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Doha stalemate: The end of trade multilateralism?

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Abstract. This article challenges conventional narratives that suggest that the travails in the Doha Round, the shift to bilateral free trade agreements, and the broader unfolding of the global crisis collectively presage the decline of either the WTO or the broader institution of multilateral trade. We question the extent to which recent trends can indeed be said to constitute a genuine crisis of trade multilateralism by reflecting upon the contradictory and ambiguous nature of the multilateralism of the past, and also upon how contemporary multilateralism has been framed with reference to it. Our main finding is that, in contrast to the many short and medium-term symptoms which tend to appear in the conventional story of multilateral decline, there is actually a far more worrying long-term trend which underpins the varied conflicts that characterise contemporary trade politics: the fundamental lack of a shared social purpose between the developed countries and the more powerful emerging countries on which a stable, equitable, and legitimate edifice of multilateral trade rules can be erected, institutionalised, and enhanced.

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Introduction

Before the restart of the Doha Round talks in Geneva in 2006, World Trade Organisation (WTO) Director-General Pascal Lamy warned that 'were this round to fail, developing countries would pay the highest price … The biggest loser, however, would undoubtedly be the WTO.'[1] After the talks did indeed subsequently break

* The authors would like to thank three anonymous reviewers, along with Faizel Ismail, Tony Payne, Ben Richardson and Gabriel Siles-Brügge, for their insightful and helpful comments on earlier drafts of this article.

[1] Pascal Lamy, 'Negotiations on the Doha Development Agenda: We Approach the Moment of Truth' speech to the Committee on International Trade, European Parliament, Brussels, 23 March 2006.

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down, a number of commentators lamented the impact of such failure on the WTO and trade multilateralism more generally. For instance, Peter Sutherland, a former General Agreement on Tariffs and Trade (GATT) Director-General, commented that 'the collapse of the talks leaves global multilateralism in a parlous state' and that abandoning the round would ultimately leave the WTO damaged.[2] Similarly, the media also portrayed the failure as the 'final nail in the coffin' for the organisation,[3] pointing at the danger that 'the entire multilateral trading system could now unravel'.[4] The onset of the global financial crisis in 2007 and concerns about states resorting to protectionist measures only served to further exacerbate fears about the future of trade multilateralism which looked especially bleak against a background of ever-proliferating Regional Trade Agreements (RTAs) and bilateral or plurilateral Free Trade Agreements (FTAs). Once trade talks were in motion again, hopes for a successful conclusion in 2008 were only matched by the disillusion that followed their collapse in July that year, amidst similar claims about the end of the WTO and the wholesale abandonment of the multilateral trading system.[5] More recently, at a specially convened public forum at the WTO under the rubric 'Is Multilateralism in Crisis?' in 2012, Lamy himself noted that 'multilateralism is struggling in almost all spheres of global co-operation', and the lack of progress in the Doha Round 'demonstrates that the WTO is not immune to the geo-economic and geo-political transformations of our time'.[6]

Despite this pessimistic tone, claims about the end of trade multilateralism are not new. For instance, the recession of the early 1980s in the West and the rise of protectionist measures that accompanied it similarly led some to argue about a crisis in the international trading system and a 'retreat of multilateralism'.[7] As Susan Strange noted at the time, it seemed that 'the road to further progress in trade liberalization was firmly closed by yawning gulfs of disagreement' between the major players, and, therefore, it was unsurprising that 'the GATT reports sound so full of doom and gloom'.[8] For over thirty years now, there have been numerous claims made about conflicts in trade relations that could potentially become real wars, 'just like in the 1930s'.[9] Beyond trade, multilateralism more generally has often been depicted as being under serious challenge, in crisis, in retreat or in decline. The ongoing political and scholarly debates over the fate of multilateralism within the UN context are perhaps emblematic. There was much pessimism as the neoliberal era dawned in the

[2] Peter Sutherland quoted in Alan Beattie, 'WTO Faces an Uncertain Future as its Negotiating System Seizes Up', *Financial Times* (25 July 2006).

[3] Edmund Conway, 'Just like England, Doha Talks Fade Before the Final Stretch', *Daily Telegraph* (25 July 2006).

[4] Liam Halligan, 'We Should Protest About the Death of Doha', *Sunday Telegraph* (30 July 2006).

[5] See, for example, Clive Crook, 'The End of the WTO?', *The Atlantic* (30 July 2008), available at: {http://www.theatlantic.com/business/archive/2008/07/the-end-of-the-wto/8617/} accessed 10 June 2012; Anu Bradford, 'Future of the WTO: End of Multilateralism?', University of Chicago Law School Faculty Blog (24 February 2009), available at: {http://uchicagolaw.typepad.com/faculty/2009/02/future-of-the-wto-end-of-multilateralism-.html} accessed 10 June 2012.

[6] Pascal Lamy, 'Multilateralism is Struggling', speech to the WTO Public Forum, 'Is Multilateralism in Crisis?', World Trade Organisation, Geneva, 24 September 2012.

[7] See, for example, Reinaldo Figueredo, 'The Retreat of Multilateralism: The International Trading System on Crisis', *Third World Quarterly*, 5:3 (1983), pp. 610–17.

[8] Susan Strange, 'Protectionism and World Politics', *International Organization*, 39:2 (1985), pp. 233–59, 243–4.

[9] See Fred Bergsten, 'The New Economics and U.S. Foreign Policy', *Foreign Policy*, 50:Jan (1972), pp. 199–222; and 'Echoes of the 1930s', *The Economist* (5 January 1991).

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1980s, captured in what Robert Cox called the tendency 'to reject the United Nations ... and a movement ... towards either unilateralism or collective dominance in world economic and political matters'.[10] In fact, every decade since at least the 1970s has been characterised by such gloomy talk; various UN Secretaries-General have repeatedly spoken of 'crisis in the multilateral approach',[11] that 'might ultimately tear it apart',[12] and, more recently, of deep divergences and lack of confidence 'in the possibility of collective responses to our common problems and challenges'.[13]

In light of these claims, the main aim of this article is to question the extent to which recent trade developments/trends can be said to constitute a genuine crisis of trade multilateralism. Our starting point is that assertions about the end of trade multilateralism often operate as *political narratives* that, despite their specificities, rely on an artifice that depicts and romanticises – whether explicitly or implicitly – the multilateralism of the past as having been operational, but currently under threat. Although there is a widespread sense that multilateralism *as a whole* is in relative decline *vis-à-vis* bilateral, unilateral, and plurilateral approaches to international trade matters, it is far from clear whether these emergent processes represent anything other than a variation on a familiar theme. Consequently, our agenda is to disentangle the significance of contemporary developments for trade multilateralism in general and the WTO specifically, the latter being an organisation embedded within the broader institution of trade multilateralism. This conceptual wedge between the WTO as an organisation and trade multilateralism as an institution is intentional on our part, so as to counter a general but misleading tendency of referring to the two interchangeably. Clearly, the relationship between the organisation itself and the broader institutional form is real and complex, but it does not warrant the assimilation – or reduction – of one (in)to the other. We can think of cases when trade multilateralism has existed without a multilateral trade organisation, for example the trading order that developed during the latter part of the 1800s. Indeed, the institution of multilateralism has taken different forms through history; the current form based on a network of international organisations is but one, and a *recent*, manifestation.[14]

Despite the wide use of the term, multilateralism is a concept and institutional form that is underexplored and poorly understood. Robert Keohane, one of the key scholars of international institutions, defined multilateralism in simple, nominal terms as 'the practice of co-ordinating national policies in groups of three or more states'.[15] This restrictive interpretation is problematic on many accounts; for instance, the North American Free Trade Agreement (NAFTA) between the US, Canada, and Mexico would be classified as multilateral, not to mention the more substantive criticism levelled against the fact that a focus on numbers obscures the *nature* of

[10] Robert W. Cox, 'Multilateralism and World Order', *Review of International Studies*, 18:2 (1992), pp. 161–80.

[11] Javier Pérez de Cuéllar, 'Report of the Secretary-General on the Work of the Organization', UN 37th Session, Document A/37/1, Supplement No. 1 (September 1982).

[12] Kurt Waldheim, *In the Eye of the Storm* (London: Weidenfield and Nicolson, 1980), p. 121.

[13] Kofi Annan, speaking in 2003, and cited in Michael Glennon, 'Idealism at the UN', *Policy Review*, 129: Feb/Mar (2005), p. 15.

[14] Friedrich Kratochwil, 'The Genealogy of Multilateralism: Reflections on an Organizational Form and its Crisis', in Edward Newman, Ramesh Thakur, and John Tirman (eds), *Multilateralism Under Challenge* (Tokyo: United Nations University Press, 2006), pp. 139–59.

[15] Robert Keohane, 'Multilateralism: An Agenda for Research', *International Journal*, 45:Autumn (1990), p. 731.

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relations instituted among state and, increasingly, nonstate actors.[16] The conceptual ambiguity that characterises our understanding of the institution of multilateralism renders confident statements about it being in crisis, or dead altogether, harder to sustain analytically. Partly in an effort to deal with this issue, and following insights from sociological institutionalism,[17] in this article we rely on an understanding of institutions, including international institutions, as *evolving* and *dynamic* sociopolitical arrangements. These arrangements/institutions are understood to be continually produced, reproduced, and transformed through social construction and interaction, which involve actors and groups with different normative and material positions. As we discuss in the latter part of the article, (trade) multilateralism is better understood as an institution that is in practice a dynamic arena of conflict and contest, rather than the orderly and cooperative arrangement it is often made to appear.[18] As will become clearer, this conceptualisation of institutions and of political narratives mentioned briefly above allows us to draw attention to the contingent and political nature of both trade multilateralism as an institution, and of the oft-made claims about its demise.

