

The ‘Development’ Discourse in Multilateral Trade Lawmaking

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Abstract: The impact of the idea of ‘development’ in multilateral trade lawmaking is often reduced to the principle of ‘special and differential treatment’, which exempts developing countries from certain obligations imposed by the trade regime. The article shows that ‘development’ has always presented a much wider challenge to the vision of the trade regime championed by the major trading nations. The development discourse has conceived the trade regime’s historical significance, the regime’s aims, and the relationships among its members in ways that were often fundamentally at odds with the conception preferred by most developed countries. The article explores how the development discourse has informed lawmaking initiatives by developing countries throughout the history of the trade regime. While not all of these initiatives were successful or necessarily fruitful, they show that the pursuit of development in trade lawmaking has always been more than an effort to seek exemption from trade rules.

1. Introduction

How has the idea of ‘development’ shaped lawmaking in the multilateral trading system? The influence of the idea of ‘development’ in trade negotiations is often reduced to the principle of ‘special and differential treatment’ of developing countries, which emerged in the 1960s and 1970s and has sanctioned derogations from the principles of reciprocity and non-discrimination in favour of developing countries (Mitchell, 2006). On this view, the history of the developing countries’ relationship to the trading system is a ‘history of ... demands for special status’ (Hudec, 1987: 4). The present article argues that the idea of development presented, from the very start, a much wider and more fundamental challenge to the vision of the multilateral trade regime championed by the major trading powers, and principally the United States (US).¹

More specifically, the development discourse clashed with the views held by the US and most other developed countries about the historical significance of the

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¹ The article seeks to contribute to an emerging literature that critically revisits the dominant accounts of the role of developing countries in the early decades of the trading system. See, in particular, Wilkinson and Scott (2008), Scott (2010), and Lamp (2015).

multilateral trading system, the system's aims, and the relationships among its members. Where the US saw the historical mission of the trade regime in overcoming the 'economic warfare' of the past by establishing the rule of law in international economic relations, the developing countries viewed the regime as an endeavour that could prove its worth only in the future – and that could easily turn out to be more harmful than the 'liberty of the jungle' if it was unduly restrictive of the 'young' countries' development. Where the US saw trade expansion, to be achieved by unshackling trade from governmental restrictions, as the core objective of the trading system, the developing countries considered trade merely as a means to an end; they saw little use in a trade organization that protected established trade flows but did not play an active role in transforming the international division of labour. Finally, while the US did not want to introduce the issue of development into what it saw as a 'commercial' agreement – it would have preferred to leave the United Nations to deal with what it regarded as a complicated political issue – the developing countries always understood and defined their position in relation to the trade regime and its members in terms of development. As a result, the perceived degree of development, rather than ideological or geographical divisions, has become the primary principle of differentiation among the trade regime's members throughout its history.

The article explores how these features of the development discourse informed lawmaking initiatives by developing countries throughout the history of the trade regime in a manner that clashed with the developed countries' perspectives and priorities.² Section 2 of the article documents how the divergent understandings of the historical significance of the trading system manifested themselves in conflicting negotiating agendas. The developed countries, which warned of a fallback into protectionism and 1930s-style anarchy at almost every turn, hoped to constrain the use of protective instruments by the members of the trade regime as much as politically feasible. The developing countries were more worried that the regime might preserve a disadvantageous international division of labour, and consequently argued for a transformative agenda – the article highlights the decades-long campaigns against tariff escalation and for multilateral action to promote structural adjustment in developed countries as examples of this approach. In a similar vein, the developed countries saw the expansion of the trade regime into new areas in the Uruguay Round as an opportunity to increase trade and economic efficiency by opening up more sectors of the international economy to the reign of comparative advantage, whereas the developing countries attempted to shape

² The discussion is based primarily on negotiating documents from the history of the trading system, with a focus on the GATT/ITO preparatory negotiations. The article makes no attempt to analyse the development discourse as it unfolded outside the multilateral trading system, nor does it provide an account of the academic discussion on development in relation to trade. The article relies on secondary literature only to the extent that it illuminates features of the development discourse that emerge from the analysis of the primary sources.

this second constitutional moment of the trading system so that development would be at the core of the new set of legal disciplines. Specifically, the developing countries sought to ensure that the liberalization of services trade would occur primarily in sectors that would promote their economic growth (Section 3). Finally, while developed countries initially resisted the idea of differentiating among the contracting parties of the General Agreement on Tariffs and Trade (GATT) according to their stage of development and later sought to counter it with the principle of 'graduation', differentiation has become a deeply ingrained feature of multilateral trade lawmaking (Section 4). While not all of these initiatives were successful or necessarily fruitful, they show that the 'development' discourse in multilateral trade lawmaking cannot be reduced either to an effort to seek exemption from trade rules, as Hudec would have it, or to a Western imposition designed to legitimize Western intervention in the economies of the South, as other authors have argued (see, in particular, Alessandrini, 2010).

