

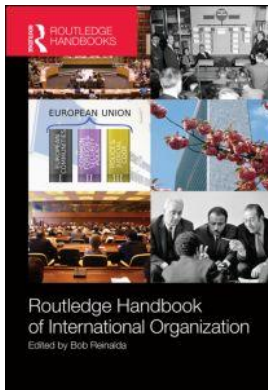
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### **The global trade architecture**

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# The global trade architecture

## An expanding agenda in times of fragmentation

Montserrat González Garibay

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This chapter provides an overview of the global trade architecture by stressing its coherence, while noting that at first sight such coherence may not be distinguished, given the plurality of trade arrangements. The overview is structured along three main axes: a theoretical background, the trade regime's main institutional configuration and the evolution of the substantive trade agenda. Regime theory, the theoretical perspective adopted in this chapter, is instrumental in highlighting the global trade architecture's *leitmotiv* (the tension between coherence and fragmentation), to which that architecture has been subject since its inception. On the one hand, actors' expectations have converged around a multilateral trade order governed by the principles of non-discrimination, most-favoured nation and national treatment, especially during the second half of the twentieth century. On the other hand, the proliferation of regional negotiation forums with disparate thematic agendas and the ascent of new actors such as the emerging countries and non-governmental actors reflect a pervasive tendency towards fragmentation.

The chapter traces the roots of the trade regime's organizational architecture back to the post-Second World War framework, which was shaped by the General Agreement on Tariffs and Trade, and its evolution towards the World Trade Organization. It assesses the proliferation of regional forums and agreements as well. It sheds light on the changing set of actors shaping that architecture and the trade regime's subject matter, which expanded its initial focus on the liberalization of trade in goods by reducing tariffs and quotas to cover items such as public procurement, technical barriers to trade, and labour rights. Finally, it highlights the challenges that the trade regime faces.

### Trade at the crossroads of economics, law and political science

Trade is a multidisciplinary domain, with ramifications mainly in economics, law and international political economy (IPE). Economic and legal analyses are often guided by normative principles and lead to prescriptions about what the global architecture should look like in terms of exogenous criteria such as efficiency and legality. The IPE agenda, however, focuses on explaining existing governance structures in terms of political actors' behaviour. Traditionally, it focuses on the question of why countries liberalize, given certain factors that

push domestic policies towards protectionism (Milner 1999), but later approaches also address the distribution of power across trading partners, the relationship between trade and other policy areas, the political economy of regional integration and the incorporation of non-state actors into trade dynamics. Within IPE, the study of trade policy confronts *top-down* structural (realist or critical) explanations where trade governance is clarified in terms of the characteristics of the international system of states, with *bottom-up* explanations, which explain trade architecture through the behaviour of individual countries or groups of actors within countries.

Top-down explanations look at the trade architecture in terms of the characteristics of the international system of states. For instance, according to hegemonic stability theory (McKeown 1983), the anarchic nature of the international system creates the need for a hegemonic power to provide public goods. Under the lens of IPE, this specific public good is trade liberalization. In turn, the regime created by the hegemonic power changes the behaviour and expectations of individual countries. Other top-down theories, especially from the critical tradition, focus on the way trade organizations consolidate global patterns of dominance (Cardoso and Faletto 1979). Within bottom-up explanations, authors look at trade policy in terms of domestic interests' rational preferences at the level of factors (labour and capital), sectors, firms, voters or government officials. Domestic institutions are integrated in those models as a buffer between the international system and national policies (Milner 1999). Those elements are often inserted into two-level-game theoretical frameworks (Putnam 1988), in which a trade negotiator's strategic behaviour is influenced by both interactions with counterparts and the pressure exerted by domestic actors. In addition, the level of the negotiator him/herself has been incorporated into bottom-up models in two ways. First, negotiation theory has introduced psychological factors, such as the character of the negotiator or the features of the interactions at the micro level (e.g. trust), as new explanatory variables of trade dynamics (Odell 2009). Second, other studies have incorporated constructivist insights, which deal with the way norms are produced at the micro level (Niemann 2006).

