

# Developed Countries' Trade Policies: Diguised Unilateralism? A Chronicle of Manipulated Multilateralism

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I.

A look at the recent WTO reports on the periodical Trade Policy Reviews of the United States<sup>1</sup> will show that the concern about a resort to unilateralism has become a recurring feature of WTO discussions. The relatively recent but growing resort by the U.S. to bilateral and regional trade arrangements has caused widely shared concern in the WTO. Developing countries have repeatedly expressed their concern about the U.S. Trade Policy's departures from multilateralism. It has also been a refrain of the EU and some other developed countries.<sup>2</sup> Not that the EU itself is free of blame in this regard. The EU's bilateralism and regionalism is not new. The EU's recent initiatives in the same direction have also attracted similar attention in the WTO.<sup>3</sup> Despite these voiced concerns, there appears to be a general scramble, as it were, to initiate or get on board the preferential trade arrangements. These trends have received attention in academia, and the political, legal and economic implications have been analyzed within theoretical frameworks.<sup>4</sup> The phenomenon of departures from the multilateral principle is, however, not recent, notwithstanding the fact that multilateralism is reckoned as the very foundation of both

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the General Agreement on Tariffs and Trade, which came into existence in 1947, and the more recent agreement establishing the WTO, which was brought into force in 1995.

Those who criticize the departures from the multilateral principle as well as those who breach it (and the two identities are not always distinct) ritualistically swear their adherence to it. There seems to be an intuitive belief, particularly among the relatively weaker members of the trading system, that the multilateral process by itself would ensure not only the legality but also the fairness or equity of decision making. Once such belief triumphs over experience, it is only a short further step that leads to the proposition that a multilateral system is *always* desirable *per se*. The attention thus gets concentrated on the form rather than the substance, on the “geometry” (the “many-sided”-ness) rather than the “equity” (the norms and the rules, the way they are worked and their relative impact on the unequal sets of participants) of the system. The more basic question of the “power-relations” defining the system tends to get obfuscated. Such an environment is conducive to manipulation of multilateralism by the powerful few. The form retains the multilateral character, but the power-equation determines the substance. Some perceptive observers describe the phenomenon as the emergence of “disguised unilateralism” or “new regionalism.”

What is the essence of multilateralism? How was multilateralism practiced in GATT/WTO? What accounts for the hiatus between the law and the practice of trade policies? And, more important, what constitutes the necessary and sufficient conditions for success of multilateralism? This paper proposes to examine these issues conceptually as well as historically so as to explicate what appears to be implicit in the poser raised by the title.

## II.

The origin of multilateralism in the trade policy context is traced to the concern in the international community over the disorderly state of affairs that prevailed in the two decades spanning the period between the two world wars. These decades were characterized by

repeated failures of international initiatives to bring some orderliness to international trade and monetary relations; competitive resort to unilateral exchange rate and trade and tariff policies leading to mutual impoverishment and general instability; and finally the traumatic experience of the Great Depression. The outbreak of the Second World War provided the immediate trigger for negotiations concerning the postwar international order. However, these negotiations were for the most part *bilateral*. The changing equation of power between the two main allied powers across the Atlantic and their respective concerns and experiences in the trade policy area left their indelible mark on the blueprint for the postwar order.

The fourth paragraph of the Atlantic Charter unveiled by Roosevelt and Churchill in August 1941, which has been hailed as the first enunciation of multilateralism as the basis of international economic order, said: "With due respect for their existing obligations, to further the enjoyment by all states, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity."<sup>5</sup> The qualifying initial phrase and the absence of the phrase "without discrimination," which the U.S. had been insisting upon, meant that the British Imperial Preference was not in danger. On the other hand, the emphasis was unmistakably on furtherance of the mutual interest of the two signatories in access to raw materials and markets of the rest of the colonial world. The mention of "all states, great or small, victor or vanquished," did not quite succeed in camouflaging this stark reality. The reference was to the warring nations of Europe, and primarily it sought to assure the public opinion in the enemy camp that eventually the "vanquished" too would be accommodated. And, of course, it totally overlooked the implication that the principle of "equal access" would continue to operate unequally in respect to those who were subjugated in the process of colonization.

Formally, the multilateral principle that emerged stood for equality of treatment or equity in international commercial relations; it promised a democratic postwar international order. In reality, it was

hardly universal in its ambit; it had the limited operational context of negotiations between the two major allied powers. This duality is its birthmark. It is also the root of the tensions and contradictions that have persisted in the system, as we shall see in what follows.