2. The history and future of the trading system

The participants in the preparatory negotiations of the International Trade Organization (ITO) and the GATT located the founding of the trading system on a number of historical trajectories. American officials construed the founding of the trading system as part of the move out of an international state of nature to a global rule of law, exemplified by the founding of the United Nations (US Senate, 1947: 3; UNESCO, 1946a: 4–5). Order in international economic relations was seen as essential to the maintenance of international peace (Dam, 2005: 84–85). American officials regularly evoked the imagery of 'economic war' (UNESCO, 1947a: 18, 21–22) and a state of nature (US Senate, 1947: 3; UNESCO, 1947a: 33: 'liberty of the jungle') to describe what international economic relations had been like in the past – and would be like in the future if nations did not agree to multilateral rules along the lines proposed by the US (UNESCO, 1947a: 17). When the US introduced the world to its post-war plans, American officials characterized the aim of their *Proposals for Expansion of World Trade and Employment* as the achievement of a 'release' from 'restrictions' (imposed by governments and private cartels) and from 'fear' (of disorder in commodity markets and irregularity in production and employment) (US Department of State, 1945: 2–7). This 'release' would be achieved by the adoption of binding legal rules, combined with provisions for the progressive reciprocal liberalization of trade barriers.

The chief manifestation of the international economic anarchy targeted by the US were the numerous trade restrictions adopted in the 1930s and during the course of the Second World War. The principal elements of the American design for the new international economic order closely tracked those of the Reciprocal Trade Agreements programme, which had been the American response to that founding trauma of modern trade policy, the escalation of protectionism in the wake of the Great Depression. However, the US initiative also sought to overcome another

aspect of international economic relations that American officials perceived as a thing of the past: the colonial model of trade policy and in particular one of its primary manifestations, the British Imperial Preferences (Leddy, 1973, 21; Toye, 2003; Winham, 1986: 31–32). This aim figured less prominently in the US's public pronouncements, but was a central topic in US negotiations with the British, both prior to and during the negotiations of the GATT. Apart from the considerable commercial interest that the US had in the abolition of the Imperial Preferences, the US was motivated by an aversion to the parochialism of colonial preferences, which it sought to replace with the principle of non-discrimination in the form of the most-favoured nation clause. In sum, for the US, the founding of a multilateral trading system represented a step out of a dark past marked by 'economic war', 'restrictions', 'fear', and colonial preferences into a future characterized by the rule of law, reciprocal liberalization, and non-discrimination.

As soon as the discussion about the founding of a multilateral trading system was opened to a wider range of countries, namely, at the 1946 Preparatory Conference in London,³ a discourse emerged that located this founding event on a different historical trajectory, and appraised its significance in different terms. For the discourse of 'development', the founding of the trading system was an undertaking that had the potential to promote and assist, but also to hinder and obstruct, the 'development' of the trade regime's 'under-developed' members. Rather than portraying it as a triumph over the sins of the past, this discourse was oriented exclusively towards the future – with a mixture of hope and suspicion. However, this discourse did not simply interpret the 'past' differently. Rather, it did not admit of a 'past' in the first place, even though the 'past' of 'development' – that which came *before* development – would appear to be if anything *more* consequential (and sinful) than the 'original sin' of protectionism against which the US defined its project. Hudec has observed (and reinforced) this contrast between the discourse of development and the US project:

GATT legal policy towards developing countries owes nothing to the past. There was no Golden Age that pointed the way. Before 1939, the organizing principle

³ It should be noted that members of the 18-member Preparatory Committee had been carefully selected by the US and the UK. The inclusion of the Dominions (Australia, Canada, New Zealand, and South Africa) primarily reflected their close political and economies ties with the UK. The same was true for India; in the case of India, however, the US initially resisted its inclusion among the countries which would form the Preparatory Committee, on the basis that 'the strongly protectionist sentiment in India ma[de] it unlikely that India could be persuaded to join [the] nuclear group in expeditious tariff reduction' (FRUS, 1945e: 89). In the end, India was included at the insistence of the British (FRUS, 1945f; FRUS, 1945g). The US and UK also took into account the political importance of countries (all five permanent members of the UN Security Council were invited, but the USSR did not participate) and attempted to ensure that the Preparatory Committee was representative in terms of geography and trading profile. A large number of countries fell through the cracks; the US State Department felt, for example, that including Argentina, as the British had urged, was 'out of the question' (FRUS, 1945e: 89). On the reasons for the US/UK decision to hold negotiations initially among a 'nucleus of important trading nations' (FRUS, 1945h: 59), see Lamp, 2016: 120–122.

for rich-poor relationships had been colonialism. Most of the countries in Africa and Asia were colonies *de jure*. A goodly portion of those in Central and South America were colonies *de facto*. This colonial past was not what the post-1945 world was looking for. The world required a clean start – a completely new departure ...

Not only was there no Golden Age to point towards as a goal but, perhaps more important, there had been no past failures that could serve as a lesson about what *not* to do – nothing resembling the lesson that developed countries had been taught by the beggar-thy-neighbour policies of the 1930s. Individual governments no doubt had ideas – even convictions – about what would work and what would not work, but there was no collective experience. (Hudec, 1987: 6–7)

Hudec's statement is both correct and deeply misleading. It is correct in that the development discourse does not *admit* of a 'past of development'. It is deeply misleading in that it suggests that this construction of an absence somehow reflects an underlying reality, namely that 'there had been no past failures that could serve as a lesson about what *not* to do' and that 'there was no collective experience' (Hudec, 1987: 6–7). By most accounts, trade had been a central aspect of colonial relations (Andrews, 1914: 48; Marley, 1938; Barnes, 1938; Rist, 2010: 52). And even though the development discourse admitted of neither a past nor a present of colonialism, echoes of the colonial experience are evident both in what the development discourse embraces and in what it rejects.