Consequently, our agenda carries important insights for two relatively distinct groups of scholars. On the one hand, we aim to speak to institutionalists with an interest in multilateralism itself, for whom a case study of contemporary global trade politics elicits a deeper understanding of the political and contested nature of real-world multilateralism. On the other hand, we aim to speak simultaneously to political economists with an interest in global trade politics, for whom straightforward claims about the decline of trade multilateralism – and, by implication, the WTO as an institution – are all too easily rehearsed but which, in our view, and on the basis of our theoretical analysis here, are far from easy or straightforward to sustain successfully. In fact, our central finding is more complex than either group might initially envisage. In contrast to the many short and medium-term symptoms which tend to constitute the conventional story of multilateral decline, there is a far more worrying long-term trend which underpins the varied conflicts that characterise contemporary trade politics: the fundamental lack of a shared social purpose between the developed countries and the more powerful emerging countries such as China, India, and Brazil – and increasingly also between the rising powers themselves – on which to erect and enhance a stable, equitable, and legitimate edifice of multilateral trade rules.

We set out to explore these issues in three stages. In the following section we discuss the recent trends that have appeared to call into question the institution of multilateral trade. Next, we take a somewhat wider view and place these recent developments in the context of post-1945 trade multilateralism in order to illuminate the contested and conflictual dynamics which have always characterised it, and that, in turn, help us to assess whether contemporary processes can indeed be said to constitute its impending demise. Finally, we engage with arguments made about the

[16] On this point, see John Ruggie, 'Multilateralism: The Anatomy of an Institution', *International Organization*, 46:3 (1992), pp. 561–98

[17] See, for example, Peter Hall, 'Historical Institutionalism in Rationalist and Sociological Perspective', in James Mahoney and Kathleen Thelen (eds), *Explaining Institutional Change: Ambiguity, Agency and Power* (Cambridge: Cambridge University Press, 2010), pp. 204–23.

[18] Valbona Muzaka, 'Linkages, Contests and Overlaps in the Global Intellectual Property Rights Regime', *European Journal of International Relations*, 17:4 (2010), pp. 755–76.

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nature of multilateralism and critically analyse the nature of the present juncture for the governance and operation of the multilateral trading system.

Recent trends

For many observers, the contemporary multilateral trading system – as well as the broader framework of global governance – is under pressure. Indeed, in comparison to the relative optimism of the 1990s, a shared acceptance of the imperative of multilateral solutions to international problems does not appear to exist. This rather pessimistic assessment has been further exacerbated by the fact that the hopeful calls for a 'Bretton Woods II' to establish a new and fairer global settlement that accompanied the onset of the global crisis soon gave way, in reality, to a fairly tepid and largely unrepresentative *ad hoc* promotion of the G20 as the default forum – for the time being at least – for discussion of global affairs.[19] Not only has the institutional response to the crisis been notably unimaginative, guided by the same pre-2007 orthodoxies,[20] but it also seems that only few among the global economic elite have grasped the fact that recent events point as much to a crisis of democracy and representation as they do of finance and economics. We will return to some of these points in the end, noting here that despite the enormity of the crisis, as Colin Hay has argued, the world remains in a kind of suspended animation with no clear normative or practical avenues for advancement towards alternative ways of doing things, a status that could, moreover, last for a long time.[21]

We consider here the implications of recent developments upon the institution of trade multilateralism specifically by outlining some of the perceived challenges facing it. There are, broadly-speaking, four commonly discerned signs that point to the presumed denouement of the multilateral trading order: first, and perhaps the more important for our purposes, the stalemate of the current Doha Round of trade negotiations; second, the concomitant proliferation of regional and bilateral free trade agreements (FTAs); third, specific problems within the WTO itself; and fourth, the wider implications of the global financial crisis.

a. The Doha Round stalemate

The multilateral trade negotiations – commonly called the 'Doha Round' or 'Doha Development Agenda' (DDA) – that collapsed spectacularly in Geneva in 2008

[19] See, for example Anthony Payne, 'How Many Gs are There in "Global Governance" After the Crisis? The Perspectives of the "Marginal Majority" of the World's States', *International Affairs*, 86:3 (2010), pp. 729–40; Susanne Soederberg, 'The Politics of Representation and Financial Fetishism: The Case of the G20 Summits', *Third World Quarterly*, 31:4 (2010), pp. 523–40; and Paul Cammack, 'The G20, The Crisis, and the Rise of Global Developmental Liberalism', *Third World Quarterly*, 33:1 (2012), pp. 1–16.

[20] Paul Ormerod, 'The Current Crisis and the Culpability of Macroeconomic Theory', *21st Century Society*, 5:1 (2010), pp. 5–18.

[21] See Colin Hay, '"Things Can Only Get Worse . . .": The Political and Economic Significance of 2010', *British Politics*, 5:4 (2010), pp. 391–401; and 'Pathology Without Crisis: The Strange Demise of the Anglo-Liberal Growth Model', *Government and Opposition*, 46:1 (2011), pp. 1–31. See also Charles Gore, 'The Global Recession of 2009 in a Long-Term Development Perspective', *Journal of International Development*, 22:6 (2010), pp. 714–38; Oliver Kessler, 'Sleeping with the Enemy? On Hayek, Constructivist Thought, and the Current Economic Crisis', *Review of International Studies*, 38:2 (2012), pp. 275–99.

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remain, at the time of writing, mired in uncertainty.[22] Many observers argue that the round will not be concluded, and with each day that passes, it is becoming 'increasingly moribund'.[23] One of the key explanations for this state of affairs is that Doha has been caught up in a substantial changing context of power, ideas, and crisis. It would appear that even its strongest advocates have lost some of their enthusiasm for it, and they have been unable to convince the many constituencies ranged against a possible agreement that it is worthwhile investing the requisite political capital to make it succeed.

The problems regularly cited are many. First, there is the thorny issue of changes in the configuration of economic power; Doha has rumbled on for well over a decade and the world has profoundly changed in the intervening period. As Aaditya Mattoo and Arvind Subramanian note, 'when the Doha Round … was launched, in 2001, the price of oil was $25 a barrel, a ton of rice cost $170, China's current account surplus was two percent of the country's GDP, US financial institutions were at the vanguard of globalization, and the term "sovereign wealth fund" could have been mistakenly thought to refer to the retirement kitty of an aging monarch'.[24] It barely needs saying that the world appears very different today. Throughout 2013 a barrel of Brent Crude has traded at well over $100, commodity prices have increased by as much as 300 per cent or more over the decade, the West is still reeling from the effects of the global financial crisis more than five years after it first hit, and emerging countries control enormous volumes of capital. China's main sovereign wealth funds alone manage over $1 trillion between them, a figure that has risen dramatically year on year.

This dominant narrative of a dramatically changed context often makes the 2001 Doha development mandate appear as dated, emaciated and distinctly unambitious.[25] Framed in this way, key protagonists – and notably the US – argue that there is little of value on the negotiating table unless other members, especially the emerging economies, make significantly greater concessions than those envisaged in the past. However, these demands may be unwarranted, because despite their relatively rapid growth, the joint share of Brazil, India and China in world GDP has yet to reach that of the US or the West as a whole, not to mention that the gap between real *per capita* GDP levels remains very wide indeed.[26] Even if this were not so, this is a round of negotiations of interest not only to major players, but to *all* WTO members, who expect their concerns to be taken into account accordingly. From the perspective of many developing countries, the major problems that hinder the conclusion of Doha relate to the unwillingness of the US and the EU to make real offers in the agricultural sector, the grossly unbalanced rate of return from an agricultural deal for developing countries compared to the substantial concessions they are requested

[22] This is so despite the Bali Package agreement reached in December 2013, not least due to developments in the US suggesting, at least at the time of writing, that the Obama administration 'fast-track' trade negotiating authority is not likely to be forthcoming.

[23] James Scott and Rorden Wilkinson, 'What Happened to Doha in Geneva? Re-Engineering the WTO's Image While Missing Key Opportunities', *European Journal of Development Research*, 22:2 (2010), pp. 141–53, 141.

[24] Aaditya Mattoo and Arvind Subramanian, 'From Doha to the Next Bretton Woods: A New Multilateral Trade Agenda', *Foreign Affairs*, 88:1 (2009), pp. 15–26, 15.

[25] Ibid.

[26] Faizel Ismail, 'Is the Doha Round Dead? What is the Way Forward?', *World Economics*, 13:3 (2012), pp. 143–69.