The exercise of working out mutually acceptable objectives and principles that should guide the shape of the postwar economic order was continued by the U.K. and U.S. in the negotiations on the Lend-Lease agreement. The Americans pursued their theme of unilateral dismantling of the Imperial Preferences by the British (that granted favorable trade considerations to Commonwealth countries), much to the annoyance of the latter. The British were concerned over the possible balance of payments problems that Britain would most likely face in the postwar period. They were also keen to maintain autonomy to follow full employment policies. They were, therefore, opposed to the American formulations of unqualified multilateralism and liberal trade, which seemed to pass on the burden of adjustment to Britain disproportionately. The American negotiators were hoping to impress their legislative masters by insisting on adequate “price” from the British for wartime supplies, holding the expectation of a *quid pro quo* for the wartime assistance to the U.K. This *quid pro quo* would, it was believed, assure the Congress that the wartime assistance was not given “free.” The compromise upshot of these negotiations emerged in the form of Article VII of the Mutual Aid Agreement, which, in the words of Jay Culbert, “became the cornerstone of postwar trade policy.” The operative portion of the Article reads:

. . . shall include provision for agreed action by the United States of America and the United Kingdom, open to participation by all other countries of like mind, directed to the expansion, by appropriate international and domestic measures, of production, employment, and the exchange and consumption of goods . . . to the elimination of all forms of discriminatory treatment in international commerce, and to the reduction of tariffs and other trade barriers . . . conversations shall begin between the two Governments with a view to determining, in the light of governing conditions, the best means of attaining the above-stated objectives by their own agreed action and of seeking agreed action of other like-minded Governments.<sup>6</sup>

Clearly, the British concerns were taken on board to a great extent. No doubt, the American objective of elimination of the Imperial Preference was now explicitly recognized, but it was linked to reduction of high U.S. tariffs. While the language was multilateral inasmuch as the openness of the system to all like-minded governments was proclaimed, the whole process of negotiations and the formulation of objectives and principles remained strictly bilateral. The entire exercise of working out a full-fledged scheme of the world trade order that followed in pursuance of the Article VII negotiations would retain this bilateral characteristic right until the end of 1945, when the outcome of the negotiations came to be published.

The American side was developing, as part of the postwar planning exercise, "A Multilateral Convention on Commercial Policy" under the leadership of Harry Hawkins. In the U.K., James Meade developed "A Proposal for an International Commercial Union." While the underlying approach of the two exercises was broadly similar, it was the latter which is acknowledged to be "the first definitive proposals for the postwar trading system."<sup>7</sup> The bilateral negotiations which commenced in 1943 in pursuance of Article VII ended in 1945 and the results were incorporated in a more inclusive document titled "Proposals for Expansion of World Trade and Employment" published by the U.S. Department of State in December 1945. A further elaboration of the American proposals titled "Suggested Charter for an International Trade Organization" was prepared in early 1946. In February 1946, the Economic and Social Council (ECOSOC) of the newly formed United Nations set up a preparatory committee to draft a convention for the consideration of an International Conference on Trade and Employment. It was at this stage that the subject matter was brought up, for the first time, for a wider, multilateral consideration in the form of the agenda of the preparatory committee. Interestingly, the membership in the preparatory process, although initially only 19 in number, represented all the three main tendencies (the developed capitalist world, the planned economies of the socialist world, and the emerging new third world of the ex-colonies and the periphery of the first world)

that were to dominate the trade and development debate in the three decades that followed.<sup>8</sup>

The debates and negotiations in the preparatory process as well as at the extended conference, which deliberated from November 1947 to March 1948, provide an insight into the inherent tensions and conflicts of interests that characterized it, and the Final Act of the Conference, namely, the Havana Charter, represented the balance of power among the major tendencies of the participants. Nevertheless, the Havana Charter was informed by the substance of the multilateral principle, that is to say, it attempted to take on board the diverging interests of different sets of participants, vastly differing not only in terms of power and wealth, their respective histories and the nature of problems confronting them, but also in terms of their vision of the future. It was no doubt characterized by the major concerns of the two powers that initiated the whole exercise of conceptualizing and formulating the postwar economic order. But it also dwelt upon the concerns of the other tendencies. And the compromise that it struck had some discernible flavor of equity.

But history was proceeding at a faster pace than the negotiations. The collocation of forces that gave the Havana Charter its flavor had meanwhile undergone a major change. The cold war was already afoot and the leading capitalist powers were more interested in the consolidation of Western Europe as the bulwark against the “danger” of communism. The USSR had exited from the process. The multilateral principle was eclipsed by the *real politick*. The Havana Charter, and the way it sought to embody the multilateral principle, had little relevance for the major capitalist powers in the changed situation. The Charter was relegated to languish in limbo. All that survived was its weak and truncated proxy brought into existence strictly for the interim: the General Agreement on Tariffs and Trade (GATT) of October 1947. Western Europe witnessed a massive boost in its bilateral economic relations with the U.S. Then followed the Treaty of Rome and the formation of the European Economic Communities. The reality of “regionalism” and “bilateralism” was asserting itself, while the legal shell of multilateralism persisted in GATT.

### III.

Equality, prosperity and stability were the three basic ideas that had inspired the planners of the postwar order, although the ambit of their conception was narrow and exclusive. The process that led to the formation of the Charter tried to extend that ambit and made it more inclusive. But with the premature demise of the Charter and its weak proxy now ruling the roost, the basic principles assumed a formal character—a narrow, technical and legal aspect, of relevance only for the *inter se* commercial relations of the industrialized members of the system. The non-discrimination principle embodied in the MFN clause continued to be treated as GATT's essence. But it lost its soul. The system itself had become exclusionary and, therefore, discriminatory, leaving out the major part of the socialist world. More important for the burgeoning membership of the ex-colonial and the peripheral world, formal application of the principle of non-discrimination actually implied *further* discrimination, because “treating the unequal equally,” in the absence of substantive provisions to tackle their major trade problems, is a travesty of the equality principle. As for prosperity, the emerging third world countries needed assured provision of preferential opportunity and access in regard to markets, technology and capital, not just successive “rounds” of tariff cutting, which was taken by GATT as its main task. GATT also meant for them a negative, uncaring and unjust system because it paid little attention to fluctuating and unremunerative prices for their commodity exports, it did little to resist and eliminate the virtual closure of the rich markets for their agricultural exports, and it condoned a highly restrictive and discriminatory regime in regard to their competitive exports of textiles and garments. The GATT interface for *inter se* disputes among the members was essentially consultative and its preoccupation was largely the disputes between the trade majors. As a result, the idea of stability—based on positive and just principles governing *inter se* commercial relations of all the members—seemed to be, from the developing-country perspective, absent in GATT.