The division between bottom-up and top-down studies is a stylized one. In practice, several theories incorporate elements from both approaches or use frameworks that may alternate focus on bottom-up or top-down dynamics. Regime theory is one such case. Developed during the 1980s by international relations (IR) scholars (Krasner 1983), it is widely used to study the international trade architecture (Oberthür and Gehring 2006). Krasner (1982: 186) defines a regime as 'principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area'. The lack of assumptions or hypotheses regarding the way norms are produced makes the conceptual framework a particularly versatile one, allowing focus on both bottom-up and top-down dynamics.

Some authors look at how and why the trade regime is constructed and the ways in which regimes change (regimes as the dependent variable), often drawing from hegemonic stability theory. From this point of view, the trade architecture is the product of the United States' (US) economic and military predominance after the Second World War and the advent of a new, presumably Asian, world order which may bring about a new trade order. The regime may alternatively be constructed by interactions of state and (possibly) non-state actors. Here, cognitive components such as ideologies, the historical context and institutional constraints are taken into account (Haggard and Simmons 1987). From this point of view, the emergence of the trade regime can be assessed as a product of the free trade paradigm that gained strength after 1945. Other authors study regimes as a factor explaining political actors' behaviour (that is, as an independent variable). They may, in other words, affect the behaviour of concrete actors. For instance, the identity of developing countries as a specific group within the

international trade regime may be regarded as the product of the trade regime (Ford 2003). A few studies combine different approaches in which both power and ideas play a role. This is the case of Ruggie (1982), who states that the financial and trade regimes that emerged after the Second World War were the product of power, ‘social purpose’ and normative action.

Looking at the international trade architecture in terms of a regime makes it possible to emphasize its continuity and systemic nature, in spite of giving the initial impression of a fragmented whole. Moreover, the concept allows for comprehensiveness by accommodating norms, actors and the characteristics of the issue area.

## Main institutional patterns of the trade regime

The regime governing international trade encompasses a complex intertwined network of organizations and treaties, involving an equally intricate web of policy actors. This section provides a brief historical overview of the organizational structure’s development, the main actors within that structure and the principles governing it.

### *The organizational structure of the trade regime*

The global trade regime has featured, since its inception, a strong struggle between fragmentation and attempts to streamline trading patterns into a single, all-encompassing multilateral structure. This duality was already present in the nineteenth century. Advocates for the removal of trade barriers brought the trade liberalization paradigm into the European political scene (Kenwood and Lougheed 1999: 90), but protectionism persisted. On the one hand, some liberalization took place, with the 1846 repeal of the United Kingdom’s (UK) Corn Laws, the 1860 Cobden–Chevalier Agreement (which eliminated trade restrictions between France and the UK) and other liberalization treaties. On the other hand, surges of protectionism (that is, tariff increases) accompanied economic crises, and colonial powers (mainly the UK and France) instituted a preference system for products originating in their colonies. The rise in the number of export and import duties during the 1880s created an obstacle to international trade, as only a few states published them. A Belgian initiative prompted 25 countries to sign the 1890 convention establishing the Bureau of the International Union for the Publication of Custom Tariffs, which collected, translated and published tariffs from around the world. Over more than 20 years, it published roughly 100 volumes with details of 464 tariff systems and 1,813 supplements and revisions (Reinalda 2009: 122–3). The volatility of nineteenth-century trade patterns was ‘normalized’ during the interwar period (Kindleberger 1990: 131–5), only to debouch into the trade wars that characterized the Great Depression of the 1930s. In this sense, we cannot speak of an established regime for the governance of international trade before the 1940s.

The postwar multilateral trade architecture was discussed in 1946 at the United Nations (UN) Conference on Trade and Employment in Havana, Cuba. This conference, along with the 1944 Bretton Woods Conference, established the main institutions governing economic life along three pillars: financial stability (International Monetary Fund), economic reconstruction and development (International Bank for Reconstruction and Development) and trade. The negotiations in the framework of the Havana Conference had two main outcomes: the 1947 Havana Charter, which established an International Trade Organization (ITO), and the General Agreement on Tariffs and Trade (GATT). The Charter envisaged the ITO as an international organization designed to deal with trade matters. Several domains of action

were included: the imperial preferences were abolished; a link was established between trade, employment and labour standards; economic development and reconstruction were set as policy priorities; monopolistic practices were discouraged; and a basis was set for the removal of quantitative barriers (quotas). In addition, it created a binding system of dispute resolution. The GATT, centred on liberalization of trade in goods, was meant to serve as a temporary instrument during the ratification process of the Havana Charter. However, the heavy opposition in the US Congress to the Charter made it clear by 1950 that ratification would be impossible. As a result, a slightly amended version of the GATT (not an international organization but only a schedule for tariff reduction) emerged as the main cornerstone of the postwar trade regime.

