interests, but also very different ideas about how the multilateral trading system ought to operate.

The European Union and the United States remain the two largest and most influential members of the WTO but have less sway in the organization than they did in GATT. There was a time when agreement between these two partners was both a necessary and a sufficient condition for bringing a round of trade negotiations to a conclusion. By the time of the 2003 Cancún Ministerial Conference, that condition appeared to remain necessary but no longer sufficient, as demonstrated by the revolt of two different blocs of developing countries against a proposal that these two members floated for the Doha Round agricultural deal. It is now an open question as to whether EU–US concurrence remains even a necessary condition. Some might contend that if China and the United States were to be in strong agreement over some new multilateral bargain, European negotiators might find it difficult to withhold their own approval – provided that the terms of that bargain were not blatantly unfair to European interests.

Power relations in the trading system today need to be seen through a wider-angle lens that takes in countries that have moved from the periphery of GATT to positions closer to the centre of the WTO. These rising powers include some that had long been nominal members of the system but did not begin to exercise their potential until relatively late in the GATT period, as well as others that did not accede until after the WTO was established. Prominent among the emerging countries in that first group are Brazil, India and South Africa, each of which were among the original GATT contracting parties of 1947, while the latter group includes China (which acceded in 2001) and the Russian Federation (which acceded in 2012). Each of these countries is highly influential within its own region, both economically and politically,

and either has or aspires to have a greater influence at the global level. Their local influence might most simply be measured by shares of regional GDP: South Africa accounts for 32.2 per cent of the sub-Saharan African economy, and the shares are higher still for China in East Asia and the Pacific (39.0 per cent), Brazil in Latin America and the Caribbean (42.7 per cent) and India in South Asia (81.3 per cent),¹⁸ while the Russian Federation is the only country that is a big player on two continents. China and the Russian Federation are among the five permanent members of the UN Security Council; Brazil and India hope to win permanent seats on an expanded council. And while these countries' military capabilities are not directly relevant to trade negotiations, it is worth observing that all but South Africa are on the top-ten list of countries with conventional military forces, and all of them either have nuclear weapons (China, India and the Russian Federation) or at one time sought to develop them (Brazil and South Africa). These and other emerging economies, such as Chile, Malaysia, Mexico, Singapore and Turkey, take a much more active role in WTO deliberations than they did in the GATT period, sometimes approaching this institution as one of several in which they may exercise a rising degree of influence on world affairs.

The influence of the largest emerging economies was already evident in the endgame of the Uruguay Round. Peter Sutherland (see Biographical Appendix, p. 594), who served as the last GATT director-general and the first WTO director-general, would later observe that the round could not have been concluded without the strong support of the ambassadors from Brazil (Luis Felipe Lampreia, see Biographical Appendix, p. 583) and India (B.K. Zutshi). Each of them fought for their respective countries' interests, but Mr Sutherland could also appeal to their sense of commitment to the multilateral trading system.¹⁹ By the same token, when General Council Chairman Stuart Harbinson (see Biographical Appendix, p. 580) worked throughout 2001 to get the Doha Round off the ground, he relied on his counterparts from Brazil and South Africa, later observing that: "The support of these two large and influential developing countries was absolutely instrumental in getting the round launched."²⁰ The clout of the emerging economies can also be felt in their rising ability to slow or halt initiatives to which they object. That had not been the case in the mid-1980s, when the concerns of countries such as Brazil and India did not prevent the Uruguay Round from being launched, and India was too isolated in 2001 to block the start of the Doha Round. However, these and other emerging economies have had a decisive influence on the subsequent conduct of that round.

At the other end of the continuum of developing countries, one finds a larger group of poorer, less powerful states in which policy-makers often have a less confident view of their countries' capacities to benefit from an open market. Chief among them are those the United Nations formally identifies as least-developed countries (LDCs).²¹ This group forms a large and growing bloc within the WTO: 26 of the 49 LDCs were resident members of the WTO as of 2012, eight were non-resident members (i.e. did not have permanent missions in Geneva), and nine were still in the process of accession. The bloc of African, Caribbean and Pacific (ACP) countries includes most of the LDCs, as well as many other developing countries in which income levels are above the LDCs but remain very poor by any objective standard. Some of the ACP/LDC countries, which collectively form the Group of 90 (G90), tend to view trade liberalization as more of a

threat than an opportunity insofar as it might reduce the margins of preference that they currently enjoy in access to the markets of industrialized countries while also restricting their own “policy space”. They also insist that any new deals be complemented by expanded capacity-building programmes to assist them in meeting these obligations.

Many other developing countries and transitional economies fall in the middle of the continuum that is bracketed by these two extremes, being larger and wealthier than the G90 but not in the same league as the larger emerging economies. These countries differ tremendously in the size, diversity and competitiveness of their economies, and also in the degree of their ambitions for the multilateral trading system. The group includes some countries that take a very pro-market approach to development, favouring free trade and a relatively small role for the state, and others in which the outlook is closer to that of the typical G90 member. Whatever position they take or coalitions that they join, these countries are now more likely than they had been in the GATT period to be formal and active members of the multilateral trading system.