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to make in Non-Agricultural Market Access (NAMA) negotiations,[27] and the persistence of small group negotiations that do not represent and address the interests of the majority of WTO members.[28]

The second issue is that the 'development' agenda which was loudly proclaimed in light of both 9/11 and the 'Battle in Seattle' did not materialise, and has been emasculated to the point of meaninglessness. As James Scott and Rorden Wilkinson note, as it currently stands, Doha 'will not deliver development nor increased trading opportunities for the developing world, particularly the least developed'.[29] This is because, firstly, the projected gains for developing countries as a whole are limited, and perhaps worth as little as $16 billion, representing 'less than a penny a day for each person in the developing world'.[30] Furthermore, not only are the gains distributed unevenly between developed and developing countries, but also *between* developing countries as the bigger players – in particular China and Brazil – stand to benefit disproportionately. It is expected that the kind of trade deal that sees Europe and the US make significant concessions on agriculture will see many of the gains captured by these big developing countries. It will also require significant movement from the developing world as a whole on the question of NAMA, as well as services and even intellectual property, which, again, only a few are well disposed to exploit. Many more would be net losers, witnessing the decimation of fledgling industries; indeed, the estimated $16 billion of gains would be offset by a $63 billion loss from tariff erosion under NAMA alone.[31] Moreover, the poorest could even conceivably be locked into a future path-dependent agricultural development trajectory as they give up many of the crucial policy levers which are required to effect industrial diversification.[32] In any ideal – yet still implausible – scenario, then, the benefits of a completed Doha Round will be distributed extremely unevenly; the rich countries will enjoy gains many times greater than those enjoyed by the developing world, and for many of the poorest developing countries – and certainly for marginalised social groups within all developing countries – the result will be a net loss. As Ben Richardson has put it, 'the benefits of multilateral liberalisation are not big enough, not certain enough, and not targeted enough to make significant difference to the world's poor'.[33]

[27] Broadly speaking, NAMA covers a wide range of products – from processes relating to manufacturing, mining, fisheries, and forestry – which are not covered by prevailing agreements. These are crucial for a number of reasons: one is the fact that they account for a high proportion (up to 90 per cent) of global merchandise exports; another is that they are traditionally seen to be critical sectors in which selective protectionism and activist industrial policy can engender developmental transformations.

[28] Martin Khor, 'The Twists and Turns of the Doha Talks and the WTO', *South Bulletin*, 68:October (2012), pp. 5–8; Faizel Ismail, *Reforming the World Trade Organization: Developing Countries in the Doha Round*, CUTS International (Geneva, Switzerland, 2009).

[29] James Scott and Rorden Wilkinson, 'The Poverty of the Doha Round and the Least Developed Countries', *Third World Quarterly*, 32:4 (2011), pp. 611–27, 623.

[30] Frank Ackerman and Kevin P. Gallagher, 'The Shrinking Gains from Global Trade Liberalization in Computable General Equilibrium Models', *International Journal of Political Economy*, 37:1 (2008), pp. 50–77, 59.

[31] Kevin P. Gallagher and Timothy A. Wise, 'Are There Large New Gains from Trade?', *Bridges Newsletter*, 14:1 (2010), pp. 21–2.

[32] Scott and Wilkinson, 'Poverty of Doha Round'.

[33] Benjamin J. Richardson, 'From Doha to El Dorado: The World Trade Organization, Agricultural Liberalisation and the False Promise of Free Markets', CSGR Working Papers, University of Warwick, UK (2010) available at: {http://www2.warwick.ac.uk/fac/soc/pais/people/richardson/publications/doha_to_el_dorado.pdf} accessed 15 June 2012.

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Third, at a broader level, at the heart of the current Doha difficulties lies a conflict that has always been present, to varying degrees, in the modern multilateral trade system between the majority of developing members who wish to orient it towards their developmental needs, and key developed members who consider it a means to improve market access in their favour with the fewest concessions possible. In this, Doha is not an unusual Round. A decade or two ago, all of this could – and probably would – have been ignored, and Western countries might have forced an accord, as happened during the Uruguay Round. Today, however, structural changes in the prevailing distribution of power within the WTO mean that the more powerful developing countries can resist what they perceive to be a flawed, unfair, or unacceptable deal. Even more crucially, this process is intensifying. In truth, the so-called 'emerging' countries have already emerged and we are now beginning to see the dawning of an era in which they are able to not merely resist, but increasingly set the terms of debate and influence certain changes in the structure of the institutions of global governance.[34] This has manifested itself in difficult negotiations over NAMA; when Doha was first conceived, developing countries were explicitly entitled to make commitments on tariff reductions that were not fully reciprocal.[35] A decade on, as some of these countries have enjoyed considerable growth, heavy pressure has been applied by the US and Europe for an extensive NAMA agreement. So far, developing countries have been able to resist these demands, with NAMA negotiations being one of the main reasons for the ongoing stalemate.[36]

b. The proliferation of FTAs

As the Doha Round negotiations struggle from one ministerial to the next, more and more trade agreements are being negotiated outside of the WTO context in a bilateral or plurilateral fashion. The large trading powers have increasingly sought to conclude FTAs with emerging countries, with the US completing such agreements with Chile and Colombia recently, as well as negotiating broader RTAs in both the Middle East and Asia-Pacific with the Trans-Pacific Partnership (TPP). On its part, the EU also forged an agreement with South Korea in 2010 and is negotiating another with India and Canada, in addition to the infamous Economic Partnership Agreements (EPAs) it has attempted to impose – not, it must be said, entirely successfully – on the African, Caribbean, and Pacific (ACP) countries as a way of bringing their trade relations into 'WTO-compliance' after the vicious WTO battles over preferences.[37] The US and EU are the most aggressive pursuers of FTAs, but certainly not the only ones; by early 2013, the WTO had been notified of a staggering 546 different RTAs and FTAs, 354 of which were in force at that point in time.[38] Both of these figures, moreover, represent roughly a ten per cent increase on the previous year, suggestive of continuous

[34] Cammack, 'The G20, The Crisis'.
[35] Scott and Wilkinson, 'Poverty of the Doha Round', p. 622.
[36] Braz Baracuhy, 'The Geopolitics of Multilateralism: The WTO Doha Round Deadlock, The BRICS, and the Challenges of Institutionalised Power Transitions', Centre for Rising Powers Working Paper No. 4, Cambridge (2012), available at: {http://www.polis.cam.ac.uk/crp/research/workingpapers/pdf/CRP_Working_Paper_Series_4_Geopolitics_of_Multilateralism.pdf} accessed 20 June 2012.
[37] See Tony Heron, *Pathways from Preferential Trade: The Politics of Trade Adjustment in Africa, the Caribbean and Pacific* (Basingstoke: Palgrave Macmillan, 2013).
[38] World Trade Organisation (WTO) Website, 'Regional Trade Agreements', available at: {http://www.wto.org/english/tratop_e/region_e/region_e.htm} accessed 10 June 2013.

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growth of RTAs in general. To many, the picture became more worrisome when the US-EU Trans-Atlantic Trade and Investment Partnership talks launched in mid-2013, risking the destabilisation of trade multilateralism as both practice and ideal even further.[39]

This proliferation of RTAs/FTAs is not a new phenomenon, and it is driven by a number of different factors. On the part of key developed countries, a principal explanation is their frustration with the multilateral process. In the case of the EU, for instance, former Trade Commissioner Peter Mandelson appeared to have hedged EU bets against the successful completion of Doha through a conscious shift from the 'multilateralism first' approach of his predecessor, to an increasingly bilateral one. In effect, the latter gradually came to supplant the former in terms of its place within the EU's wider trade agenda. The infamous 2006 *Global Europe* strategy[40] occasioned a notable shift towards a much more assertive attitude in external bargaining with the express aim of securing access to emerging markets in a game of 'competitive liberalisation' where other major players, and, in particular, the US, are doing much the same thing.[41] This has also seen the increasing and uneasy 'entwinement' of both the EU's 'developmental' FTAs (meaning the EPAs with the ACP) and the 'commercial' FTAs it has been seeking with emerging markets and fast-growing developing countries (such as South Korea and the BRICS).[42] One of the most visible consequences of these developments is the move towards full reciprocity in trade relations between Europe and countries as disparate as India, Brazil, Uruguay, Argentina, Vietnam, and Thailand, as well as the often much poorer countries from the ACP that are struggling to adjust to this new reality.[43]

Unsurprisingly, the shift to bilateral FTAs has come under sustained criticism, much of which we will not address here, save to make the following points which speak to our agenda. First, many critics have stressed the WTO-undermining implications of this unfolding process.[44] This is partly because some of the most contentious Doha Round items in which developed countries have defensive interests, such as agriculture, have not been liberalised in these FTAs. Second, and related to this, critics also suggest that FTAs further confuse an already complex multilateral process because 'they create trade diversion, add to the ''spaghetti bowl'' of trade regulations, and allow the US, EU, and other powerful nations to exact concessions from weaker trading partners that they would never get at the WTO'.[45] This final point,

[39] James Kanter and Jack Ewing, 'Running Start for a U.S.-Europe Trade Pact', *The New York Times* (13 February 2013), available at: {http://www.nytimes.com/2013/02/14/business/global/obama-pledges-trade-pact-talks-with-eu.html?_r=0} accessed 10 July 2013. For a critical discussion of the potential negative democratic implications, see George Monbiot, 'This Transatlantic Trade Deal is a Full Frontal Assault on Democracy', *The Guardian* (4 November 2013), available at: {http://www.theguardian.com/commentisfree/2013/nov/04/us-trade-deal-full-frontal-assault-on-democracy} accessed 11 January 2014.

[40] European Commission, 'Global Europe: Competing in the World' (Brussels: European Commission, 2006).

[41] Tony Heron and Gabriel Siles-Brügge, 'Competitive Liberalisation and the ''Global Europe'' Services and Investment Agenda: Locating the Commercial Drivers of the EU-ACP Economic Partnership Agreements', Journal of Common Market Studies, 50:2 (2012), pp. 250–66. See also Gabriel Siles-Brügge, *Constructing European Union Trade Policy* (Basingstoke: Palgrave Macmillan, 2014).