The development discourse treats colonialism as the *antonym* of development. This is sometimes made explicit, for example when the Pakistani delegation informed the GATT membership that '[t]he process of economic development in Pakistan commenced simultaneously with independence' (GATT, 1962: para. 5). This construction could be seen as an expression of the idea that as long as a people remains under colonial rule, it has no agency to pursue, and no voice to articulate, its ambition for 'development'.⁴ In the context of the GATT, it was only when the colonial power declared to the GATT that the respective 'customs territory' possessed or would acquire 'full autonomy in the conduct of its external commercial relations' that the former colonial subject was set free to become a 'developing' country (GATT, Article XXVI.5.c). Tellingly, the GATT recognized that a contracting party 'in the early stages of development' may have '*just started* [its] economic development' (GATT, Note ad Article XVIII.1 and XVIII.4, para. 2, emphasis added). Another indication of the co-extensiveness of independent statehood and incipient development is the frequent reference to

⁴ In India, for example, the government had adopted a policy 'to foster the development of industries' as early as 1923. However, as Indian experts noted in 1946, this policy failed partly because of '[h]ostile influences, mainly of foreign origin' which were 'at work behind the scenes to put a brake on industrial progress' (UNESCO, 1946c: 8–9).

'less-developed' countries as 'young' countries, with a 'short history', during the preparatory negotiations (UNESCO, 1947b: 21).

This antonymous construction of colonialism and development, however, does not explain why the development discourse in the trading system did not draw attention to the colonial past of almost all 'developing' participants in international trade lawmaking in a way similar to the manner in which the US narrative dramatized the protectionism of the inter-war years. As Trebilcock and Howse have noted, in the post-war period the

specialization patterns of many developing countries could with justification be viewed as the historically contingent product of colonialism – developing countries served as ready sources of raw materials on the one hand, and as markets for the finished products of the colonial powers on the other. This suggested not only the artificiality of existing comparative advantage in developing countries, but also its foundation in fundamentally unjust power relationships. (Trebilcock and Howse, 2005: 485–486)

It would have been perfectly conceivable, even plausible, for the development discourse to construct colonialism as a past trauma, giving rise to a moral obligation on the part of the colonial powers to assist the newly independent countries in escaping the trading position entrenched under colonial rule. What the development discourse appears to do instead, however, is to substitute the image of a generic state of 'underdevelopment' for the varied colonial – and, for that matter, pre-colonial – histories of 'developing' countries. As a result, the distinctive impact of colonial rule is not a part of the story that the development discourse tells.⁵

Some authors have argued that this move is facilitated by the ahistoricism of the concept of 'development' itself. In Tarullo's view, the notion that '[n]ations develop from predominantly agricultural to predominantly industrial economies' is based on the 'adolescence myth': 'As adolescents grow into adults, so developing nations are expected to grow into developed nations' (Tarullo, 1985: 548). This construction of development as a 'natural phenomenon[on]', Tarullo argues,

robs the world of its history and recalls the definition proffered by Barthes of myth as 'depoliticized speech'. It is *natural* to be underdeveloped while growing towards development; the history of imperialism is incidental. (1985: 548, emphasis in original)

Rist offers a similar analysis of the internal logic of the development discourse. In contrast to the 'colonizer/colonized opposition', which suggests 'hierarchical subordination', the development/underdevelopment dichotomy

introduced the idea of a continuity of substance, so that now the two terms of the binomial differed only relatively. 'Underdevelopment' was not the opposite of

⁵ The 'historylessness' of colonial subjects is a pervasive theme in colonial discourse; see Wolf (2010), Said (1994: 40, 75).

'development', only its incomplete or ... 'embryonic' form; an acceleration of growth was thus the only logical way of bridging the gap. The relationship more or less established itself in a quantitative mode, with a fundamental unity assumed between the two phenomena. In this comparison, moreover, each nation was considered for itself: its 'development' was very largely an internal, self-generated, self-dynamizing phenomenon, even if it could be 'assisted' from outside. Once more, *the naturalization of history empties history of its content*. The historical conditions that would explain the 'lead' of some countries over others cannot enter into the argument, since the 'laws of development' are supposedly the same for all ... Not only does this bracket out the effects of conquest, colonization, the slave trade, the dismantling of craft production in India, the breaking up of social structures, and so on; it also presents things as if the existence of industrial countries did not radically alter the context in which candidates for industrialization have to operate. The world is conceived not as a structure in which each element depends upon the others, but as a collection of formally equal 'individual' nations. (Rist, 2010: 74–75, footnotes omitted, emphasis added)

A number of authors have investigated how these features of the concept of 'development' suited the interests of the former colonial powers by obscuring their share of responsibility for the economic state of the 'developing' countries and legitimizing continued Western intervention in the name of 'development assistance' (see, in particular, Alessandrini, 2010). These authors have pointed to striking continuities between the colonial 'civilizing mission' and post-colonial 'development aid'. These continuities also formed part of the founding process of the trading system. The discussions on development at the 1946 Preparatory Conference occasionally echoed colonial themes, for example when the Lebanese delegate explained the 'non-economic' motivation for 'development' thus:

Higher standards of life for the population do not only mean more food and clothing, but also better education and better enjoyment of the higher elements of culture. This cultural aspect is as important, if not more important, than the purely material aspect of raising the level of consumption. The relation between manufacturing industry and culture is very intimate. Manufacturing industry advances science and enables man to control nature, while agriculture leaves man in a state of dependence on nature, thus fostering fatalism and a generally unprogressive mentality. While manufacturing frees man materially and intellectually, agriculture keeps him in a sort of slavery to forces which, especially in the less-developed countries, are beyond his control. (UNESCO, 1946b: 21)

There are a number of indications, however, that, even though the development discourse did not openly address and define itself against the colonial past, in the context of international trade lawmaking it was primarily designed to emancipate the 'less-developed' countries from their position under colonial rule.