During the following decades, the GATT was converted *de facto* into a full-fledged multilateral organization. This was done thanks to the efforts of Eric Wyndham White, GATT executive secretary from 1965 to 1968. It served as the forum for eight 'trade rounds': the Annecy Round (1949), Torquay Round (1950–1), Geneva Round (1956), Dillon Round (1960–2), Kennedy Round (1964–7), Tokyo Round (1973–9), and the Uruguay Round (1986–94). Though the GATT acquired the infrastructure, mandate and legitimacy of an international organization throughout the years, it was not until 1994 that it was recognized as a permanent (as opposed to an accidental) institution. The Uruguay Round triggered a process that culminated in the establishment of the World Trade Organization (WTO) as the main institution charged with further liberalizing international trade. The Doha Development Round, aimed at completing and extending liberalization to other fields, is the first set of negotiations to be conducted in the WTO forum.

In spite of the fact that the GATT's creation and consolidation pulled the trade regime towards unity, the organization did not fully succeed in mainstreaming trade patterns, and the tension between coherence and fragmentation remained present in two ways. First, regional and bilateral cooperation structures (preferential trade agreements or PTAs) emerged throughout the post-Second World War period. Those structures can adopt the form of trade-liberalizing areas (better known as free trade areas) or customs unions, wherein several countries liberalize their mutual trade and at the same time apply a common tariff to imports from third parties. The creation of the European Economic Community (EEC) in March 1957 initiated these cooperation patterns, and as a customs union, the EEC has participated as a single actor in multilateral trade negotiations since the 1956 Geneva Round.<sup>1</sup> Regional integration gained further momentum in the 1990s with the formation of the Southern Common Market (MERCOSUR) and the North American Free Trade Agreement (NAFTA). MERCOSUR is a customs union between Argentina, Brazil, Paraguay, Uruguay, and since 2006, Venezuela, whereas NAFTA established a free trade area covering Canada, Mexico and the US. In addition, the Association of Southeast Asian Nations (ASEAN) signed a free trade agreement in 1992, and numerous other regional agreements have followed. The most visible among these agreements involve either the US or the EEC and third parties.<sup>2</sup> Countries such as Australia, Japan and New Zealand, however, have also pursued an active free trade strategy.

The second source of tension was the evolution of former colonial preference systems into organizations and schemes focused specifically on reinforcing the role of the developing countries within the trade system. In 1964, in the midst of the post-colonial period, the UN General Assembly created the UN Conference on Trade and Development (UNCTAD), whose mission was essentially to provide a voice to the developing countries in the multilateral trade regime, and to provide an alternative to the Western-dominated GATT (see later). Officially, its role was to promote international trade and to help coordinate trade and

development policies. In 1964 a GATT initiative established the International Trade Centre (ITC), which provides trade and development assistance to both (large) exporters and policy makers in developing countries. Since 1968, the GATT and UNCTAD have been running it jointly.

In addition to multilateral cooperation systems, some developed countries (the US, European countries through the EEC and later on, Japan) established a generalized system of Preferences (GSP), reducing tariffs to which the 'Least Developed Countries' (LDCs) were subject. The colonial preferences as such survived the end of colonialism thanks to a series of EEC treaties (the Yaoundé Conventions of 1963 and 1969, the Lomé Conventions of 1975, 1980, 1985 and 1990 and the Cotonou Agreement of 2000) granting unilateral trade preferences to their former dependents.

### *The main actors*

The trade regime's organizational fragmentation has been accompanied by fragmenting participation of the various trade actors in the various trade forums. The regime has experienced two evolutions throughout time, their common denominator being the breakdown of the developed countries' trade monopoly: a change in the set of nation-states shaping the regime and the addition of non-state actors at the negotiating table.