[42] Heron and Siles-Brügge, 'Competitive Liberalisation'.

[43] Ibid.

[44] Mattoo and Subramanian, 'Doha to Next Bretton Woods', p. 16.

[45] Timothy A. Wise, 'Doha Goes on Life Support', Global Development and Environment Institute Commentary, (May 2011), p. 3, available at: {http://www.ase.tufts.edu/gdae/Pubs/rp/GC23May11Wise.pdf} accessed 10 June 2012.

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the so-called 'WTO-plus' nature of many FTAs is a particularly controversial issue. Many of the poorer developing regions, such as the Caribbean, have been corralled into an EPA which forces them to not only engage in reciprocal liberalisation with an inordinately more powerful entity like the EU, but to also commit to open up sectors which go far beyond their multilateral obligations.[46]

c. The WTO

For some observers, a fundamental difficulty facing the WTO is that it is 'trapped by its existing architecture'.[47] Changing power configurations have made it difficult for the organisation to fundamentally change its approach and central premise. In terms of the former, it appears to be bound by the need to reach agreement on further liberalisation on the basis of the 'single undertaking',[48] although some developed members have more recently voiced the possibility of moving towards a *plurilateral* approach as a means to move Doha forward.[49] In the case of the latter, one of the main premises of the WTO has historically been that of the continued liberalisation of substantially *all* trade. As we shall see, in practice this was manifested in a highly nuanced manner, but it worked reasonably well for the key members early on, since there were fewer trade issues up for negotiation and less resistance overall. Today, few countries are convinced of the merits of across-the-board liberalisation, particularly in the increasingly sensitive sectors envisaged under Doha, and many are actively resisting being drawn into binding multilateral deals that they consider unsatisfactory.

The WTO also appears trapped because, as a member-driven organisation, it has limited space to break out of the impasse in which it finds itself. There is some irony here, in that during the 1990s, flexibility and consensus-building (consensus, that is, among the most powerful actors) were celebrated as WTO strengths, particularly in comparison to older and supposedly more elitist multilateral institutions.[50] But now the organisation is revealed as something of a naked Emperor. This is, firstly, because it still preaches trade liberalisation even though some of its member countries 'have not waited for [it] to rethink the state-market problematic' and have got on with the business of intervening in failing markets.[51] Indeed, it has long been argued that more powerful countries not only do not practice the 'free trade' gospel they preach, but they have also 'kicked away the ladder' for developing countries to use

[46] Matthew L. Bishop, Tony Heron, and Anthony Payne, 'Caribbean Development Alternatives and the European Union-CARIFORUM Economic Partnership Agreement', *Journal of International Relations and Development*, 16:1 (2013), pp. 82–110.

[47] Daniel Drache, 'Reform at the s next for the WTO? A Second Life? A Socio-Political Analysis', *Oñati Socio-Legal Studies*, 1:X (2011), pp. 1–22, 1.

[48] The notion of a 'Single Undertaking' refers to the fact that an agreement in the Doha round is an indivisible package; until an accord is reached on all issues to the satisfaction of members, there is essentially no agreement.

[49] Ismail, 'Is Doha Dead?'

[50] Indeed, an interesting comparative point here might be the contrast between the WTO and the IMF during the crisis. The latter has been distinctly more successful in crafting, relatively speaking, a radical and original response to the intellectual challenge presaged by events in 2008–onwards. See, for example, Ilene Grabel, 'Not Your Grandfather's IMF: Global Crisis, "Productive Incoherence", and Developmental Policy Space', *Cambridge Journal of Economics*, 35:5 (2011), pp. 805–30.

[51] Drache, 'Reform at the Top', p. 3.

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the same kinds of interventionist policies they used earlier for their own industrial development.[52] It also bears repeating that the intellectual gymnastics performed by the EU and the US to justify subsidies to agriculture and other strategic sectors (not least the financial and automotive sectors) betrays their commitment to the principle of free trade and free market logic. This problem, of course, plays out in the difficulties over agriculture and NAMA currently haunting the Doha negotiations.

Secondly, for some, its real power lies in the so-called Single Undertaking, the implication being that, if the latter fails to materialise, other practices (for example, regional and bilateral FTAs) may usurp those embodied in the WTO.[53] As Simon Evenett has argued, the WTO may consequently become a hollow institution, characterised by a 'missing middle' in which there exists very little space or provision for the 'non-juridical, deliberative functions' needed in order to remain a relevant site for the playing out of trade politics.[54] More importantly, should it no longer be possible to negotiate trade rules at WTO rounds, the prospect of changing them so that they benefit the majority of its membership may also be reduced.[55] It is worth recalling that the Doha development mandate agreed in 2001 was originally geared towards addressing developing countries' concerns relating to previously agreed rules, although many of these have been sidelined in the course of interminable negotiations. Yet, the likelihood of addressing them outside the WTO currently does not appear very promising.

d. The Global Financial Crisis

Finally, the unfolding of the global crisis has exacerbated many of these challenges. On their own, the Doha stalemate, the shift to FTAs, and the ongoing intellectual and political contradictions within the WTO itself might not carry quite the same significance. However, although there has been no return to the protectionism of the 1930s that some might have – perhaps misguidedly – feared,[56] a number of protectionist measures were adopted by both developed and developing country governments in the aftermath of the crisis.[57] It seems plausible that government bailouts, tariff increases and export subsidies are mainly a short-term expedient to the shrinking global economy, and do not represent an ideological renunciation of the principle of liberalising trade itself (even though they do not sit easily with such a commitment).[58] Indeed, it is notable that, even in light of the travails in which the multilateral liberalisation process finds itself, the basic principle upon which the shift to RTAs is premised is some kind of continued, if qualified, liberalisation.

[52] Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective* (London: Anthem, 2002).
[53] Drache, 'Reform at the Top'.
[54] Simon J. Evenett, 'Aid for Trade and the "Missing Middle" of the World Trade Organization', *Global Governance*, 15:3 (2009), pp. 359–74, 359.
[55] Rorden Wilkinson, 'Of Butchery and Bicycles: the WTO and the "Death" of the Doha Development Agenda', *The Political Quarterly*, 83:2 (2012), pp. 395–401.
[56] Gabriel Siles-Brügge, 'Explaining the Resilience of Free Trade: The Smoot–Hawley Myth and the Crisis', *Review of International Political Economy*, iFirst (2013), pp. 1–40.
[57] See Ann Capling and Richard Higgott, 'Introduction: The Future of the Multilateral Trade System – What Role for the World Trade Organization?', *Global Governance*, 15:3 (2009), pp. 313–25.
[58] See Andrew Gamble, 'The Western Ideology', *Government and Opposition*, 44:1 (2009), pp. 1–19.

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As will become clearer in the following section, trade multilateralism has never actually existed independently of a world in which overlapping bilateral agreements also exist. Or, put another way, the existence of multilateral trade has not precluded the development of bilateral measures in the past or present. It has also never been immune from developments within – and transformations of – the domestic environment. On the contrary, the durability of multilateral arrangements, in trade and elsewhere, has been closely related to domestic politics, in addition to other factors such as the distribution of capabilities and resources among members and the specific principles and norms underpinning a particular multilateral arrangement.[59] To give one pertinent example: it has often been argued that the principal reasons why the US has failed to provide decisive leadership during the Doha Round are mainly domestic and they relate to the pressure by major American lobbies, both for more market opening in manufactures and services, and for protection in agriculture. This phenomenon was given added impetus in the aftermath of the crisis, where both the Bush and Obama administrations had as their primary concern the domestic implications of global convulsions.[60] Governments elsewhere are obviously not immune from these dynamics and concerns. We will return to this point again; here we simply note that, in light of such concerns, the fact that member states are struggling to make concessions and reach deals at the WTO cannot be taken, in and of itself, to signal the end of trade multilateralism. This is so especially because previous negotiation rounds have also been fraught and difficult. In order to understand the current challenges to trade multilateralism noted above, we need to examine them in a broader historical context. We do so in the following section, where we question the extent to which the crisis in the multilateral trading system is new by highlighting some of the characteristics of the conflictual institution of trade multilateralism established at the end of World War II.

Looking back: The ambiguous and contradictory nature of trade multilateralism

Claims about trade multilateralism being in crisis or retreat often unfold as narratives organised as a sequence of events culminating in a problem/deviation that requires a solution and equilibration.[61] Regardless of when such narratives emerge, and the specificities of the actual events taking place, they most commonly rely on an artifice which depicts such events as deviant and problematic against a background of a balanced, functioning, and effective trade multilateralism of the yesteryears. Trade multilateralism, therefore, simultaneously emerges as a normative goal about how trade relations ought to be organised, and as an institutionalised practice which is currently under threat. By their very nature, narratives are simultaneously normative and political. A particular representation of a past state of affairs as having 'really existed', as a fact, is political and serves a specific role within a given narrative. One role of such a narrative is to compel members resisting a negotiation outcome (which they may consider unbalanced) to consent to it in order to solve the present crisis, lest the entire edifice of trade multilateralism crumbles. But, as will become clearer, an

[59] Ruggie, 'Multilateralism', p. 595.
[60] Ismail, 'Reforming the WTO', p. 149.
[61] Molly Patterson and Kristen Renwick Monroe, 'Narrative in Political Science', *Annual Review of Political Science*, 1 (1998), pp. 315–31.