A first indication of this emancipatory function of the development discourse was that, in international trade lawmaking, it was initiated and promoted by the

'less-developed' countries themselves.⁶ While the lineage of the concept of 'development' may be Western, the 'less-developed' countries appropriated the concept in the context of the founding of the multilateral trading system and deployed it as a counterweight to the US narrative about the purpose of the trading system, namely to lift international economic relations out of the state of nature, release world trade from public and private restrictions, and provide a forum for reciprocal liberalization.

In the late 1940s, the attitude of the Western states towards the development discourse ranged from cooption (in the case of Canada and Australia, which did not consider themselves to be fully developed, and to some extent by the UK and France, which analogized the needs of post-war reconstruction to development⁷) to more or less open hostility. In the early discussions between Britain and the US, the idea of 'development' had played almost no role. Britain had at one point invoked the 'principle of colonial trusteeship' to argue for lenient treatment of export taxes in the Charter (which would facilitate the establishment of processing industries by its colonies) (FRUS, 1945a: 5; see also Barnes, 1938). Influenced by discussions with India and Australia, Britain had also anticipated that 'countries in an early stage of industrial development' would insist on the flexible use of tariffs for revenue purposes and for the protection of infant industries, and would be suspicious 'that the developed countries were trying to restrict local development to gain or retain the market for their own manufactures' (FRUS, 1945b: 2). In response, the US had indicated that it would be prepared to agree to an infant-industry exception 'if formidable pressure was brought to bear at a trade conference in favor of' such an exception and 'if adequate safeguards could be established' (FRUS, 1945c: 34). While the US agreed that a corresponding provision should be drafted, it preferred to 'hold back such provisions' as a bargaining chip (FRUS, 1945c: 34). The *Proposals* published by the US in November 1945 did not contain any mention of an infant-industry exception, or, for that matter, of 'development'. At the outset of the 1946 Preparatory Conference, India commented on these discussions:

Under pressure exerted by countries of the British Empire, the UK made a half hearted attempt to assert the right of undeveloped countries to apply tariffs 'for

6 On the importance of recognizing the agency of developing countries in the development project, see also Brigg (2002: 425), who notes that 'the ascription of agency to the West by viewing the notion of development as a Western imposition or hegemony ... elides the fact that many Third World governments and subjects have actively embraced development'; one of the effects of this move is 'to write the "Others" – Third World people – out of history in a similar way to discourses that are more commonly targeted as Eurocentric'.

7 See the following statement by the French delegate: 'France is, in certain ways, in a situation comparable to the one of the non-developed countries. As a matter of fact, she has, on the one hand, an overseas empire of colonies and territories, the economic development of which is not as yet high enough, and, on the other hand, the destruction of her own territories has placed her ... in a rather difficult position easy to be compared with the one of new and young countries' (UNESC, 1946b: 12).

a limited period under adequate safeguards for the protection of infant industries'. The USA, however forgetful of its own history, was not prepared to concede even this limited 'right'. (UNESCO, 1946c: 6)

US negotiators continued to exhibit considerable scepticism towards the relevance of the concept of 'development' for the trading system throughout the Preparatory Conference, especially when it came to the 'freedom of the so-called underdeveloped countries to take protective measures' (UNESCO, 1947a: 15). When demand for specific provisions on development did in fact materialize, the US reacted by submitting a 'tentative and non-committal draft chapter' on development, which it subsequently portrayed as a considerable concession. The infant-industry provision, Clair Wilcox noted, could 'be regarded only as one of extreme generosity' (UNESCO, 1947a: 16). And with regard to the obligation 'to co-operate in the economic development of other countries and specifically to impose no unreasonable impediments on the exportation of capital materials, equipment and technology which are needed for that development', Wilcox reminded the other participants that '[t]here never was before, in the history of the world, such a commitment' (UNESCO, 1947a: 14). The US evidently regarded the development discourse as a threat to *its* narrative that the Charter would overcome the dark past of untrammelled protectionism. If the less-developed countries' amendments allowing quantitative restrictions for protective purposes were adopted, Wilcox warned,

the restrictions of the Fifties and the Sixties will make the restrictionism of the Thirties look like absolute free trade ... We all know that the folly of the past brought us to tragedy. What reason is there to suppose that even greater folly in the future would bring us to a better future? (UNESCO, 1947a: 17)

The US would not accept, Wilcox concluded, 'a Charter that was in its very terms a sanctification of autarchy, an incitement to resume economic aggression, a guarantee of economic war' (UNESCO, 1947a: 18).