The entry of Japan into GATT in the 1950s was also illustrative of the dual character of the system. While the U.S. sponsored the

entry, a large majority of the developed countries in GATT virtually boycotted Japan through the use of the non-application clause provided in GATT. The rationale given by the industrialized countries for such a restrictive and exclusionary attitude was that their industry could not face the threat of competition from “low-wage” countries. This was as blatant as it was self-serving, for it cut at the very root of the principle of comparative advantage, which is supposed to provide the intellectual foundation of GATT.

For developing countries, a provision permitting restrictive trade measures, which was necessary to secure their external financial positions, was a positive feature. But this was essentially a counterpart of the similar provision found necessary by the developed members in the initial decade of GATT’s existence, and its extension with some amplification could not have been denied to developing countries. The relatively major move in GATT to address the problem inherent in “treating the unequal equally” came in response to the debate on trade and development that was going on in the United Nations forum and in the emerging coalition of developing countries. It was embodied in the addition of Part IV to GATT, which was long on rhetoric but short on effective mechanism. Later, again reactively, in the context of the formation of the United Nations Conference on Trade and Development (UNCTAD) in 1964 and the initiatives taken in that forum to work out an agreement providing the Generalized System of Preferences in the markets of developed countries for the exports of manufactures of developing countries, GATT first provided waivers and later incorporated the more formal agreement on the so-called Enabling Clause, both of which permitted departures from the principle of non-discrimination in favor of developing countries.

But by that time—as the 1970s progressed—the international environment for global capitalism was already undergoing a vast change. The expansionist phase was coming to an end. The oil crisis had altered the underlying assumptions of that phase. It appeared, for a while, as if the power equations of the postwar era were undergoing a change. The hegemonic role of the U.S. in providing the anchor

to the postwar economic order was weakening. Japan had already emerged as an industrial and trade major. The *inter se* competitive pressures between the EEC, Japan and the U.S. were growing severe. Incipient challenges were being perceived by the newly industrializing developing countries. GATT witnessed contradictory tendencies in these years. As stated earlier, on the one hand, the formalization of the agreement on the Enabling Clause, a positive feature bringing an element of equity into the system, took place. On the other, there was also the emergence of the “codes” on various aspects of international trade, i.e., agreements whose benefits were to be confined only to the signatories (who happened to be developed country members), which implied fragmentation of GATT, a fundamental structural departure from the multilateral and non-discriminatory architecture. Expansion of the scope and further accentuation of the restrictive regime regarding exports of textiles and garments also came into being in these years. Anxiety began to grow and was being articulated in developed country circles in terms of the “tyranny of the numbers” in the functioning of GATT, as the developing countries came to acquire an overwhelming numerical majority and, formally, every country had only one vote. All in all, the beginnings of the great regression that was witnessed in the 1980s and 1990s were already noticeable.

#### IV.

The 1980s witnessed accentuation of the crisis of global capital and consequent sharpening of the *inter se* conflicts in the developed world. It also saw a concerted offensive on the part of the developed world to explore new frontiers for their expansion. The former resulted in repeated trade conflicts between the three trade majors in GATT: the U.S., the EEC and Japan. The latter led to an eventually well-coordinated move on the part of the three to bring about a paradigm shift in the trading system embodied in GATT.

The story of the relapse of the trade majors, particularly the U.S., into GATT-inconsistent and GATT-illegal trade measures during those years is now too well known to bear repetition here. The deep

concern it caused in the developed world largely centered round the *inter se* trade conflicts of the three majors. Lester Thurow's remark that "GATT is dead in the water" pointed dramatically to this state of affairs. The point being stressed was that the principles of open trade, comparative advantage, of a multilateral system operating with its rules to provide stability to the economic order, were being renounced in favor of protectionism, managed trade, bilateral deals of expediency and even "aggressive unilateralism." No doubt, there was a qualitative change being experienced by the developed world in comparison with the workings of the trading system for the two and a half decades following the adoption of GATT. But this feeling of concern and even outrage rarely stressed the systemic inadequacies and inequities of GATT that developing countries had experienced since the very beginning. Nor the fact that the relapse also affected some developing countries, particularly those who were considered as promising economic spaces for expanding the frontiers of the operations of the multinational corporations of the developed world. On the contrary, developing countries were being dubbed as "free riders," and were being eyed as potential targets not only for collecting the overdue "payments" for the "benefits" of the system that they had been enjoying but also for launching offensives in new areas of economic activities. And the trade majors, particularly the U.S., strategically used the instruments of "aggressive unilateralism" and bilateral pressures to compel the opponents of these moves to eventually fall in line.