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exploration of the nature of 'trade multilateralism of the past' shows that, far from being orderly, effective and balanced, it too was characterised by contests, conflicts, and crises. This has been so not merely because trade issues are contested and political, but also because institutions, *per* critical sociological institutionalism, are inherently contested, dynamic and contradictory.

Conceptualised within this approach, the institution of trade multilateralism, like institutions generally, is best seen as an enduring – although changeable – structure with both material and symbolic properties that influence actors' identities, values, behaviour, access to resources, and action.[62] It is, moreover, an arrangement that is produced, maintained, and transformed through social construction and interaction among actors and groups that, importantly, have different normative and unequal power positions. Such ongoing processes often produce an array of institutional arrangements that are interrelated and yet contradictory at the same time. In other words, far from being *orderly* arrangements, institutions like multilateralism are better understood as *dynamic* arenas of conflict and contest. Indeed, at the core of critical sociological institutionalism lies the argument that contradictions within and between institutions are the bases of the most important political conflicts, and that it is through political action fuelled by such conflicts that organisations, institutions, and more broadly, society are transformed over time.[63]

According to John Ruggie, multilateralism can be analytically understood as an institutional form that coordinates actors' behaviour on the basis of certain generalised principles of conduct, without regard to actors' particularistic interests and specific exigencies.[64] In the case of trade multilateralism, Ruggie argues that *non-discrimination* can be said to be this overarching generalised principle of state conduct. Elaborating further, this entails both 'indivisibility' amongs the members of the collectivity (it applies to all), and generates expectations of 'diffuse reciprocity',[65] whereby members expect roughly equivalent benefits in the aggregate and *over time*, rather than on every occasion.[66] We will return to this conceptualisation shortly; for now, suffice to say that it is especially helpful in shifting the focus to the *nature* of relations constituted among members in a particular multilateral form. Analytical concepts are, of course, not universal and their meaning can only be understood and critically examined in their historical dimension and manifestation. And because institutions such as multilateralism are underpinned by principles and rules that are not clear-cut but intrinsically ambiguous, their history is necessarily dynamic, as the principles and rules that constitute them are always subject to actors' interpretation

[62] R. Friedland and R. R. Alford, 'Bringing Society Back In: Symbols, Practices and Institutional Contradictions', in W. W. Powell and P. J. DiMaggio (eds), *The New Institutionalism in Organizational Analysis* (Chicago, IL: University of Chicago Press, 1991), pp. 232–63; W. R. Scott, *Institutions and Organizations* (Thousand Oaks, CA: Sage, 2001); E. Armstrong and M. Bernstein, 'Culture, Power and Institutions: A Multi-Institutional Politics Approach to Social Movements', *Sociological Theory*, 26:1 (2008), pp. 74–99.

[63] Ibid. See also J. K. Benson, 'Organizations: A Dialectic View', *Administrative Science Quarterly*, 22 (1977), pp. 1–21; and Valbona Muzaka, 'Contradictions, Frames and Reproductions: The Emergence of the WIPO Development Agenda', *Review of International Political Economy*, 20 (2012), pp. 215–39.

[64] Ruggie, 'Multilateralism', p. 571.

[65] Ruggie borrows the idea of 'diffused reciprocity' from Robert Keohane, 'Reciprocity in International Relations', *International Organization*, 40:1 (1986), pp. 1–27.

[66] With specific reference to the WTO, see also Rorden Wilkinson, *Multilateralism and the World Trade Organization* (London: Routledge, 2000).

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and, often, to reinterpretation and contestation.[67] The institution of trade multilateralism is not different in these respects.

As the principle of '*collective security*' of multilateralism in security matters, *non-discrimination* has been said to be the key organising and generalised principle of trade multilateralism. Indeed, many of the current claims about the end of trade multilateralism explicitly invoke the discriminatory nature of certain developments (for example, bilateral trade agreements) in their support. At the level of principles, nondiscrimination means that countries do not discriminate between their trading partners (the so-called Most Favoured Nation (MFN) principle). As is well known, the MFN principle was the lynchpin of the nineteenth-century trade multilateralism,[68] a European*, ad hoc* multilateral trade system that was essentially built upon a network of *bilateral* agreements. This type of trade multilateralism, like that on security exemplified by the Concert of Europe, had a temporally distinct and contradictory character which combined the recognition of *equal* state sovereignty with a leading role for *powerful* states (and especially Britain, in the case of trade). The post-World War II multilateralism rested on a similar contradictory mix but, importantly, with the new added dimension of multilateral organisations and their authoritative expertise, the presumed neutral and apolitical nature of which helped mask (to varying degrees) existing power differentials among states.[69] This was true of the UN and Bretton Woods institutions and certainly of GATT which, despite being born in a period of heightened and self-conscious multilateralism, was essentially *a club* where 'major commercial powers … could go off to do business by themselves'[70] without having to accommodate the rest of the world.

The nondiscrimination (MFN) principle was indeed *the* principle on which the 1947 Agreement opened (GATT Article I). This was not a preambular, nonoperative article; the success attributed to the nondiscriminatory (European) trade system of the nineteenth century, and the unhappy war and interwar experience that followed, seems to have convinced negotiators not only of the 'virtues' of an open, nondiscriminatory trade system, but also of the necessity of constituting such a system through binding, continuous, and multilateral negotiations.[71] It is worth noting that, such conviction and commitment notwithstanding, the original GATT never came into force and it, alongside the articles setting out the nondiscrimination principle, were only applied *provisionally*, allowing members to withdraw on sixty days notice.[72]

[67] Peter Hall, 'Historical Institutionalism in Rationalist and Sociological Perspective', in James Mahoney and Kathleen Thelen (eds), *Explaining Institutional Change: Ambiguity, Agency and Power* (Cambridge: Cambridge University Press, 2010), pp. 204–23.

[68] The most important element of the 1860 Anglo-French treaty was the inclusion of the Most Favoured Nation (MFN) clause. It rapidly cascaded into a series of bilateral trade agreements between other European countries, all linked by the inclusion of an unconditional MFN clause. See D. Irwin, 'Multilateral and Bilateral Trade Policies in the World Trading System: A Historical Perspective', in K. Anderson and B. Hoekman (eds), *The Global Trading System 1 – Genesis of the GATT* (London: I. B. Tauris, 2002).

[69] Kratochwil, 'The Genealogy of Multilateralism'.

[70] R. E. Hudec, *The GATT Legal System and World Trade Diplomacy* (Salem: MA, Butterworth Legal Publishers, 1990), p. 57.

[71] Irwin, 'Multilateral and Bilateral Trade Polities'; Kenneth Dam, *The GATT: Law and International Economic Organization* (Chicago, IL: the University of Chicago Press, 1970).

[72] Rorden Wilkinson, *The WTO, Crisis and the Governance of Global Trade* (London: Routledge, 2006); J. H. Jackson, 'Dispute Settlement and the WTO: Emerging Problems', in WTO Secretariat (ed.), *From GATT to the WTO: The Multilateral Trading System in the New Millennium* (The Hague: Kluwer Law International, 2000).

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Some countries did withdraw,[73] but the provisional application was only one of the issues with the principle of nondiscrimination at the GATT. Since the very beginning, it was subject to two major exceptions: certain preferential arrangements and customs unions/free trade areas were exempt from the MFN clause.[74] These two exceptions ensured the survival of a number of existing preferential trade arrangements (such as the British Commonwealth system of preferences), alongside a number of other preferential and discriminatory measures that were saved by the application of the 'grandfather clause'.[75] They also opened the way for new preferential trade arrangements (for example, the EEC), including the current PTAs, accompanied by contentious debates over the 'proper' interpretation/meaning of the ambiguous 'freeing *substantially* all trade' proviso.[76]

Additionally, the nondiscrimination principle as applicable to tariffs was also subject to the escape clause that allowed a country to withdraw tariff concessions made previously if they were deemed to have led to 'serious injury' to a domestic industry or in emergency situations. Again, 'serious injury' was subject to interpretation.[77] In fact, GATT escape clauses went even further, authorising members to withhold the application of the *entire* GATT from another party (Article 35).[78] Discrimination in the earlier multilateral trade system found another expression that had important material consequences for the vast majority of developing countries, even if its operation was obfuscated by the seemingly fair principle of reciprocity. All rounds of tariff negotiations until the mid-1960s were primarily item-per-item, *quid pro quo* reciprocal negotiations between two parties, one of which was the principal supplier of a specific good to the other's market; reduction in the latter's tariffs for that item were made in return for concessions by the former party in tariffs for an item of interest to the latter. This practice meant that, although a tariff reduction agreed bilaterally was passed on to all members of the GATT on the basis of the MFN principle, the *largest* share of the benefits actually accrued to the two parties negotiating it.[79] In other words, these were not necessarily negotiations carried out in the principle of 'diffuse reciprocity' proper, because a large number of countries, especially developing ones, not being principal suppliers of any product, were effectively excluded from meaningful tariff negotiations and benefits accruing from them.

These legal and practical departures from nondiscrimination reflected the power differentials among members and were in line with the 'club' nature of the GATT.[80]

[73] China withdrew in 1950 following the establishment of the People's Republic in 1949; Liberia in 1953; and Lebanon and Syria after the dissolution of their customs union in 1951.

[74] The only conditions were that they freed 'substantially all trade' among their members and did not erect higher barriers to trade with the rest of the world than before. See Dam, 'The GATT'.