During the first years of the regime, trade took place mainly among industrialized countries and consequentially Western powers dominated the GATT. They constituted the majority among the 23 countries that participated in the GATT negotiations of 1947. During the postwar period, the US led trade negotiations, though this role gradually expanded to the Quad group (Canada, the EEC, Japan and the US). Decision making was achieved at so-called Green Room meetings, where the Quad was ubiquitous (Barton et al. 2006: 64–5, 154). However, the Uruguay Round, with no less than 123 countries participating, was marked by the emergence of the larger developing countries (Brazil, India, Mexico) as important drivers of trade liberalization, and by the formation of a complex web of coalitions that cut across the lines of economic development (Narlikar 2003). Moreover, the accession of China to the WTO in 2001 has made it a central player in world trade dynamics. Russia joined the organization in 2012. The increased participation of emerging and developing countries in the world trade regime is not limited to the WTO. Increased flows of South–South trade (between developing countries) have led some of the main actors to pursue an active leadership in other settings. For instance, Brazil (through MERCOSUR) and India have behaved assertively during bilateral and bi-regional negotiations with the EEC, and several former European colonies have successfully opposed economic partnership agreements (EPAs) with the EEC. Although no direct trade negotiations take place, some regional and bilateral forums, such as the G20, the India–Brazil–South Africa (IBSA) trilateral cooperation, and the Asia–Pacific Economic Cooperation (APEC), address trade liberalization by providing developing countries with additional platforms to defend their agendas.

The second evolution with regard to actors is the expansion of agency from nation-states towards non-state actors. Nation-states remain the only actors with an international legal personality but as the trade agenda has expanded to include beyond-the-border policies such as intellectual property (Barton et al. 2006: 125–52) and the environment, they have become increasingly subject to pressure from interest groups, multinational corporations and non-governmental organizations (NGOs). Domestic interest groups such as European farmers and American steel producers have traditionally played an important role in deterring trade liberalization. This has been the case both for the multilateral setting and in a bilateral context.



For instance, one of the most contentious issues in the EEC–South Korea FTA negotiation proved to be the automobile sector, in which automotive interest groups actively lobbied. In addition, the US generalized system of preferences was stalled at the beginning of 2011 due to a local industry’s pressure against Bangladeshi imports. Pressure by NGOs has also become ubiquitous at the WTO and elsewhere. During the 1990s, several NGOs denounced the WTO on the basis of environmental and labour concerns (Wilkinson 2006). This led to the opening of WTO and GATT documents to the public and the submission of letters (*amicus curiae* briefs’) by NGOs during the dispute resolution procedures (WTO 2007: 338–40). Public opinion has also been mobilized in regional settings, such as NAFTA, where protests and lobbying induced the signature of parallel agreements on labour and the environment. Sometimes coalitions of NGOs and developing countries arise. The failure of the Multilateral Agreement on Investment in 1998 can be attributed to joint public mobilization and developing country opposition. The Oxfam campaign against economic partnership agreements in the late 2000s was instrumental in stalling the negotiations.

### *Coherence across structures: the principles governing the trade regime*

Even though the modern multilateral trade regime displays some formal coherence, characterized by the GATT/WTO’s principles, actual adherence to those principles is far from uncontested. This section highlights each of the four principles that formally govern the trade regime as well as the exceptions that lead to fragmentation.

The most-favoured-nation (MFN) principle, reciprocity and national treatment, all enshrined in the GATT, are regarded as the cornerstones of the trade regime. Most-favoured-nation treatment (GATT Article I) implies that every WTO member is to grant the same trade preferences (e.g. tariffs) to the other members as it does to its most favoured partner, regardless of the latter’s membership. In other words, discrimination is prohibited among members of the regime and between regime members and external actors. The reciprocity principle (WTO 2007: 130–31), though not officially defined, essentially implies that trade liberalization should be mutual. Countries should not liberalize less (or more) than their counterparts. National treatment (GATT Article III) refers to the obligation of parties to the regime to treat imported products in the same way as domestic products in their internal markets, thus avoiding unfavourable protection of the latter. Two observations are pertinent with regard to these principles. First, they do not impose trade liberalization as much as non-discrimination in liberalization processes. Second, although two of the three principles are clearly defined in international legal texts, their practical application is often fraught with obscurity and is defined in multiple ways (WTO 2007: xxvii).