Not only did the development discourse challenge the West's conception of the historical meaning of the trading system's founding, it was also emancipatory in that it was, without ever mentioning colonialism by name, at its core directed against the division of labour and the trade patterns instituted under colonial rule. In particular, this meant achieving the industrialization of the predominantly agrarian countries of the South. At the Preparatory Conference, this transformative agenda produced anxiety among those of the 'industrial' countries evidently still wedded to a colonial mind set. The Belgian delegate lamented, for example, as follows: 'I must say that, *in accepting the industrial development of the rest of the world*, we have to display a considerable amount of fortitude' (UNESCO, 1947a: 33, emphasis added). In insisting on prior approval for the use of quantitative restrictions to protect infant industries, the Belgian delegate provided the following motivation:

the development of other countries imposes changes in our industrial production and the whole set-up of our economic life. Such changes have to be gradual if they are not going to provoke the greatest social difficulties and sometimes downright

misery. If a number of countries which are our markets are going to apply all kinds of quantitative restrictions without any prior notice, without any prior discussion as to some sort of adaptation of their policy to the policies of other countries, we are going to find that some industries cannot continue to function normally. (UNESCO, 1947a: 33)

Given the ambivalence that some of the delegates from developed countries evidently felt about the prospect of increased competition from industrializing developing countries, it is not surprising that the developing countries were concerned about the prospect that protective measures, which they regarded as essential for the implementation of their development plans, would be subject to the prior approval of the ITO. As the Lebanese delegate noted:

Will the industrialized countries who will inevitably have to make the necessary readjustment not be able to resist effectively the legitimate desire of the under-industrialized countries to develop their industries in order to raise the standard of life of their people? (UNESCO, 1947b: 5)

Cuba formulated the fear shared by many of the ‘under-developed’ countries, namely that by adopting the Charter

we would be freezing the actual economic status of the different countries of the world. The agricultural countries would continue to be agricultural. The monopoly countries would continue to be monopolies, and the more developed countries would continue selling typewriters and radios, etc. to those nations that were trying to produce the primitive tools. (UNESCO, 1947a: 44)⁸

In a speech dripping with sarcasm about the wisdom of the ‘experienced civilized nations’ (UNESCO, 1947a: 37, 38) – a rare echo of colonial imagery⁹ – the Cuban delegate complained that ‘economic development has become here some sort of wicked word that is looked at with great apprehension by many Delegations’ (UNESCO, 1947a: 42). By contrast to the US narrative about the need to exit the state of nature in international economic relations, Cuba suggested that the ‘young nations’ might prefer ‘the liberty of the jungle’ which was sometimes

⁸ See also China’s comment: ‘the Charter in its present draft merely seeks to acquire and maintain for the advanced nations a series of markets which they either have no intention at all to develop or seem anxious even to prevent from developing’ (UNESCO, 1947b: 15). See further Brazil’s intervention, which articulated the fears of under-developed countries, though it did not agree that they were justified: ‘To some it may, perhaps, seem that the Charter, when applied, will deliberately or not result in an instrument for the maintenance of the *status quo*, thus perpetuating the unfavourable situation of the less developed countries’ (UNESCO, 1947b: 10, original emphasis). France argued against this view: ‘We are convinced that it is nobody’s intention here to admit that the Charter should become a rigid instrument, the provisions of which would tend merely to regularise international competition and to provide guarantees for acquired positions. We must, on the contrary, strive that this Charter should be an instrument of economic and social progress’ (UNESCO, 1947b: 17).

⁹ See also the following part of the Cuban representative’s speech: ‘We have here, like one of the other bad boys of this Conference, dared to raise a voice against our older brothers, and have come into the room when that big civilisation ... is drafting the Charter of a new economic order’ (UNESCO, 1947a: 37).

'more healthy than the very sophisticated and civilized world' (UNESCO, 1947a: 37). While such rhetoric openly mocking the categories of colonial thinking was rare at the Preparatory Conference,¹⁰ many 'less-developed' countries shared Cuba's apprehension about the selective legalism of the Draft Charter, which circumscribed the less-developed countries' use of protective instruments, while imposing no binding obligations on the developed countries in respect to the formers' development. To quote the Lebanese delegate again:

It is evident that there is, throughout the Charter, a conflict ... in the means for achieving two of its purposes, namely (1) the purpose of the removal of trade barriers, and (2) the purpose of the promotion of the industrial development of the undeveloped countries. But it is worth noting that to achieve the first purpose, strict and definite obligations are placed upon the Members, which restrict their liberty of action in the achievement of the second purpose. On the other hand, the Charter does not provide for equally strict and definite obligations to give positive assistance for economic development. (UNESCO, 1947b: 3)

The developing countries' fear that the trading system might end up 'freezing the actual economic status of the different countries of the world' has led them to pursue a lawmaking agenda designed to transform the international division of labour throughout the history of the trade regime. Apart from long-standing efforts to reduce barriers to their exports maintained by developed countries, the transformative impetus of the developing countries' participation in trade lawmaking is particularly evident in two projects:¹¹ their decade-long fight against tariff escalation; and their campaign, which stretched from the 1960s to the 1980s, for international action to promote structural adjustment in developed countries.