[75] The 1947 Protocol of Provisional Application of the GATT also contained the 'grandfather clause' that provided for Part II of the GATT to be applied only to the fullest extent not inconsistent with existing legislation, that is, legislation that existed before 30 October 1947. However, not all pre-existing legislation was exempt; it was generally understood that it included only legislation and measures based on legislation that imposed on the executive authority requirements that could not be modified by executive action.

[76] The current Doha Round contains a mandate to clarify and improve the rules applying to PTAs; a provisional Transparency Mechanism for Regional Trade Agreements was established via a WTO Decision on 14 Dec 2006 See: {http://www.wto.org/english/tratop_e/region_e/trans_mecha_e.htm}.

[77] Dam, 'The GATT'.

[78] In a case of mass-discrimination, a total of 14 countries (out of around 39) invoked this clause when refusing to apply the GATT to Japan during its accession in the 1950s.

[79] Dam, 'The GATT'.

[80] Hudec, 'The GATT Legal System'.

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The trade liberalisation that occurred under GATT was therefore not unequivocally multilateral and nondiscriminatory – it largely occurred in *certain* commercial sectors of interest to the industrialised, rather than *all*, GATT members.[81] These were mainly sectors able to adapt and compete internationally and the ensuing growth of trade in these sectors between key members further increased their interdependence and reproduced the club nature of the GATT. Other (wage-sensitive, labour-intensive, and produce-standardised) sectors were subject to a variety of protective measures, or were excluded from the regime's remit altogether.[82] Agriculture, cotton, and, later, textiles, were the most notable sectors that, despite their importance to a large number of trading countries, were excluded from the normal GATT rules and effectively protected on behalf of sectoral interests in Europe and the US.[83] In addition, other protectionist and discriminatory measures were retained and new ones introduced in the form of nontariff barriers (NTBs); these were formally prohibited, but the GATT itself made no general provision for negotiations on their elimination. In any case, the prohibition of nontariff barriers was subject to a fair number of exceptions: for instance, quantitative restrictions were permitted for balance-of-payment purposes, economic development purposes, the protection of agricultural prices, the protection of local industry from 'serious injury', and public policy purposes (such as health, morals, national security). Most of these exceptions enjoyed, by their very nature, considerable room for 'flexible' interpretation. Inside the border, the GATT prohibited all internal restrictions such as taxes or regulatory measures against imports, but again there were exceptions, such as the freedom to grant production subsidies to domestic producers, the freedom to grant them preferential treatment in government procurement, and so on.[84]

As is apparent, although being in principle about multilateral, nondiscriminatory trade liberalisation, the GATT rules were riddled with conflicting exceptions and deviations which only multiplied in practice, as existing rules were further bent through reinterpretation, and new forms of discrimination were introduced to accommodate the *special* concerns of individual countries.[85] This weakens claims about the indivisibility of multilateralism (*per* Ruggie), especially when we take into account the fact that it was the *special* concerns of *certain* countries that prompted the introduction of a number of explicitly discriminatory measures. The exclusionary, club nature of the GATT is clear, insofar as substantive exception clauses and concrete 'solutions' were secured so as to deal with potentially disruptive economic situations facing industrialised countries, as illustrated by waivers and arrangements to protect agricultural and textile/clothing markets in these countries.[86]

On the other hand, little concrete was forthcoming for developing countries party to the GATT; indeed, even the General System of Preferences (GSP) – the most concrete measure taken explicitly to improve developing countries' terms of trade – further entrenched the club nature described above. Importantly, GSP signalled a

[81] Wilkinson, 'The WTO, Crisis'.
[82] Charles Lipson, 'The Transformation of Trade: the Sources and Effects of Regime Change', *International Organization*, 36:2 (1982), pp. 417–55.
[83] Wilkinson, 'The WTO, Crisis'; Dam, 'The GATT'.
[84] Hudec, 'The GATT Legal System'; Dam, 'The GATT'.
[85] R. E. Baldwin, 'Pragmatism versus Principle in GATT Decision-Making: a Brief Historical Perspective', in WTO Secretariat (ed.), *From GATT to the WTO: The Multilateral Trading System in the New Millennium* (The Hague: Kluwer Law International, 2000).
[86] Dam, 'The GATT'; Wilkinson, 'The WTO, Crisis'.

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major departure from the principle of reciprocity, as it enabled industrialised countries to offer *nonreciprocal*, *preferential* tariffs to exports from developing countries.[87] However, developed countries were merely enabled, but not obliged, to offer preferential treatment that, at any rate, they could withdraw at any time. As it happened, the GSP came to embody discriminatory trade preference programmes offered by individual developed countries to specific (groups of) developing countries of political, economic, and military interest to them.[88] As a result, the (uneven) benefits derived from the GSP scheme accrued largely to a small number of developing countries,[89] while the threat of GSP withdrawal provided donor countries with an effective tool through which to discipline 'recalcitrant' behaviour on the part of recipients within GATT rounds and beyond.[90] Indeed, as Manger and Shadlen have recently shown, this very characteristic of GSP – that granting countries can and do remove it at will – is a major explanation for why many developing countries, and particularly those with a heavy degree of 'political trade dependence', often move towards reciprocity in order to place their trade relations on a less advantageous footing, but ultimately one which is perceived to be more stable.[91]

Besides pointing to these significant departures from the indivisibility and diffused reciprocity of 'nondiscriminatory trade multilateralism' of the past, it is worth reiterating that such departures were possible in part due to the ambiguous nature of the GATT rules which, as a consequence of these departures, became even more complex and ambiguous. The way in which they were interpreted, implemented, and reinterpreted was – and remains – a highly contested and political process. The (re)interpretation of existing rules has been one means by which discriminatory rules and practices have emerged; a clear example of this process can be found in some countries' conscious interpretation of GATT 'fair trade' rules, such as antidumping and safeguard provisions, in such a way that they are able to justify their own discriminatory practices. In other cases, new discriminatory rules were created both to close off markets (for example, for agriculture and textiles) and open new ones (through bilateral/regional trade agreements). Given these complex developments, it was almost impossible at times to determine which GATT rights were enforceable by which parties,[92] an argument that nonetheless is presented today as a new development associated with the 'spaghetti bowl' phenomenon.[93] The GATT itself contained

[87] The idea of the GSP emerged at UNCTAD II in 1968; the GATT enacted the GSP by adopting a ten-year waiver to the MFN principle (Article 1) in 1971 that eventually became a permanent waiver through the so-called 'Enabling Clause' (*Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries*) of the Tokyo Round in 1979. The Clause also permitted developing countries to enter into preferential trade agreements that do not strictly meet the GATT criteria; as of 2003, around 19 regional agreements between developing countries, including the Andean Pact, MERCOSUR, ASEAN have been notified under the 'Enabling Clause' (see: {http://www.wto.org/english/tratop_e/region_e/region_e.htm}.

[88] Wilkinson, 'The WTO, Crisis'.

[89] Brian Hindley, 'Different and More Favorable Treatment – and Graduation', in Michael Finger and Andrzej Olechowski (eds), *The Uruguay Round: A Handbook on the Multilateral Trade Negotiations* (Washington, DC: The World Bank, 1987).

[90] For instance, US pressure that it would withdraw its GSP to certain developing countries who were, incidentally, resistant to the inclusion of intellectual property rights in the Uruguay Round; the same pressure was applied via the US Special 301 route.

[91] Mark S. Manger and Kenneth C. Shadlen, 'Political Trade Dependence and North-South Trade Agreements', *International Studies Quarterly*, iFirst (2013), pp. 1–13.

[92] Dam, 'The GATT', p. 345.

[93] Jagdish Bhagwati, *Termites in the Trading System: How Preferential Agreements Undermine Free Trade* (Oxford: Oxford University Press, 2008).

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no provision for the establishment of an internal tribunal to resolve disputes or give 'authoritative' interpretation of GATT's rules; compliance was supposed to be monitored by the contracting parties exercising as a whole the functions of a tribunal.[94] A dispute settlement mechanism of sorts developed in practice that mainly opted for political and pragmatic solutions but which, more often than not, left matters in limbo.[95] With many grievances unaddressed, this mechanism was another example of challenges to the principles of indivisibility and diffused reciprocity that in theory underpinned the trade multilateralism of the yesteryears.

Trade principles and rules, like all rules, are never created on a clean slate; their substance embodies values, relationships, contests, and processes developed over time among a variety of actors. In this complex interaction, domestic environments play a crucial role in the kind of multilateral arrangements that are set in place among state actors. In the case of the GATT, as John Ruggie has argued, trade principles and rules were characterised by a political commitment to 'embedded liberalism', a compromise according to which the expansion of open trade relations were to be balanced with the (then) shared sense of the necessity and legitimacy of governmental intervention into the market for the purposes of securing *domestic stability*.[96] Although the degree to which key Western governments shared this consensus varied somewhat, overall trade multilateralism and the quest for domestic stability were 'coupled and conditioned by one another'.[97] The many departures from the principle of nondiscrimination on the part of the GATT parties can be interpreted to some degree as measures through which they could ensure domestic stability and prosperity. Indeed, GATT parties enjoyed considerable autonomy to interpret and implement trade norms and rules in ways that enabled them to fulfil the political and social vision of the progressive, interventionist welfare state of the time, while also respecting the diverse ways in which this vision could be implemented.[98]

The problem with these numerous departures was not that they existed to provide the necessary space for the interventionist welfare state to act domestically, but rather that 'embedded liberalism' was not widely shared among *all* GATT parties. This observation goes some way towards understanding the ambiguity of the GATT rules and the particular ways in which they were interpreted and applied. Firstly, there was uneven commitment to the embedded liberalism compromise even among industrialised countries, with the US being the most notably ambivalent party. Secondly, and perhaps most importantly for our argument, the compromise of embedded liberalism was never fully extended to the developing countries. In fact, they bore some of the costs associated with embedded liberalism, as domestic stability in industrialised countries was secured in part through externalising the cost of adjustment to developing countries.[99] As mentioned earlier, the club nature of the GATT

[94] Dam, 'The GATT'.