The fourth principle governing the international trade regime is dispute resolution, an alternative to immediate retaliation via trade sanctions if agreements are breached. The rationale of the principle boils down to the avoidance of the trade wars that led to widespread impoverishment during the Great Depression. It should be noted, however, that the dispute resolution procedures have changed considerably throughout the years. In the Havana Charter’s dispute resolution system, states did not dispose of a veto right for those decisions adopted against their will, whereas the GATT established a non-binding procedure in which unanimity was required for the adoption of a resolution concerning a trade dispute (hence, countries had a veto right). The supranational or binding element re-emerged in the WTO, whose Dispute Settlement Body may adopt decisions against the will of particular states.

Even though the formal principles are widely acknowledged to be the cornerstone of the multilateral trade regime, several tolerated and non-tolerated violations occur. First, in a

somewhat contradictory way, preferential trade agreements are allowed under GATT Article XXIV. The consequence of this exception has been the formation of a 'spaghetti bowl' of bilateral or regional trade agreements (see earlier) that have often rendered MFN treatment irrelevant. According to the WTO, 319 such agreements were in force in January 2012. Some authors question whether this fragmentation constitutes a step towards further liberalization at the multilateral level or rather an obstacle thereto (Bhagwati 2008; Davis 2009). Second, trade restrictions have continued to exist and resurged in popularity since 2008. They include both quantitative and qualitative trade barriers. Export taxes, for example, are not regulated by the WTO and Argentina used them to ensure domestic supply and lower domestic prices during the 2008 surge in food prices. Moreover, developed countries' environmental regulations have been denounced as 'green protectionism', especially those established by the European Union (EU), and both private and public actors increasingly apply sanitary and phytosanitary standards.

### The asymmetrically expanding trade agenda

The evolving structure of the trade regime is closely intertwined with the regime's expanding thematic borders, which have evolved from trade barriers to a number of other domains such as intellectual property rights and the environment. However, that expansion does not happen uniformly across forums: several topics have been integrated in different forums with varying degrees of success.

The ITO encompassed a large number of subjects besides the narrow field of the reduction of trade barriers, such as liberalization of investment, abolition of restrictive business practices, commodity agreements and labour standards. Conversely, the GATT negotiations that started in 1949 narrowed down the scope of the regime to the liberalization of trade in goods, with agricultural goods and textiles excluded from the outset. That exchange of concessions took place according to a bilateral, product-by-product negotiation technique, which prevailed during the first rounds of negotiations but changed gradually as tariff liberalization progressed. The Kennedy Round of 1964 formed an important inflexion point of the trade agenda when the bilateral negotiation approach was replaced by a 'linear tariff reduction' approach: an average tariff reduction to be spread across all goods. The round also aimed at streamlining anti-dumping measures, the tolerated trade restrictions adopted by a country in response to the export of a product by another country at less than its market price. However, the introduction of other topics such as agriculture remained a stumbling block.

The Tokyo Round of 1973 opened the scope of the trade agenda further in the direction of non-tariff barriers. In addition to a new tariff agreement, several 'codes', to which members subscribed voluntarily, were negotiated outside the GATT. Those codes referred to subsidies and countervailing measures (prohibited subsidies for industrial goods and commodities and allowed actions for retaliation), technical barriers to trade (protectionist standards disguised as technical requirements for products, such as packaging), import licensing procedures (simplification of licences to import a product), government procurement (liberalization of purchases by governments), customs valuation (methods to define the value on which to apply tariffs) and anti-dumping. In addition, agreements were concluded on the liberalization of bovine meat, dairy and civil aircraft trade.

Soon it became clear that the 'codes' approach was leading to a fragmentation of the system. Each of the codes mentioned its own consultation and dispute resolution procedure and not a single developing country had entered any of them. Hence, the following (Uruguay) Round became a major attempt to overhaul the trade system towards convergence. The topics



listed by the negotiation mandate (the Uruguay Ministerial Declaration of 1986) were tariffs and non-tariff barriers, tropical products, natural resource-based products, textiles and clothing, agriculture, review of GATT articles, safeguards, expansion of the agreements concluded during the Tokyo Round, subsidies and countervailing measures, dispute settlement, intellectual property rights and the liberalization of investment (Croome 1999: 347–9). During the course of the negotiations, the liberalization of trade in services was added. A difference with previous liberalization rounds was the introduction of the ‘single undertaking’ as a negotiation technique. Negotiations were conceived of as a single package to be adopted in principle by all the states, rather than the *à la carte* set of agreements of the Tokyo Round.