Tariff escalation refers to the differentiation of tariffs in relation to the degree of processing, whereby low or no tariffs are imposed on the raw materials, higher tariffs are imposed on semi-finished products, and the highest tariffs apply to the finished product. This tariff structure, traditionally maintained by many developed countries, made it difficult for developing countries to move up the value chain, as it encouraged companies to export raw materials from developing countries for processing in developed countries, rather than to process the product in the developing country (Trebilcock and Howse, 2005: 481; Balassa, 1965; Corden, 1966). The

¹⁰ See also Brown (1950: 98), who reports that a requirement drafted by the US that 'development plans should be "soundly conceived, mutually consistent and effectively coordinated"' was rejected as "older brother" language'.

¹¹ The developing countries also campaigned for the transformation of international economic relations on a larger scale, in particular by demanding the formation of a 'New International Economic Order' in the 1970s. These demands, however, were mostly articulated in the framework of the United Nations, and in particular UNCTAD; the developed countries did their best, for the most part successfully, to keep this agenda outside of the GATT. See McRae and Thomas (1983: 66), who report that the developed countries met Brazil's proposal for a 'Framework Group' in the Tokyo Round with scepticism 'out of concern that it might become a vehicle for the rhetoric of the "New International Economic Order"'.

effect of tariff escalation on the composition of the developing countries' exports was noted in the GATT as early as the 1960s (GATT, 1961: para. 24), and a proposal to address tariff escalation in reduction modalities was made – and rejected – as early as the Kennedy Round in 1964–1967.¹² The problem has persisted throughout the operation of the trading system, and was for the first time comprehensively addressed in the Doha Round Modalities for Agriculture, which provide separate modalities for the reduction and, in some cases, elimination, of tariff escalation (WTO, 2008: paras. 84–92).

In contrast to tariff escalation, which concerned an issue plainly at the core of the trade regime's competence, structural adjustment was not an easy fit for the GATT's traditional repertoire of instruments and techniques,¹³ and the contracting parties struggled for a long time to define the GATT's role in relation to this issue. Structural adjustment was first discussed by a group of experts in the 1960s (GATT, 1966; GATT, 1969), it was the subject of reporting requirements in respect to the textiles sector (GATT, 1975; GATT, 1980), and again became a hotly debated issue in the early 1980s (GATT, 1982; GATT, 1983). A key puzzle in these discussions was the fact that a number of trade instruments that could serve to facilitate adjustment, such as safeguards and subsidies, could just as well be used to delay adjustment (GATT, 1984: para. 3). The question was thus *how* these instruments were used – a question that ultimately went to the role of the state in the adjustment process, and the relationship between the state and the economy more generally. The developing countries were hoping that developed country governments, prodded by multilateral pressure, would take a more proactive role in promoting adjustment to import competition in their economies. In the end, the GATT's activities on structural adjustment were largely limited to information exchanges and consultations; no obligations *directly* concerned with structural adjustment were ever negotiated. However, a number of agreements negotiated in the Uruguay Round, and in particular the Agreement on Textiles and Clothing and the Agreement on Safeguards, have nevertheless made it more difficult for countries to prevent or delay structural adjustment. At least in the textiles sector, then, the developing countries' ambition has been, with the end of the ten-year implementation period in 2005, largely fulfilled.

Tariff escalation and structural adjustment have, of course, not been the only initiatives that developing countries have pushed over the history of the trading system; they do, however, exemplify what I take to be the basic orientation of developing countries towards the historical significance of the trade regime: an orientation that is marked by the expectation that the trade regime will usher in a

12 At an early stage of the Kennedy Round, the developing countries suggested that 'specific rules should be established' regarding tariff reductions for the benefit of developing countries, 'establishing a maximum level, related to the duties on finished manufactures, for the duties on semi-processed products' (GATT, 1964: para. 10).

13 For a comparative analysis of adjustment policies, see Trebilcock *et al.* (1990).

fundamental change in the international division of labour. The developing countries' worst fear has not been 1930s-style anarchy, but a trade regime that would, as Brazil put it in the Uruguay Round,

freeze an inequitable international division of labour and represent an unacceptable limitation to our legitimate aspirations of also becoming producers and suppliers of high-technology goods and services. (GATT, 1987a: para. 43)

This orientation is quite far removed from the idea that the incremental and gradual liberalization of trade is necessary so that countries can from time to time reaffirm and revitalize their commitment to a rules-based trading system, banish the temptation of protectionism, and realize a few efficiency gains on the side (to somewhat caricature the US view).¹⁴

Both the rule-of-law narrative and the development discourse, then, employ a technique of 'temporal othering' (Prozorov, 2011) to define the meaning of the trading system. The rule-of-law narrative explains the significance of the trading system 'by means of casting as Other [the system's] own past, whose repetition in the future it seeks to avoid' (Prozorov, 2011: 1273). The development discourse, by contrast, casts as Other the present, which it seeks to overcome in the future.

Despite their different orientations – towards the past and the future, respectively – the two discourses are similar in one respect: they both produce a constant sense of restlessness. Neither ever declares victory. The development discourse carries the connotation of a perpetually unfulfilled promise; development is aspired to, but never quite achieved. The rule-of-law narrative, in turn, imparts a sense of fragility; it is animated by a constant fear of backsliding and complacency.