The story of the Uruguay Round, during which GATT gave way to the World Trade Organization (WTO) at Marrakesh in 1995, has been variously told and this is not the place to repeat or even summarize it.<sup>9</sup> What is pertinent to our present theme is that the systemic crisis of the 1980s was used deftly by the trade majors to bring about a paradigm shift in the trading system represented by GATT. The Uruguay Round was not merely some refinement, some institutional strengthening and some accentuation of a tariff-cutting exercise. It introduced for the first time new areas like intellectual property rights, alien to GATT's trade mandate, into the system. It also put paid to the "cross-border trade in goods" character of GATT by bringing

within its purview an all-embracing and loosely defined area of services. It moved GATT beyond its role of a watchdog for trade, based on the comparative advantage principle, to the establishment and enforcement of international norms and standards on subjects hitherto squarely within national jurisdictions. And it introduced into the dispute-settlement process and mechanism the cross-retaliation possibility, enabling members to secure compensation for impairment and nullification of their rights in one area from another area within the system—a development that would, more often than not, only add strength to the elbow of the relatively stronger members of the system. On the whole, the outcome of the Uruguay Round is now widely perceived as having enhanced the inequity of the system.

The inequity and lack of legitimacy of the process of concluding the Uruguay Round negotiations and bringing the WTO into being could not be obfuscated either by the pretense of consensus decision making or the opacity of the negotiations in the last phase. The essence of the multilateral system is considered to be the principle of “unconditional application of non-discrimination,” that is to say, every member of the system being equally and unconditionally entitled to equal treatment. Leaving aside for the moment the paradox of “treating the unequal equally,” as discussed above, it should be obvious that introducing new or additional conditionalities for *continued* enjoyment of the *existing* privilege of the multilateral principle, without explicit and willing consent of every member of the system, would amount to withdrawal of the privilege from those members who do not see the benefit of the new conditionality and, therefore, are unwilling to accept the same. And if the new conditionality were nevertheless incorporated into the system, it would amount to the collapse of the multilateral principle. If the members so affected are precisely those who even otherwise are in a disadvantageous position because they are living in an unequal environment in the system, then the implications of the collapse are even more damaging for them. It is precisely by organizing such a collapse of the multilateral principle of GATT that the developed countries, particularly the three majors, accomplished the paradigm shift of the system from GATT to the

WTO. More serious, the condition of unanimity laid down by GATT for any modification of the multilateral principle through imposition of new conditionality or otherwise has now been substituted in the WTO by the rule of prescribed majorities, thereby opening up a continuing possibility of expanding the frontiers of the WTO to any new area whatsoever, and thus adding even newer conditionalities.<sup>10</sup>

## V.

Since the agreement at Marrakesh, many attempts have been made by the apologists of the WTO system—the embodiment of the changed paradigm—to present it as a universally desirable development, largely a “win-win” situation. To press the point, the gains on the front of textiles and agriculture were highlighted, sometimes with a good deal of exaggeration as subsequent trends have shown, particularly in regard to agriculture. Some conceded some downside, but it did not affect their generally positive assessment. The more enthusiastic supporters were quick to build further on the triumph of Marrakesh. Indeed, the 1995 OECD Ministerial Report sought to replace the narrow principle of comparative advantage by the logic of “deeper integration”<sup>11</sup> and “internationally contestable markets”<sup>12</sup> to provide an intellectual foundation for the ever-expanding thrust of the WTO, to rationalize the compelling functional requirement of the transnational corporations arising out of their strategies and calculus of global operations. Within a short space of a couple of years after Marrakesh, a clutch of new issues again emerged as the possible agenda for the fresh round of negotiations, sought to be christened as “The Millennium Round.” Predictably, issues of labor standards and environmental norms, the question of laying down international norms and standards for investment and other capital flows, and bringing government procurement within the ambit of the WTO system<sup>13</sup> formed the multi-prong offensive to push the theme of deeper integration. The offensive produced a strong reaction among the developing country members, who were by now acutely experiencing the lopsided nature of the multilateralism being practiced in the GATT/WTO system. A strong opposition also developed among sig-

nificant sections of the first world peoples who were alienated by the ongoing process of “corporate globalization” and who identified the offensive launched in the WTO as part of that process—although their perceptions did not always coincide with the stance of developing countries on some issues, such as labor standards and environment and trade. The continued exclusion of a vast majority of developing country members from the decision-making process of the WTO provided the last straw, and the WTO ministerial meeting held at Seattle in 1999 to launch “The Millennium Round” ended in an unprecedented fiasco.

The efforts to resurrect the process were launched by the majors soon afterwards. The general atmosphere of uncertainty and outrage at the events of September 11th were adroitly exploited to push the themes of “multilateralism” and the launch of the new round of negotiations. In some articles appearing in the Western print media, subtle and not-so-subtle hints were thrown in to suggest that the opposition to the new round in the WTO could be perceived as a kind of economic version of the irrational forces of terror and anarchy challenging global security and order. The round was ultimately launched in Doha in 2001, but could raise the important new issues on the agenda only obliquely because of the continuing reservations and fears of the majority of developing countries. The showdown, however, came at the midterm ministerial meeting at Cancun in 2003, when in the face of the resolute opposition of an overwhelming majority of small developing countries to the commencement of negotiations on these issues, the offensive was temporarily called off. The impasse on the issue of agriculture created by the confrontation between the U.S.-EU combine and the Group of 20 countries, which included the influential developing countries of the three continents (Argentina, Brazil, China, India, Indonesia, South Africa and Egypt, among others) contributed considerably to the derailment of the meeting.