Until the Uruguay Round, agriculture and textiles had remained largely outside the GATT. On the one hand, agriculture remained a stumbling block due to the EEC’s Common Agricultural Policy, which was built on the principle of ‘community preference’ for domestic agricultural products. This principle undergirded the heavy subsidization of the EEC’s agricultural and farming sector, as well as the prohibitive tariffs enforced on other goods. Moreover, some agricultural commodities such as cocoa and coffee were the subjects of international commodity agreements negotiated under the auspices of UNCTAD, which aimed at improving the developing countries’ terms of trade by establishing minimum and maximum prices in the international market. On the other hand, textiles were subjected to a set of treaties outside the GATT, in which textile-exporting nations committed ‘voluntarily’ to limit their exports to other nations. This mechanism, dubbed ‘voluntary export restraints’, was first introduced by the Long-Term Arrangement Regarding Trade in Cotton Textiles of 1962, which was followed by the Multi-Fiber Arrangement of 1974, which extended the voluntary export restraints to more textile and apparel products. The Long-term Arrangement was legitimized by the GATT system during the Kennedy Round.

The Uruguay Round’s final outcome in 1995 went well beyond its original mandate, with the WTO encompassing a large number of treaties on trade in goods: a revamped version of the GATT itself and agreements on agriculture, sanitary and phytosanitary measures, textiles and clothing, technical barriers to trade, trade-related investment measures, anti-dumping, customs valuation, pre-shipment inspection, rules of origin, import licensing, subsidies and countervailing measures and safeguards. A schedule for the phasing out of the Multi-Fiber Agreement was set, which was intended to complete textile liberalization by 2005. However, when China had prepared itself well for the new situation without quotas, its shipping of large quantities of textile products to the US and Europe in 2005 caused another period with further quotas and another delay in the agreed liberalization. Two other frameworks were adopted in 1995: the General Agreement on Trade in Services (GATS) and the Trade-Related Aspects of Intellectual Property Rights (TRIPS), which set the stage for future liberalization. In addition, several declarations on different topics such as the environment, least-developed countries, financial services and the movement of natural persons (related to services liberalization) were adopted (Croome 1999).

Paradoxically, the creation of the new WTO was accompanied by the proliferation of preferential trade agreements, which contributed to expand the trade agenda both in developed and developing countries. NAFTA bridged the developing–developed dimension and incorporated investments, labour and the environment into the liberalization of trade in goods. MERCOSUR was a larger, EU-style attempt at regional integration, which involved political dialogue and cooperation on social matters such as social security, migration and industrial relations. The MERCOSUR structure incorporated a Consultative Social and Economic Forum composed of different civil society actors such as workers, employers,

NGOs and environmental organizations. Within the Forum, the gender aspects of MERCOSUR have been discussed.

Three main developments characterized the evolution of the international trade agenda during the post-Uruguay Round period. First, the unfinished work of the Uruguay Round itself set the path for further liberalization in the form of a 'built-in agenda' composed of the implementation of compromises and the further liberalization of textiles and agriculture. Second, the developed countries, especially the EU, attempted to introduce a new agenda going beyond the Uruguay agreements to expand liberalization in the fields of competition, investment, government procurement and trade facilitation, known as the 'Singapore issues' (after the WTO Ministerial Meeting in Singapore in 1996). Third, the trade regime became visible to public opinion for the first time since its inception, since the Uruguay Round's comprehensive agenda collided with other regimes at the international and the domestic level, and generated public pressure for the further inclusion of other topics, the most visible of which were labour and the environment. The idea emerged that the liberalization of trade in goods and services would lead, or had led, to a 'race to the bottom', in which countries competitively lowered their labour and environmental standards in order to lower costs and remain competitive (Wilkinson 2006). The three issues created a divide between the developed and the developing WTO member-states that would hamper consensus on trade negotiations during the second half of the 1990s. The developed countries pushed for a new trade agenda, and among them some (the US and Scandinavian countries) took over the public's concern with the environment and labour, while the larger developing countries (Brazil, India, Mexico, South Africa) stuck to the 'built-in' agenda, a development discourse and accusations of protectionism (González Garibay 2011).