[95] Especially because the losing party had the *right to veto* the outcome of the dispute. See Lipson, Transformation of Trade'; Jeffrey Dunoff, 'The Death of the Trade Regime', *The European Journal of International Law*, 10 (1999), pp. 733–55.

[96] John Ruggie, 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order', *International Organization*, 36:2 (1982), pp. 379–415.

[97] Ibid., p. 398.

[98] Robert Howse, 'From Politics to Technocracy-and Back Again: the Fate of the Multilateral Trading Regime', *The American Journal of International Law*, 96:1 (2002), pp. 94–117.

[99] Ruggie, 'International Regimes', p. 413; Andrew Lang, 'Reconstructing Embedded Liberalism: John Gerard Ruggie and Constructivist Approaches to the Study of the International Trade Regime', *Journal of International Economic Law*, 9:1 (2006), pp. 81–116.

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ensured that most developing countries' participation was marginal and without meaningful benefits. Even the benefits from the Uruguay Round (1986–94), the first one in which developing countries appear as near-equals in terms of obligations undertaken, were highly skewed. As is the case with the current Doha estimates, a large asymmetry existed between the gains that accrued to the developing countries and the industrialised members as a whole.[100] And, not only were the gains for the former group rather modest, they were also unevenly distributed among them, with the more advanced developing countries claiming the larger share.[101] It is this broader, entrenched, and more fundamental breach of the diffused reciprocity that still haunts trade multilateralism today, as evidenced in part by the difficulties of the Doha Round.

As was also argued earlier, post-World War II (trade) multilateralism rested on a foundation that simultaneously recognised and emphasised equal state sovereignty *and* a differential leadership function for powerful states, especially the US. However, the role of the latter – and the contradictions that it implied – was somewhat masked and legitimised through the authority and expertise of seemingly neutral international organisations, such as the GATT.[102] The GATT activities, to the extent they were deemed to be 'legitimate', were so because each member was nominally an equal member with an equal vote. In practice, the GATT operated on the basis of *consensus* decision-making, which, in a way, added to its legitimacy, given that all members had agreed to take a particular decision or direction.[103] Nevertheless, 'consensus' also entailed a tool for the more powerful trading members to generate support for outcomes that were skewed in their favour.[104] This held true until the Uruguay Round; recent changes in the distribution of economic power among members have reduced somewhat the effectiveness of the old tactics, as any dispassionate observer of the Doha Round negotiations would surely attest. As discussed, developing members were not really part of the compromise of embedded liberalism that the more powerful trading members had struck in an effort to reconcile the contradictory pulls of open, liberalised trade, increased prosperity, successful welfarism, and peace and security. But, given that areas of interest to them were closed off from meaningful negotiations, neither were they 'free riders' benefitting from the application of MFN, or more favourable tariff treatment (GSP). Nonetheless, unease about developing countries receiving the rights (but not the obligations) of certain Tokyo Round plurilateral codes concerned some developed members enough to consider shifting trade negotiations to the OECD,[105] once again revealing their precarious commitment to the principles of nondiscrimination and diffuse reciprocity in trade multilateralism.

As we can see, constructions of trade relations of the past as multilateral and underpinned by the principle of nondiscrimination eclipse their rather more complex

[100] Wilkinson, 'The WTO, Crisis'.

[101] T. N. Srinivasan, *Developing Countries in the World Trading System: From GATT, 1947 to the Third Ministerial Meeting of WTO*, High-level Symposium on Trade and Development, WTO, Geneva (Oxford: Blackwell Publishers, 1999), p. 1054.

[102] Kratochwil, 'Genealogy of Multilateralism'.

[103] Consensus was not defined in the GATT provisions, but it came to be the *modus operandi* of decision-making, despite provisions for voting. Virtually all GATT decisions (waivers and accessions aside) were taken by consensus. See G. Patterson and L. Patterson, 'The Road from GATT to MTO', *Minnesota Journal of Global Trade*, 3:1 (1994), pp. 35–9.

[104] Richard Steinberg, 'In the Shadow of Law or Power? Consensus-based Bargaining and Outcomes in the GATT/WTO', *International Organization*, 56:2 (2002), pp. 339–74.

[105] Ibid., p. 357.

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and contradictory nature. This brief account makes it sufficiently clear that non-discrimination, indivisibility and diffuse reciprocity cannot be unreservedly attributed to the trade system that preceded the current Doha Round. There existed significant departures in letter and in spirit from the principle of nondiscrimination and the same rules did not apply to all members of the collectivity. Moreover, if we take indivisibility to imply, minimally, that members of the GATT were 'in it together', then the hierarchical, exclusionary, club nature of the GATT becomes difficult to square. We have seen that this arrangement did not generate true 'diffuse reciprocity' because most benefits visibly accrued, in aggregate and over time, to key developed countries. That said, our argument is not that the GATT trade system was not multilateral because it did not fit neatly an ideal conceptualisation of multilateralism. Rather, it is that as an institutional form, (trade) multilateralism is contingent; it finds different expressions over time and the characteristics of such materialisations need to be taken into account when making claims about trade multilateralism being in crisis, in retreat, terminal decline, or even completely moribund.

The end of trade multilateralism?

Multilateralism is a dynamic and evolving arrangement that can only be understood within a particular historical context. As we have seen, the much-lauded postwar trade multilateralism was primarily an arrangement by and for a core of key countries, although nominally it involved many more members. Even within the core there were significant departures from the principle of nondiscrimination in practice, as many exceptions were carved out to respond to core members' concerns. Both the principles that underpinned trade multilateralism at that time and exceptions to them were closely related not only to power differentials between core states, but also to the demands of their domestic environments. Indeed, the rules and principles of trade multilateralism during this period were not only coupled and conditioned by the quest for domestic stability in these core states ('embedded liberalism'), but, and this is important for our argument, their continued functioning was made possible by the very existence of progressive welfare state provisions. Just like modern cars were able to go faster only once equipped with better brakes, trade multilateralism functioned to the extent to which national structures of *social* policy and their development were able to replace and/or weaken protectionism.[106] This may also explain to some degree why most developing countries with weaker welfare structures in place are more cautious about trade liberalisation. Importantly for our argument, this earlier social purpose (domestic stability) was not marginal but fundamentally *central* to the existence and continuous functioning of trade multilateralism. As noted earlier, numerous exceptions were carved out so as to allow core members considerable autonomy to interpret and implement trade norms and rules in ways that enabled them to fulfil the social vision of the progressive, interventionist welfare state of the time, which, in turn, enabled further trade openness.

This brings us to an important juncture in our argument: when we look back at this earlier – and for many, successful – period of trade multilateralism, we see not what the alarmists claim are the unmistakable signals of the end of trade multilateralism. On the contrary, we perceive that its functioning did not and cannot be

[106] Elmar Rieger and Stephan Leibfried, 'Welfare State Limits to Globalization', *Politics and Society*, 26:3 (1998), pp. 363–90.

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merely based upon out-and-out trade liberalisation, but rather on members negotiating, adopting and implementing trade rules towards a broadly shared *social purpose*. Here, we part company somewhat with Ruggie, insofar as to be successful multilateralism requires not only generalised principles of conduct, but also a shared social purpose, a key element missing in his account. While 'collective security' can to a certain extent operate both as a generalised principle *and* as the social purpose of multilateralism in security matters, nondiscrimination (the MFN principle) cannot be *the* social purpose of trade multilateralism. Or, put another way, creating binding, nondiscriminatory rules is a means to a broader end, not an end in itself. Indeed, even as an organising, generalised principle, 'nondiscrimination' is extremely difficult to operationalise without a general social purpose guiding state behaviour, especially because trade rules today are about so much more than simply border tariffs. This said, we concur with Ruggie's argument that multilateralism should imply both indivisibility and diffuse reciprocity among the members of the collectivity, meaning that all members expect to benefit from the arrangement and their gains will be roughly equivalent in the aggregate and over time. It is also important to clarify that, in our view, nondiscrimination does not imply elimination of differential treatment; on the contrary, *differential treatment is fully consistent with the principle of nondiscrimination*. Discrimination against partners or sectors ultimately results in disadvantageous consequences to them, consequences that are wrong and/or unjustifiable. Differential treatment, on the other hand, is necessary to ensure that countries or sectors in different levels of development are not discriminated against or disadvantaged. This is not a tension that can ever be fully resolved, but it can be managed and guided by the overall social purpose of the trade regime, if it has one.