The legal, economic and political dimensions of WTO history

The multilateral trading system is the joint product of legal, economic and political ideas, as well as real-world developments in each of these fields. There are times when the tensions between these three disciplines are held in abeyance. That was certainly the case in the early 1990s, when the political, economic and legal rationales for the establishment of a new international organization converged: the end of the Cold War promised a peace dividend and invited a large swath of the world to re-enter the global market; the rise of the Washington Consensus prompted a re-evaluation of development strategies and trade doctrines in developing countries; and the time seemed right to establish a new world order based on inclusiveness and the rule of law.

The planets came into alignment just long enough to produce a new World Trade Organization. Once that heady period had passed, the conflicts between these three schools of thought and action re-emerged, and grew especially heated as the Doha Round dragged on and the shortcomings of the system became more apparent. Lawyers, economists and politicians who look upon the trading system in general or specific issues that arise within it often appear something like the blind men of legend who were each asked to describe an elephant, with the results depending on which part they happened to grab. The problem worsens when these blind men move from description to prescription; fixing what ails the system is not made any easier when lawyers think that its trunk swings too freely, economists want the tusks removed and politicians say that its feet are too flat.

If the differences between these three disciplines were to be decided by the force of numbers, it is the lawyers who would win, a point that is apparent from the Biographical Appendix to this book. In it one finds details on all of the directors-general, deputy directors-general, chiefs of staff, chairmen of the WTO General Council and members of the Appellate Body from 1995 to

2012, together with selected ministers, ambassadors and other figures whose words or deeds from the late GATT period to the present are cited in this book. Of the 86 individuals in the Biographical Appendix for whom information on their educational background is available, 40 received degrees in law (46.5 per cent) versus 25 in economics or business (29.1 per cent); five held joint or distinct degrees in both law and economics (5.8 per cent), such that 81.4 per cent of these figures held degrees in either or both of these fields.²² Only six (7.0 per cent) held degrees in political science, though every member of this community can be said to have been schooled in practical politics.

Those simple numbers do not tell the whole story, as it is the interaction between these three fields – sometimes creative and sometimes destructive – that makes for the dynamism of the trading system. The themes covered in this intellectual prehistory all figure prominently in the actual history that follows. The legal issues run throughout the narrative, as the WTO is now an institution that both embodies and belies the equality of states. In principle, the legal rights and status of all members are identical; countries such as Liechtenstein and Saint Lucia are on the same footing as China and the United States. In practice, however, it is an inescapable fact that vast asymmetries exist between countries, and it is inevitable that the larger countries in the system can deploy more resources and exercise greater influence.

The book examines these three themes from several angles. The political issues examined here fall principally into two categories. One concerns the relations between members that are conducted within the organization. These can be seen in the countries' decisions on whether they will accede to the organization, how they will be represented within it, and whether they will join specific coalitions (Chapter 3) and in the political issues that arise in negotiations over new members' accessions (Chapter 4). The book also explores the political issues surrounding the WTO itself, both in its relations with other organizations and civil society (Chapter 5) and in the leadership of the organization and management of the institution (Chapter 14).

The disparities among members are a recurring theme in the WTO, and are examined at several points in this book. In Chapter 6, we review how the rules and norms of the organization seek to balance the needs of the very different countries that comprise the WTO. The disparities between larger and smaller countries are more significant when dispute settlement cases come down to retaliation, as explored in Chapter 7. And if market access negotiations fall back on the principal supplier rule – that is, when only the principal suppliers of a product request tariff concessions on it – they cede the initiative to larger countries.²³ That is an issue discussed in Chapter 9.

The economic issues are also recurring and varied. Economists are sometimes frustrated by the WTO and its perceived shortcomings as an instrument of liberalization. This is one of the themes in Chapter 8, where we examine means other than dispute settlement through which the letter and the spirit of the system can be enforced. Chief among these is the Trade Policy Review Mechanism (TPRM), an instrument by which WTO members' regimes are examined in depth on a rotating basis. Many economists are dissatisfied with the TPRM insofar as it does not go nearly as far as they would like in identifying barriers and prescribing better policies.

They also tend to see the formulas and other approaches taken to liberalization, as discussed in Chapter 9, as imperfect half-measures. Economists are more divided on the question of discrimination, which we take up in Chapter 13, split as they are between those who see it as an acceptable – if second-best – way to open markets and those who see that as a very distant second.

Four other chapters are devoted to the historical development of the WTO and the negotiations that have been conducted in it. No one discipline dominates these narratives, where the legal, economic and political issues often blend together. These include the history of the creation of the multilateral trading system (Chapter 2), the negotiations that have been conducted within the WTO but outside of the Doha Round (Chapter 10), the negotiations leading to the launch of the Doha Round (Chapter 11), and the Doha Round itself (Chapter 12). The book concludes with a discussion in Chapter 15 of where the WTO may be headed in the future.