The confrontation started during the preparations for the WTO's first Ministerial Conference, the highest decision-making body, which took place in Singapore in 1996. The Conference banned the discussion on labour standards from the organization. However, the US persisted in advocating it, and the confrontation reached a climax at the 1999 Seattle Ministerial Conference, where the politically contentious climate was worsened by street protests by NGOs and trade unions, organizational chaos and major disagreements between the US and the EEC on agriculture, as well as the failure of the developed countries to launch the Multilateral Agreement on Investments in the midst of the Organisation for Economic Co-operation and Development (OECD) as an alternative to the WTO. The agreement was regarded by the developing countries and northern NGOs as an imposition, and triggered clamorous NGO protests. The fallout enhanced the fragmented nature of the trade arena: some of the Singapore topics, as well as labour and the environment, were pursued at the bilateral level (for instance the US–Chile agreement), where the developing countries could offer less resistance.

In November 2001 a new multilateral trade agenda emerged after intense negotiations. This Doha Development Agenda attempted to reach a balance between the concerns of developed and developing countries. It refined the existing agenda for some topics such as agriculture (export subsidies, market access and domestic support), services liberalization, elimination of tariffs for non-agricultural products, regional integration and trade-related intellectual property rights, but also continued to discuss the Singapore issues and trade and the environment. In addition, it tackled specific problems of the developing countries such as technical cooperation, aid to Least Developed Countries, technology transfer and the special and differential treatment of developing countries. The single major breakthrough in this round has been the Doha Declaration on TRIPS and Public Health of 2001, which relaxes the intellectual property requirements for the trade in medicines between developing

countries. However, the round's overall progress has been slow and fraught with problems. Agriculture remains one of the main stumbling blocks. The Cancún Ministerial Conference of 2004 failed to reach an agreement on the subject and a possible deal was broken in the summer of 2008 due to disagreement on agricultural safeguards between the EEC, India and the US, and on cotton between the US and the West African countries. Moreover, the Singapore issues have remained a matter of contention. All of them, with the exception of trade facilitation, were dropped from the trade agenda in 2004.

The Doha impasse continues. In 2008 negotiations between the WTO members came close to reaching a deal, but disagreement between the US on the one hand and the EEC and India on the other hand with regard to agricultural products brought the negotiations to a halt. With the liberalization impetus slowed down by the economic crisis that began in 2008, the main stumbling blocks include agriculture – where the EEC's and US's widespread subsidization remains a thorn in the eye of agriculture-exporting countries such as Brazil; services, in which the free movement of natural persons (related to migration policies) has confronted developed and developing countries; and non-agricultural market access.

The WTO's immobility does not mean that the trade regime as a whole has remained static. On the contrary, it has enhanced the path towards organizational and thematic fragmentation. An increasing number of preferential trade agreements has incorporated the Doha topics into their provisions, such as intellectual property, labour and the environment, and a new generation of agreements dealing with investment is being negotiated in the early 2010s. However, not all agreements incorporate the same topics under the same form, nor do their negotiations follow the same paths. For instance, the EEC agreement with South Africa signed in 1999 included investment only as a matter of economic cooperation, whereas the EEC–South Korea agreement, in force since 2011, tackles the liberalization of investment. Likewise, the development dimension is more present in some agreements than in others. The Trans-Pacific Partnership, which was re-launched in November 2011 and which aims at trade liberalization in the Pacific Rim within the APEC platform, would join 13 members that together make up 40 per cent of the world's gross domestic product (more than the EU) (*The Economist* 2011). Even though several of those members (Indonesia, Malaysia, Mexico, Peru, Vietnam) are developing countries, development is not prominent on its agenda. Conversely, development is an important pillar of the economic partnership agreements, which should replace the system of historic preferences with a reciprocity-based set of treaties and promote regional integration among developing countries. It should be noted, however, that the EPAs' success has been limited, as their negotiations (2002–9) stalled due to protests. This makes another point clear: the negotiation processes and the participation of non-state actors such as businesses or NGOs may strongly differ from one agreement to another. Non-governmental organizations have been active in the case of both the EPAs and the EEC–India negotiations, and less so for the EEC–South Korea agreement.

The expansion of the trade agenda has also taken place outside both multilateral and regional cooperation settings, as several OECD and EEC countries concluded an Anti-Counterfeiting Trade Agreement (ACTA) in January 2012, prompting some analysts (Davis 2009) to launch the question of whether the trade regime is experiencing forum shopping, a practice in which states may (opportunistically) select among overlapping institutions when launching a new regulatory initiative (Gehring and Oberthür 2009: 141). ACTA has proven to be extremely controversial. In July 2012 the European Parliament rejected it on the grounds that it might lead to censorship and the seizure of generic drugs produced in developing countries.