3. The aims of the trading system

The different stories that the US and the proponents of the development discourse told about the historical significance of the trading system were intertwined with different views on the objectives of the trading system. The primary objectives advanced by the US narrative were an expansion of world trade, to be achieved through reciprocal liberalization and the elimination of discrimination, which would also support world peace. At the insistence of Britain, the US had included the objective of full employment in its *Proposals*. This objective, however, was primarily construed as a precondition for the expansion of trade, and where the objectives of full employment and trade expansion came into conflict, the latter objective was given priority. Thus, the *Proposals* stipulated that '[d]omestic programs to

¹⁴ See also Winham (1986: 142), who describes the relationship between developed and developing countries in similar terms when he argues that, as an 'outgrowth of the interests of the mainly Western, developed countries', the GATT 'looks to the competitive protectionism of the 1930s as the major evil to avoid', whereas the developing countries 'seek more to escape their own underdevelopment than to create a liberal world trade regime'.

expand employment should be consistent with realization of the purposes of liberal international agreements' and should not include measures

which are likely to create unemployment in other countries or which are incompatible with international undertakings designed to promote an expanding volume of international trade and investment in accordance with comparative efficiencies of production (US Department of State, 1945: 9–10).¹⁵

Development was not among the US objectives for the ITO.¹⁶ One of the arguments provided by the US why provisions on 'development' should not be included in the ITO Charter was that:

[c]ontrary to commercial policy ... economic development presented considerable difficulty in its definition and machinery; it would therefore be necessary first to consult the specialized agencies as well as the Economic and Social Council of the United Nations with which the Organization would co-operate. (UNCTE, 1947: 6)

In the context of the employment provisions of the *Proposals*, it was only the 'attainment of approximately full employment by the major industrial and trading nations' that was considered key to the realization of the ITO's objectives in the international economic arena (US Department of State, 1945: 9, emphasis added). While the *Proposals* referred to the United Nations' pledge, in Article 55 of the UN Charter, to promote 'higher standards of living, full employment, and conditions of economic and social progress and development' (US Department of State, 1945: 9), the US considered the attainment of these objectives to be the responsibility of the UN's Economic and Social Council. Curiously, the preamble of the GATT made reference to the first two of these objectives ('raising standards of living' and 'ensuring full employment') but omits the latter (promoting 'conditions of economic and social progress and development') – presumably reflecting the US view that trade expansion was the primary goal of the trading system. By contrast, the ITO Charter listed as one of its objectives to 'foster and assist industrial and general economic development, particularly of those countries which are

¹⁵ According to Gardner (1969: 148), the provision on employment remained at the level of general principles 'since neither Government had any well-developed views on how the employment problem could usefully be handled in any international agreement'. One concern of the British was that the US would not take decisive steps, in the form of countercyclical policies, to avert another depression; the commitment in the *Proposals* (US Department of State, 1945: 9) that signatory nations 'will take action designed to achieve and maintain full employment' would thus have had some significance to them. Gardner (1969: 147) highlights the role of full employment in British public opinion. For a contemporary discussion, see Smithies (1947).

¹⁶ See the 'purposes of the Organization' listed in US Department of State (1945, 11); cf. US Senate (1947: 4) on the ITO chapter covering 'economic development': 'This chapter did not appear in the original United States draft ... It was added because a number of the underdeveloped countries felt that provisions dealing explicitly with this subject are a necessary and proper part of an International Trade Charter.'

still in the early stages of industrial development, and to encourage the international flow of capital for productive investment'.¹⁷

The development discourse, which emerged at the Preparatory Conference, took issue not so much with the US objectives of trade expansion as such as with what was perceived as a single-minded focus on trade liberalization as the way to achieve it.¹⁸ Several countries argued that the development of the less-developed countries held the greatest potential for an expansion of international trade, by creating demand for investment goods and by increasing the purchasing power of the population in less-developed countries (UNESCO, 1946d: para. 1). At the same time, they were not blind to the trade-offs between development and the objectives reflected in the *Proposals*. In its comments on the *Proposals*, the Indian government noted that it could not assume a commitment to refrain from taking measures that are 'likely to create unemployment in other countries', since such an undertaking would have the effect of 'freez[ing] the existing pattern of production' and 'hamper[ing] changes in the economic structure of backward countries' (UNESCO, 1946c: 18). India clearly recognized the potential conflict between the objective of attaining 'full employment' in the 'major industrial and trading nations' and the desire of 'backward countries' to move up the value chain and make inroads in markets dominated by those nations.

A similar conflict soon became apparent between the vision formulated in the *Proposals* that international trade and investment would expand 'in accordance with comparative efficiencies of production' (US Department of State, 1945: 10), and the reality that, whatever new industries a 'backward country' could hope to establish, it was 'obvious that at first they will not satisfy the test of "comparative efficiency"' (UNESCO, 1946c: 19). The preparatory negotiations in London brought this tension between liberal trade conducted on the basis of existing comparative advantage and the aspirations of the developing countries to join the ranks of the industrialized countries into sharp relief. In his opening speech to the 'Joint Committee on Industrial Development', which had been established to discuss the cross-cutting question of how best to promote industrial development,¹⁹ the UK delegate, Mr Helmore, sought to frame the discussion in terms of 'three aspects of the general objective' of economic development: increasing productivity and thereby raising standards of living, diversifying the economy so as to make it

¹⁷ITO Charter, Article 1, 2.