The developed countries succeeded in bringing the process of negotiations of the Doha Round back on rail at the Geneva meeting of the WTO in July 2004. The U.S.-EU combine was apparently able to extract a framework for conducting negotiations on agriculture

and the non-agriculture market access to their satisfaction through what appears to be a studied ambiguity built into the framework on agriculture, an ambiguity that could also provide, for the time being, a sort of consolation for the main players of G-20. The U.S.-EU combine also bought peace with a large number of small developing countries by offering to take the new issues of investment, government procurement and competition policy off the agenda of the multilateral negotiations. Notwithstanding the apparent success on the question of new issues, developing countries seem to consider the July Framework outcome as some loss of ground compared to the promise of Cancun.<sup>14</sup>

## VI.

The developed countries' tactical move to take the new issues of investment, etc. off the agenda of multilateral negotiations has some positive connotation for developing countries if viewed from a political standpoint. The emerging solidarity in their ranks has obviously raised concerns in the developed world. Even if we discount the on-the-spot petulant outbursts of the U.S. and EU representatives at Cancun after the derailment of the Doha process, their underlying deep concern should not be underestimated, particularly in the light of their growing resort to bilateral/regional trading arrangements, to which we referred in the very beginning of this paper.

As we have seen, the crisis in the trading system in the 1980s was overcome by the forces of global capital by transforming the paradigm of the trading system and imposing additional conditionalities to suit its requirement for further penetration into the new economic spaces (services) and strengthening its monopolistic hold on the knowledge and technology to maximize its returns, including *rentier* income, from that source (TRIPs). The design of the new "multilateral" system was bent to serve the requirements of the few. But the formal democratic structure was allowed to remain, perhaps because outright demolition of the structure would not have been easy, or because it was strictly not necessary considering the success that they had achieved in forcing down their decisions through the opaque

and self-serving procedures of decision making by consensus, a consensus garnished by bilateral arm twisting (remember “aggressive unilateralism?”) where necessary. The results appeared to them quite satisfactory; that is, until they witnessed the fiasco at Seattle. Their anxiety about the functioning of the WTO system deepened when in quick succession to Seattle they faced the derailment of the process at Cancun. Again, the numbers seemed to create the difficulties. So the obvious remedy seemed to lay in avoiding the large collectives of numbers. The easier and more efficient way of achieving the objective would appear to be to bypass and preempt such collectives through the bilateral and regional route. And this is what we are witnessing in the spurt of preferential trade arrangements: a tactical retreat from the formal “multilateralism” of the postwar era, a more direct and undisguised pursuit of expanding spheres of regional influence, with a view to neutralizing the potential resistance of the formal majority in the WTO and, eventually, once again transforming and further bending the multilateral instrument to meet the requirements of the few.<sup>15</sup>

If one looks at the characteristics of preferential trade arrangements (PTAs) that have emerged in the recent years, more particularly after the WTO came into being, the rationale of increasing resort to this route becomes clearer. In his excellent study of “Regional Trade Agreements in the GATT/WTO,”<sup>16</sup> James Mathis analyzes this phenomenon, which he describes as “Modern Regionalism,” mainly from a legal point of view, but he also furnishes perceptive insights into its political and economic aspects. He has delineated certain features of those arrangements and has drawn conclusions about them. Placing them in the context of the analysis in the preceding sections, attempted from the standpoint of the South, we would recapitulate them as follows:

First, the end of the cold war has effectively removed the “real” constraint on the national prerogative of pursuing unilateral routes; the institutional constraint imposed by GATT was only a weak constraint, and the adherence to multilateralism as conceived in GATT and practiced by the major powers was really a function of the geopolitical constraint of the cold war. With that constraint gone, the major

powers are now free to pursue the unilateral route.

Second, many of the regional trade agreements under the WTO are either the initiatives of the U.S. or the EU or are in response to their earlier initiatives. The hegemonic character of the arrangements is, therefore, to be expected.

Third, while the focus on the regional agreements is evident (NAFTA, the EU and transition-economy countries, the Free Trade Area of the Americas hemispheric conception), not all of them (or all initiatives for such agreements) retain geographic proximity (EU-Mexico, EU-Mercosur, U.S.-African Growth and Opportunity initiative).

Fourth, multinational firms operate globally but have regional strategies and defend markets regionally. They lobby for regional preferences, including the investment regimes which help strengthen their competitive edge.

Fifth, the agreements include issues not within the purview of GATT/WTO but sought by the trade majors to be so included in the mandate of the multilateral system, e.g., services and investment provisions.