The developments discussed here show that the fragmented organizational setting in which the global trade agenda has taken place since the 1990s is intrinsically connected to a

growing thematic fragmentation that displays two main features. First, different topics are addressed in different forums. Second, the way in which topics are approached differs largely across those forums. For instance, regulations regarding labour and the environment are stricter in the preferential trade agreements negotiated by the US than in those by the EU. The differences are the manifestation of each forum's own negotiation and power logics. Trade actors' preferences come more to the foreground in a bilateral or regional setting than in a multilateral setting, where the exercise of power is tempered by the large number of negotiating actors and the possibility to form alliances. Moreover, the participation of non-state actors and the politicization of issues may differ across forums.

## Conclusion

The global trade regime swings between a world of coherence under the guidance of the WTO and one of fragmentation in which a variety of preferential trade agreements encompasses an ever-growing list of trade-related topics. The struggle with fragmentation takes place on three fronts: the negotiation structures, the issues, and the relationship between multilateral and preferential trade liberalization.

The integration of new actors into the trade regime means an increased pressure on existing negotiation structures. On the one hand, the increased activism and assertiveness of emerging markets, especially Brazil, Russia, India and China (BRIC, and with South Africa BRICS), as well as the general economic decline of the Western countries since the financial and economic recession that began in 2008, raise the question of whether a structure whose basis was laid in 1947, when colonialism was still present, is capable of supporting a new economic order. This question is even more important when taking into account the active role that non-state actors have adopted in the trade discussion. This is made clear by the stalled economic partnership agreements negotiations in the EEC and the delay of the generalized system of preferences' renewal in the US. On the other hand, the difficulties with which trade negotiations have proceeded are related to the higher number of parties and issues at play, and may thus point at the limits of the most-favoured-nation principle. The fact that trade preferences need to be extended to an ever-growing number of countries may make sustained liberalization impossible.

Second, pressure is added further by the emergence of myriad new issues related to trade: the economic crisis and the related surge of protectionism, the environmental challenges (green taxes, relationship with the environmental regime), soaring unemployment related to restructuring, food security and the Chinese Yuan's artificially high value. Whereas the original trade regime was specifically designed to deal only with trade liberalization, questions emerge as to whether the trade agenda can be borne by the regime and whether the WTO actually has both the legitimacy and the organizational resources to act as the forerunner of that agenda. The Doha Round's arduous progress, or rather lack thereof, suggests several inadequacies in the system.

A third source of pressure on the present trade regime relates to the relationship between multilateral and preferential trade liberalization. Whereas the WTO has tried to internalize it through GATT Article XXIV and to regard it as a component, or an exemption, of the multilateral order, it can be questioned in the context of the rising number of preferential trade agreements (more than 250 in 2010 according to the WTO) as to whether the pattern is not being inverted. PTAs seem to be able to integrate both new actors and new topics. It is less clear, however, what the WTO's role would be in a PTA-dominated world. The relatively smooth functioning of the Dispute Settlement Body suggests that the

WTO, rather than a forum for liberalization, might become a 'trade court' with global authority.

These challenges boil down to various questions. Should countries and non-state actors create alternative forms of decision making? Is full trade liberalization as the cornerstone of the trade regime a realistic and, above all, desirable goal? Is coherence to be reached by means of a WTO-centred structure? From the regime perspective, these questions can be summarized in one: is the trade regime still a regime? It is unclear, in this setting, whether actors' expectations still converge towards the same basic principle of multilateral trade liberalization, which is based on classic, Western, by now centuries-old theories of growth and welfare.

### *Recommended for further reading*

Croome (1999), Barton et al. (2006), Bhagwati (2008), Davis (2009) and Cottier and Elsig (2011).

### **Notes**

- 1 I refer to European Economic Community as opposed to European Union in order to preserve coherence throughout the text.
- 2 The US has signed PTAs with Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, Guatemala, Honduras, Israel, Jordan, South Korea, Mexico, Morocco, Nicaragua, Oman, Peru and Singapore. The EEC concluded agreements with Chile, South Korea, Mexico and South Africa.

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