As we have seen, even when it was 'successful', trade multilateralism had a poor score both in terms of indivisibility and of diffuse reciprocity, insofar as the majority of members formally constituting the 'collectivity' were not seriously partaking in the arrangement, or benefiting in any significant measure from it. In addition, to the extent that there was a 'shared' social purpose, the majority of the collectivity either did not share in it, or found itself bearing some of the cost associated with securing domestic stability within the core, or both.[107] To a large extent, this is the result of a contradictory multilateral arrangement that normatively is built upon the principles of indivisibility and diffused reciprocity, and in practice combines the recognition of equal state sovereignty with a leading role for a core of powerful states.[108] The contradictions embodied in this arrangement have been and remain the source of many political conflicts within the institution of trade multilateralism. Some of these conflicts have visibly manifested themselves in previous rounds and, perhaps more clearly, in the current Doha Round. This is a Round that was explicitly established to deal with developing countries' dissatisfaction with the multilateral trade system, although many of their earlier concerns have (again) been relegated to the backburner.[109] These conflicts are likely to become more pronounced if, as some observers suggest, the asymmetries in the trade system continue to grow.[110]

[107] Ruggie, 'International Regimes', p. 413; Lang, 'Reconstructing Embedded Liberalism'.
[108] Kratochwil, 'Genealogy of Multilateralism'.
[109] Martin Khor, 'Analysis of the Doha Negotiations and the Functioning of the World Trade Organization', South Centre, Research Paper, Geneva, Switzerland (30 May 2010).
[110] Daniel Drache and Marc D. Froese, 'Deadlock in the Doha Round: The Long Decline of Trade Multilateralism', Working Paper (2007), p. 33, available at: {http://www.yorku.ca/drache/academic/papers/Deadlock_at_Doha_2007.pdf} accessed 10 June 2012.

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Current narratives about the end of trade multilateralism are above all political, insofar as they idealise a 'really existing' multilateralism in the past in contrast to the current 'problematic' state of affairs. But we saw that the earlier trade multilateralism was a contradictory, contested and dynamic institution, and that many of the current problems causing observers to declare the retreat or end of trade multilateralism are not only similar, but also closely related to the contradictions that characterised it early on. Depending on how events are organised in the narrative and, importantly, what and where the problem is said to be, the purpose of such narratives is often to prompt 'recalcitrant' actors to change their behaviour, lest they be responsible for putting the last nail in trade multilateralism's coffin.[111] The most oft-heard narrative for the current Doha stalemate (largely generated by business lobbies and the US administration) is that negotiations have failed because developing countries as a group and emerging economies in particular are not willing to bring reasonable offers to the table.[112] However, this is not a narrative shared widely by other members; indeed, for the group of developing countries in question, it is not only the current offers, formulas and percentages negotiated at the WTO that remain disadvantageous to them, but the entire institution of trade multilateralism. Hence, what we are observing at Doha is not so much the end of trade multilateralism, but the concrete manifestation of a longstanding conflict between (a minority of) powerful members trying to negotiate trade rules so as to maintain and improve their competitive position, and (the majority of) members who seek to orient such rules towards meeting their developmental needs. This conflict stems from and takes us back to the principles of nondiscrimination and diffuse reciprocity that the institution of trade multilateralism is supposed to, but does not, embody.

It is worthy of note at this juncture that, as dominant narratives explain the stalemate on account of key developing countries not making meaningful concessions and key developed states entertain the idea of plurilateral agreements for 'the willing',[113] it is the developing countries that have emerged as keen defenders of trade multilateralism, as an ideal and as practice. So far, major developing countries have resisted both being part of plurilateral talks and moving away from consensus decision-making and the single undertaking model. As a matter of fact, over 100 developing country members, including major powers, such as India, Brazil, and China, issued a declaration during the 8th Ministerial in December 2011 stating their refusal to adopt a plurilateral approach on account of their commitment to a trade multilateralism that was inclusive and transparent.[114] This statement is important, not only in confirming their commitment to trade multilateralism, but to a multilateralism that, unlike in its earlier form, is inclusive of all members (that is, embodying the principles of indivisibility and diffused reciprocity). The demand for transparency is closely related to a truly inclusive form of multilateralism for, despite some improvements on the part of the WTO on this account, the old practice of reaching deals in small groups and presenting it to the rest of the membership continues, and it is another important reason for the Doha stalemate. This remains a problem because, while these small groups now include developing countries such as Brazil, India, or

[111] Rorden Wilkinson, 'Language, Power and Multilateral Trade Negotiations', *Review of International Political Economy*, 16:4 (2009), pp. 597–619.
[112] Ismail, 'Is Doha Dead?'
[113] Khor, 'Twists and Turns'.
[114] See Ministerial Declaration by Friends of Development, 15 December 2011, WT/MIN(11)/17.

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China, it is the case that these countries participate in these groups as individual members and not as representatives of a wider membership.[115]

Multilateralism is not new; its form and nature is dynamic, depending on the distribution of power between and within states and the purpose it is meant to achieve. It is also a demanding form of institution.[116] As long as members participate *only* to defend and promote their national interest (however that position may have been reached), trade multilateralism will always be precarious. In our view, to the extent that we can speak of a crisis of trade multilateralism, it is a longstanding one and it relates to the absence of a clear social purpose shared by all members. Developing countries have continually reiterated that the notion of *development* for all should infuse such a common purpose,[117] but, judging how their developmental concerns have been sidelined during the Doha Round, it does not appear to be a premise that members of the old club are willing to accept at the moment. Yet, it is only when members agree on the more profound question of the social purpose of trade multilateralism that can we expect there to be difficult but successful trade rounds. It may well be that far from foreboding the end of trade multilateralism, the present juncture offers states an opportunity to move closer towards it. Because trade multilateralism is truly 'what states make of it', this juncture may be precisely the moment where narrow concerns with the failure to agree to yet more trade liberalisation measures are sidelined in favour of dealing with the more pressing and fundamental question of what the overall social purpose of trade multilateralism should be and how it is to be achieved.

We part company with the alarmists who have repeatedly proclaimed the end of trade multilateralism on the (cautiously) optimistic basis that a progressive institution of trade multilateralism underpinned by a widely shared purpose is yet to be established. One of our main aims in engaging in the kind of analysis presented here has been to stress the importance of having a debate over such a fundamental issue occur outside the misleading institutional and discursive constraints that are purposefully imposed through (politically powerful) narratives which seek to stabilise the image of trade multilateralism of the past as an orderly, functioning, and progressive institution that, moreover, is the only one that is normatively desirable today. This having been the goal, we have not engaged directly with questions about how a different institutional form of trade multilateralism may look like, or what the shared purpose can or should be. This is largely because our fundamental concern has not been over the nature or content of this debate, but that this debate is barely happening.

Having raised this concern here, we welcome new work and thinking by practitioners and analysts alike by making a few initial remarks of our own. One is that the debate about the nature of the shared social purpose and of trade multilateralism overall cannot take place separately from resolving the broader and fundamental questions that we face today: grotesque and rising inequality within and between countries, falling freedoms and living standards for working people everywhere, and rampant environmental degradation. This entails, minimally, abandoning the dogma that the purpose of trade rounds is that of adopting endless trade liberalisation measures, especially because these common problems have been exacerbated the more

[115] Khor, 'Analysis of Doha', p. 38.
[116] Ruggie, 'Multilateralism'.
[117] See, for example, the declaration by the Friends of Development, 15 December 2011, WT/MIN(11)/17.

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trade rules (at and inside the border) have liberalised.[118] Secondly, as noted earlier, representatives of developing countries have pointed out that the purpose of trade rounds must be development for all. Accepting development for all as a shared social purpose would only be a starting point, which must be followed by a critical questioning of what 'development for all' entails and how it can be achieved through trade multilateralism. This, in turn, may necessitate not only devising rules embedding the diffuse reciprocity and the nondiscrimination principles in ways which recognise that different countries require differentiated policy space – that is, *differential treatment* – but also opening up and safeguarding the necessary political space for democratic participation, questioning, and accountability to ensure that differential treatment and policy space truly result in sustainable and human development everywhere. If these initial points appear too optimistic, it is not because we have abandoned our understanding of the institution of multilateralism as dynamic, political, and contested (that we borrowed from critical sociological institutionalism); on the contrary, it is precisely because of such nature that changes along the lines sketched here can and may occur.

A last word about the fate of the WTO as an organisation. We are aware that there continues to be vigorous disagreement about the implications of the current juncture on the WTO between those for whom ongoing liberalisation is a *sine qua non* of its continued health, and those, like Dani Rodrik, for whom more rounds are not the answer to ameliorating the challenges it faces.[119] For the latter group, the WTO will not collapse, just as the legal system will not collapse if we do not produce more laws; indeed, even as the WTO appears to be in a degree of trouble, global trade is, as we suggested earlier, holding up reasonably well.[120] However, even a state of affairs where the WTO merely manages current agreements and houses the world's trade dispute settlement mechanism is rather problematic, because currently there do not appear to be other venues where changing trade rules so as to move towards a fairer and more inclusive trade multilateral system is possible. Our overarching position remains that the most important task facing the members of the multilateral trade regime is not saving the WTO or the Doha Round *per se*, but agreeing on a common social purpose for trade multilateralism and changing the rules and organisational procedures to serve such purpose.

[118] We are not necessarily claiming a direct causality here, but that these problems have worsened during the same period that trade and finance liberalisation rules have become the norm warrants a cautious rather than business-as-usual approach.

[119] For the former, see Jeffrey C. Schott, 'The Doha Dilemma: Implications for Korea and the Multilateral Trading System', Conference paper presented at the KITA-PIIE International Conference, Seoul, 26 September 2011, p. 4; for the latter, see Dani Rodrik, 'Free Trade Optimism: Lessons from the Battle in Seattle', *Foreign Affairs*, 82:3 (2003) pp. 135–140.

[120] Siles-Brügge, 'Smoot–Hawley myth and the crisis'.

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