Sixth, while an agreement such as NAFTA underlines regional trade dependency, a number of PTAs show another type of dependency, namely, the large /small factor. Such agreements seem to promise large economic benefits to the small partner but confer unquantifiable political benefits to the larger partner. They take the “hub-and-spoke” form, which brings to mind the pre-GATT tendency of regional spheres of influence and a built-in dependency for the small nations, with all its consequences.<sup>17</sup>

Seventh, such agreements are a part of the process of attracting investment primarily from firms located in Europe and the U.S. by providing (a) free trade channels for the inputs and outputs of investments established and (b) certain legal guarantees to secure favorable treatment for investors. Investment obligations incurred by the host country can be without regard to mutuality. The dependency entailed by such arrangement can be more comprehensive across a broader range of traded factors than just goods.

In another more recent, brief but incisive article,<sup>18</sup> appearing in *Asia-Europe Dialogue*, the U.S.'s forays into unilateralism and selective plurilateralism have been x-rayed. The conclusions reached reinforce some of the conclusions and observations mentioned above. The authors point out that the U.S. has entered into 23 bilateral Free Trade Agreements (FTAs) and is in the process of concluding similar agreements with 28 more countries. Barring NAFTA, the partner countries include mostly small countries with very low tariffs, small GDP and small trade turnover with little trade significance for the U.S. They also have high market dependence on the U.S. The agreements are, however, noteworthy as they include service sector liberalization, investment provisions and high intellectual property protection. Controversial issues like investor-to-state disputes<sup>19</sup> and negative-list approach<sup>20</sup> for services coverage are included. The large/small factor, high dependency and the strategy to bring in the controversial non-trade issues with a view to soften/eliminate the opposition to their inclusion in the WTO agenda are also the characteristics pointed out by Mathis in his study earlier referenced.

## VII.

It would be appropriate to recall here that, from Jacob Viner to Jagdish Bhagwati, the free trade theorists of the neo-classical school have exposed the fallacy in the "primitive illusion" that greater *inter se* liberalization in a subset of a wider set of trading nations is always desirable, as it is a step towards freer trade. The question of discrimination *against* other members of the wider set implicit in such liberalization is important. Trade-creating liberalization is welfare improving, whereas trade-diverting liberalization is welfare reducing. And the final result is a matter of empirical assessment. The condition that *inter se* liberalization in the subset should be total or maximal does not by itself alter the position for the better; indeed, it may worsen it. In other words, PTA is no route to improvement of welfare through free trade, and hence, the inherent superiority of the multilateral approach to trade liberalization.

This exposition has, however, not dampened the enthusiasm for the preferential trade arrangements. Not only that, the history of the actually existing multilateral trading system has taken a course far different from that prescribed by the free trade theorists, as we have briefly analyzed in the preceding sections. Moreover, the last two decades of the period of so-called globalization have, if anything, witnessed more of the departures from the multilateral approach. So a reiteration of the free trade theory and the elegant proof of welfare-improvement through the multilateral route do not provide satisfactory explanation of the way the trading system has been evolving historically, nor do they help suggest policy guidelines for those weaker members of the system who are confronted with adverse trade and development outcomes.

Attempts have been made to bring into the analysis the political theory inputs to develop a more meaningful model to understand and explain the concept and functioning of multilateralism. Rorden Wilkinson has developed what could be called a “Keohane-Ruggie-Wilkinson” model of multilateralism, which he claims “can provide the means for laying open and thus making sense of the intricacies of the WTO’s legal framework”:

This model perceives multilateralism as a set of constitutive rules, which organize the relations of participants in accordance with the principles of indivisibility and diffuse reciprocity. These rules, in turn, authorize participants to act within a given behavioural range conducive with these core principles . . . But as a necessary corollary, to ensure that such behaviour is given rise to—that is regulated in the intended manner—multilateralism also entails an adherence to the principle of dispute settlement.<sup>21</sup>

He makes an apparently modest claim that:

it is unlikely that specific or actual multilateralism will demonstrate anything other than a general propensity to adhere to these characteristics. Nonetheless, it gives us a basis upon which we can observe the difference between the ideal and an actual expression.

This model attempts to go beyond the superficial geometry of popular misconception of multilateralism. It also transcends the “algebra and calculus of opportunity and choice” of the elegant models of free trade and tries to found the analysis in terms of an understanding of history and the workings of multilateralism largely as seen from the standpoint of the developed world. But it also suffers from the major shortcoming of basing itself on unhistorical/partially historical/unwittingly biased concepts not in line with multilateralism as it was actually practiced by the trade majors and was observed and experienced by the majority of the members of the system who suffered exclusionary practices or were on the margins of the system.

Our account and analysis of the genesis as well as working of the multilateral trading system will show amply how the basic ingredients of the Wilikinson model do not fit the historical reality of the multilateral system. The concept of indivisibility is an unreal assumption. It presupposes equality and harmony subsisting between all the members of the system and integrity of interests binding them together. The exclusionary character of GATT and the reality of unequal members do not permit any presupposition of indivisibility. Rather, it is the contradictions and conflicts of interests and domination through manipulation that characterized the system throughout. According to the model, “diffuse reciprocity” differs from “specific reciprocity” only in that the former lacks the characteristics of immediacy, specificity and definiteness of sequence of *quid pro quo*, which are the hallmark of the latter. Here too, in a set of unequals, non-reciprocity or preferential treatment (differential and more favorable treatment, to use the GATT jargon) is what is appropriate to the typical situation prevailing in the GATT/WTO system. It took GATT a full 30 years to give this perception a formal legal recognition. It follows that this shortcoming is a direct offshoot of the first shortcoming mentioned above. The third leg of the model, in the shape of a dispute settlement mechanism to ensure appropriate behavioral patterns, also suffered from a similar shortcoming. And the introduction

of the possibility of cross-retaliation has only worsened the deficiency of the system in the WTO.