Endnotes

- 1 Bhagwati (2002b: 1) quoted Cobden as noting that in order to undercut the arguments of the protectionists abroad, the British free-traders "avowed our total indifference whether other nations became free-traders or not; but we should abolish Protection for our own selves, and leave other countries to take whatever course they like best."
- 2 The United States abrogated the 1854 trade agreement 13 years later, in no small part because of Union unhappiness over the Confederacy's use of Canada as a staging ground for raids during the Civil War.
- 3 Even so, these approaches have not disappeared altogether. Bhagwati (2002b) advocated a return to this approach as a supplement to multilateral negotiations, and several other authors have examined the use to which it has been put in recent decades by such diverse countries as Australia (Garnaut, 2002), Chile (Edwards and Lederman, 2002) and Japan (Hamada, 2002).
- 4 For example, see Émeric Crucé's *New Cyneas* (1623).
- 5 This specific article refers to trade within the confines of the Holy Roman Empire. Other articles in the treaty address commerce in and between other states of Europe.
- 6 This same point may be made with respect to other WTO members/former GATT contracting parties that, for varying reasons, are (like the European Union) more prone than the United States to be favourably disposed towards international organizations. That is notably the case for Canada, which has a long history of engagement in multilateral diplomacy (e.g. see the drafting history of the United Nations Charter) and for Japan (where the legal traditions place treaties ahead even of the constitution). The comparison made here between the European Union and the United States is thus the most prominent example, but not a unique one, of the frictions between political cultures in which policy-makers demonstrate very different degrees of attachment to sovereignty, world federalism, and other contending ideas and ideals.
- 7 Ricardo's logic also assumes that the added costs of transportation do not wipe out the efficiencies that result from specialization and trade. The validity of that assumption has grown over time as technology has reduced the costs and risks of transportation.
- 8 See Lang (2011), especially Chapter 3, on the emergence of the anti-globalization challenge to free trade.
- 9 See www.cupe.ca/mediaroom/newsreleases/showitem.asp?id=87.
- 10 Originally stated by WHO Director General Gro Harlem Brundtland in 1999 and often repeated. See <http://apps.who.int/medicinedocs/en/d/Js2248e/7.html>.
- 11 Readers will note that the principal emphasis throughout this book is on trade relations at the state-to-state level, with reference made to the domestic politics of trade only when necessary. That is an omission made solely for reasons of practicality. Domestic considerations are often the key determinant of how countries approach the multilateral trading system, but space does not permit extensive examination of how these considerations have played out in the many countries that comprise this system. For the author's views on the domestic politics of trade in one country, see VanGrasstek (2013).
- 12 Some versions of theory of the hegemonic stability identify the Netherlands as the first country to play the role of the market-opening hegemon.

- 13 Several studies in this school have examined what its assumptions mean for institutions and their membership, scope, centralization, control and flexibility. Some of these studies have focused on important issues in the trading system, such as the escape clause (Rosendorff and Milner, 2001) and the negotiation of agreements that are linked through MFN clauses (Pahre, 2001).
- 14 See, for example, Gallagher and Robinson (1953). The theory and practice are more fully explored in Semmel (1970).
- 15 Note that the levels of GDP shown in Figure 1.1 and Table 1.2 were calculated on different bases, and while comparisons can be made within each set of data, one should not consider the table to be a continuation of the same time series shown in the figure.
- 16 Note that trade *relative to* GDP is not the same as trade *as a share of* GDP. Because GDP is calculated on the basis of net exports (exports minus imports), it is possible, as is the case for a great many countries, for total trade (exports plus imports) to be greater than 100 per cent of GDP.
- 17 None of this should be taken to mean that a country's level of activity is determined solely by its degree of trade-dependence. Australia is relatively less trade-dependent, with trade being equal to 37.5 per cent of its GDP, but is by any reasonable measure one of the most active members of the WTO. Conversely, there are many developing countries that are highly trade-dependent but are not very active in WTO deliberations. Some do not even have permanent missions in Geneva, as is the case for Belize (where trade is equal to 84.4 per cent of GDP), Maldives (88.3 per cent), Sierra Leone (91.0 per cent) and Papua New Guinea (92.4 per cent). In brief, trade dependence should be considered one factor among many that may affect the level of significance that a country attaches to trade.
- 18 Calculated from World Bank data on GDP in 2010. See <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>.
- 19 Author's interview with Mr Sutherland on 18 January 2013.
- 20 Author's correspondence with Mr Harbinson on 30 January 2013.
- 21 While the specific benchmarks for LDC designation have evolved over the past generation, these criteria are based on three tests: weak human resources; a low level of economic diversification; and a low income, as measured by GDP per capita. The criteria are periodically examined to "graduate" countries from this status or, more commonly, to add new countries. As approved by the UN General Assembly in 1971, the original list of LDCs identified 24 countries. After numerous additions, a few graduations, and the merger of two countries into one, the list had more than doubled to 49 LDCs in 2012.
- 22 Other fields that are less prominently represented in this group are public administration, some received degrees in multidisciplinary programmes or in more than one field, and others received degrees in such diverse fields as anthropology, chemistry and sociology.
- 23 For an extended analysis of the meaning of the principal supplier rule for power relations in GATT and the WTO, see Kim (2010: 60ff).