In a word, there is little evidence, in the observed functioning of the multilateral trading system over the years, of “a general propensity to adhere to the characteristics of the model” as claimed by the author.

## VIII.

What then is the more appropriate model of multilateralism that will both explain the way the trading system has actually worked and provide insights into the conditions for its success—that is to say, the conditions that would secure its essence, namely, an “unconditional right to equality of treatment for all the members”? We can only attempt here the basic elements of an approach to exploring the answer to this poser. Our analysis of the working of the actually existing multilateral trading system over the last five decades and more already provides some clues.<sup>22</sup>

First we have to make a decisive move away from the imaginary constructs of harmony and “win-win” models. We have to reckon with the reality of contradictions and conflicts of interest that characterized (and continue to do so) the working of the trading system. These contradictions and conflicts of interest were very sharp as they marked the birth of the system, and resulted in the exclusion of a large part of the postwar industrial world. They were not as sharp in the 25 years of the so-called “golden age of capitalism,” but they were always there, and became sharply visible again in the 1980s. In the first half of the 1990s, however, with the creation of the WTO, these contradictions and conflicts of interest were formally erased in the name of multilateralism, to the disadvantage of the large majority of the members. Despite this, they have persisted and even been exacerbated, causing the visible crises of the recent years.

Then we have to look for explanations for the way the system behaved and continues to behave: the underlying systemic causes that shaped the conflicts, if, and to what extent, they were an integral part of the functioning of the postwar capitalism. We have to identify what

is new in contemporary capitalism and how it is impinging on what happens in the WTO in the present times. We need to examine whether the basic contradictions in the functioning of capitalism in the metropolitan economies and their global spillover explain the dynamics of the system adequately and satisfactorily and whether we need to supplement the examination by introducing another level of contradiction in terms of the South and the North.

The travails of the negotiations, the long-drawn battles of concepts and formulations, have to be related to those underlying causes and forces. We must look for explanation of the eventual defeat of the South in many a battle in GATT/WTO and the emerging possibilities for regrouping. In that context, the question of identifying specific terrains of adversarial confrontation between the developed and developing members—and also the question of why some terrains yielded some results in terms of reducing, or indeed aggravating, the inequity of the system—acquire importance.

The “how” and “why” of the outflanking moves of the North need to be investigated and their potential of success gauged. The question of whether the North-South matrix adequately explains these moves, their twists and turns, needs to be addressed. In that context, the related question whether our inquiry requires introduction of another layer of contradiction—that within in each camp—also would need examination.

In our search for necessary and sufficient conditions for the successful working of true multilateralism, we would need to concentrate on the persisting antagonisms in the system and the structural and conjunctural possibilities, so as to discover the locus and agency for the desired transformation. In that context, the role of those elements in the organization who are bearing the brunt of the system’s inequity as it functions today would need to be assessed.

## IX.

Finally, what elements do we gather from the historical analysis so far, as an early harvest (to use the GATT/WTO jargon)? In other words, pending the working out of the full-fledged explanatory formulation

and a theoretic construct in the light of the posers raised and pointers indicated above, what conditions can we discern, in the immediate context, that would help propel the functioning of the system in the desired direction of an equality of treatment, or at least hold the line and prevent further deterioration?

In the short run, a few strategic initiatives may be identified. First and foremost, the emerging solidarity of the South in the WTO needs to be nurtured. The emergence of G-20 and other larger formations of groups of smaller African, Caribbean and Pacific countries, and groups of even larger number of other developing countries on clusters of issues, is a positive development. However, the movement from the issue-based Groups of the South to the revival of the joint negotiating capacity of the South on the lines of G-77<sup>23</sup> in the past, but inclusive of China, is essential. As the WTO is launched on the course of “deeper integration,” the trade weightage is not relevant. The stakes of small and big countries are of equal weight now. And since the “deeper integration” is in response to the forces of global capital whose home is in the North, the adversarial confrontation between the nation-states of the South and those forces of global capital is unavoidable. And in order to prevent further aggravation of the inequity of the system, this organizational initiative has a strategic significance. It should lead to strategic use of the numerical majority of the South in the WTO.

The paradigm of corporate, capital-intensive, export-oriented, agribusiness-centered, peasant-insensitive and mass livelihood-endangering agriculture which informs the U.S.-EU approach to the international discipline on agriculture has posed unprecedented challenge to the three-billion-strong third world peasantry. Unlike the issue of intellectual property rights that initially touched only a relatively small section (until the implications for health care via the HIV/AIDS crisis made it a people’s issue not only in the affected South but also in the North, which eventually did lead to some dilution of the inequity of the TRIPs agreement), the agriculture issue touches all developing countries and their large masses of people directly and acutely. The possibilities of the mobilization of the South on this issue

in the WTO are considerable. This is, therefore, a likely terrain that can yield successful results in preventing further aggravation of the inequity of the system. One important condition for such mobilization is that G-20 must explore with the rest of developing countries an alternative paradigm for international discipline on agriculture.

Considering the outflanking moves of the North via the PTA route, it is of importance for the solidarity of the South to initiate two countermoves in this context. First, a revival of the idea of a code for transnational corporations operating in the South. This should be looked at as a possible balancing move in response to the recent spurt in the one-sided bilateral arrangements granting privileges to transnational corporations in regard to investment regimes and other matters. Second, an initiative from the South to call for re-examination of GATT Article XXIV, which is providing a license to the hegemonic powers for all kinds of departures from the multilateral principle to the detriment of developing countries. The immediate objective should be to plug the free trade area loophole, which provides such license.

## NOTES

1. See WTO *Trade Policy Review of U.S. 2001, 2003*.
2. See European Commission *U.S. Barriers on Trade and Investment 2002, 2003*.
3. See WTO *Trade Policy Review – European Union*.
4. See Wilkinson (2000), Mathis (2002) and Bhagwati (2002).
5. See Gardner (1980), pp. 46-7.
6. See Gardner (1980), p. 383.
7. See Culbert (1987), pp. 400-7.
8. The Committee had a membership of nineteen, which included, besides the U.S. and U.K., the USSR, France, Canada, Belgium, Netherlands, Norway, Luxembourg, Czechoslovakia, Australia, New Zealand, China, Brazil, India, South Africa, Chile, Cuba and Lebanon. See also Wilcox (1949): "In their approach toward the problems of trade policy, the countries participating in negotiations now fall into four major groups. In the first group, which includes the United

States, Canada, Belgium, Holland, and the Scandinavian countries, there is a strong desire to reestablish a world trading system based on multilateralism and non-discrimination. In the second group, which includes Great Britain and France, recognition of eventual desirability of multilateralism is overshadowed by preoccupation with the immediate necessities of reconstruction. In the third group, which includes most of the countries of Latin America, Asia, and the Middle East, the predominant concern is with the promotion of industrial development. The fourth group, which includes the countries of Eastern Europe, is committed to collectivism.”

9. See Shukla (2000).

10. See Shukla (2000), pp. 43-5.

11. “Deeper integration” refers to the incorporation of non-trade issues, such as environmental or labor standards, into the mandate of the WTO.

12. The concept of “internationally contestable markets” seeks to ensure provision of market access and opportunities for foreign firms, equivalent to domestic firms, and make those markets open to global competition. See Zampetti and Sauve (1996).

13. Introduced at the 1996 Singapore WTO ministerial, WTO provisions for government procurement would effectively bar governments from giving preference to local suppliers of goods and services, opening the procurement process to international competition. See the statement by Martin Khor, of the Third World Network, to the Group of 15 Meeting of Trade and Economic Ministers, Jakarta, May 27, 2001.

14. See Khor (2004).

15. In the context of the emerging “multipolar” trading system as a result of the trade hegemony’s growing resort to preferential trade arrangements (PTAs), Jagdish Bhagwati comments on the phenomenon thus: “. . . [D]o the WTO rules themselves get adjusted to reflect what the ‘hegemon’-centered PTAs have enacted[?] The latter has been the case, in my view, with intellectual property protection; and it is being asked for when the United States, for example, negotiates a Free Trade Agreement with Jordan, builds linkages to labor standards into it, and then declares that this is a ‘template’ for others to follow! The ‘normative’ question then is: should we approve of this role of PTAs? In terms of international relations theory, this amounts to ‘divide and get your way’: changes which are not negotiable with, say, developing countries on IPP [the Intellectual Property Protection] and on labor standards in multilateral negotiations, are accepted by weak or small developing countries as Jordan and Singapore in one-on-one bilateral PTAs by a hyperpower like the United States, and the coalition of the developing countries at Geneva in multilateral negotiations begins to break down.” See foreword to Mathis (2002).

16. See Mathis (2002), pp. 127–43.

17. See Runato Ruggiero, former WTO Director–General (1997): “If the logic of regionalism often makes less economic sense in an era of globalization, why are we witnessing such a dramatic expansion of regional initiatives? Perhaps part of the answer could be that in some cases these initiatives are less about advancing regional economic efficiency or cooperation . . . and more about securing regional preferences, even regional spheres of influence, in a world marked by growing competition for markets, for investment and for technology.” Quoted in Mathis (2002), p. 127.

18. See Dhar and Kallumal (2004).

19. Examples of such disputes are those provided under NAFTA’s Chapter 11 on investment, which allow private firms to bring suits against governments that infringe upon their investment rights and receive cash remuneration for investment damages.

20. Negative lists allow liberalization of trade unless *specifically prohibited* by provision in an FTA. In the service sector, this means that the development of new services can not be protected from international competition under an existing FTA.

21. See Wilkinson (2000), p. 43.

22. The approach suggested here (which also informs the historical analysis of the actually existing multilateral trading system in the preceding sections of this paper) is inspired by Maurice Dobb’s seminal essay “Marxism and the Social Sciences.”

23. The Group of 77 (G-77) was established at the end of the first UNCTAD session in 1964, with the mandate of providing “the means for the developing world to articulate and promote its collective economic interests and enhance its joint negotiating capacity on all major international economic issues in the United Nations system, and promote economic and technical cooperation among developing countries.” It currently encompasses 132 nations, but retains its original name.

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