¹⁸The British delegate portrayed the conflict in terms of 'expansion of trade' vs. 'expansion of production': 'I am absolutely convinced that you cannot have one without the other. If we divide ourselves into those who say "Expansion of trade is the only thing that matters", and those who say "Expansion of production is the only thing that matters", and still more if those two classes say "The expansion of our trade is the only thing that matters", and "The expansion of our production is the only thing that matters", then the world is in for a very serious trouble indeed' (UNESCO, 1947b: 28).

¹⁹The chair noted that 'this Committee was born out of the opinion expressed by several delegations that the subject of industrial development was so important that it merited separate consideration by one body rather than piecemeal consideration at the hands of various Committees' (UNESCO, 1946b: 2).

less vulnerable to external shocks, and industrialization. When it came to the latter aspect, namely, the question of which industries a country should seek to establish, Helmore suggested that ‘efficiency should be the prime criterion’ (UNESCO, 1946b: 4). As Helmore explained:

If a new industry in an under-developed country is set up without regard to efficiency, later on the time will come when that infant has grown up and wants to go out into the world, when that industry will want to compete on world markets; and if due regard has not been paid to the problem of efficiency it will find that its products do not sell on world markets’ (UNESCO, 1946b: 4)

Helmore elaborated that the industry that a country was seeking to establish not only had ‘in some way to be related to the natural geographical physical economic conditions of the country’, but that the country should also ‘take all the precautions it can to see that the productivity of its workers is not wasted by making the product in ... an inefficient way’ (UNESCO, 1946b: 17–18). The ‘danger’ presented by inefficient industries ‘established behind excessive protection’, in Helmore’s view, was not only that ‘the country will be wasting its own resources’, but also that it would be ‘causing an unnecessary decline ... in the standard of life in every economy which is affected in any way by the operations of that undertaking’ (UNESCO, 1946b: 18). While the UK delegate made his intervention in the spirit of advice from ‘one of the older industrialised countries’ (UNESCO, 1946b: 4), his concern that protective measures taken by developing countries would have a negative impact on the economic fortunes of the developed countries was palpable.

From the developing countries’ perspective, it was clear that the establishment of new industries necessarily entailed an at least temporary deviation from the principle of comparative advantage. Brazil emphasized that the developing countries could not, ‘without a period of some years, hope to attain the same productivity and the same efficiency as those of other countries which have carried on this activity over a period of some hundred or two hundred years’ (UNESCO, 1946b: 23).²⁰ And India noted that ‘the question of efficiency and what is an economic line of production is one thing from a short-term point of view and quite a different thing from the longterm point of view’, pointing to its iron and steel industry as an example (UNESCO, 1946e: 10). The developing countries’ position was by no means an outright rejection of liberal trade; on the contrary, most of them envisaged liberal import regimes for capital goods and anticipated that they would remove protection for any industries that became competitive. India, for example, noted that its iron and steel industry, after initially having been protected by a ‘heavy import duty’, had already ‘become a completely economic proposition’, so that ‘for several ranges of steel products, there [was] absolutely no

²⁰ See also the Lebanese delegate’s statement: ‘It must be recognised that production is much more efficient in the advanced industrial nations and that for a long time the less developed, generally agricultural countries, will not be able to achieve the level of efficiency of the advanced countries’ (UNESCO, 1946b: 18).

need for protection' (UNESCO, 1946e: 10). From the perspective of the development discourse, the pace of trade liberalization was going to be dictated by a country's development needs; as an objective, development took priority over the efficient allocation of productive resources that trade liberalization promised to bring about.

The difference between the objectives that the US and other developed countries associated with the trade regime, and the way the purpose of the trade regime is portrayed in the development discourse, came to the fore again during the *second* constitutional moment of the trading system – the Uruguay Round negotiations on an agreement on trade in services. The developing countries sought to shape this moment in a way that would make it fundamentally different from the first. From the outset of the services negotiations, Brazil tried to establish the principle that these negotiations should not be 'an exercise to liberalize trade in services at any costs', and that 'trade liberalization [was not] an end in itself' (GATT, 1987a: para. 16). Brazil recalled that, in trade negotiations on goods, the principle of special and differential treatment had been 'conceived as an afterthought to the GATT, as a right to derogate on an *ad hoc* basis from the general rules' (GATT, 1987a: para. 44). The negotiations on trade in services, by contrast, would have 'to start from a totally different standpoint':

The objective of development will be ... the kernel of the exercise. We are mandated ... not to further the best theoretical possible allocation of resources at the world level, a result which in the end might work mainly for the advantage of a few more advanced States or of transnational corporations ... Development shall have to be ... not a basis for derogation to possible general rules, but an integral part of any set of rules we may eventually devise. (GATT, 1987a: para. 44)

India spelt out some of the practical implications of this approach:

If the objective of development of developing countries is to be achieved, the enumeration of sectors of trade in services will have to be first tested in terms of whether, and to what extent, expansion of trade in such services would promote development of developing countries. It is not enough to generalize that international competition is good and that it would lead to maximization of welfare all around ... the aim of development has to be understood as seen by the developing country concerned, and not in terms of some mysterious handiwork of an invisible hand operating through idealized market processes. (GATT, 1987b: para. 14)

India, too, rejected the way in which development had been addressed in the GATT:

We believe that we should not base our approach on assumptions borrowed from familiar areas of trade in goods supplemented by carving out exceptions in terms of special and differential treatment for developing countries. The objective of development should not be considered as an adjunct or an afterthought. The

approach to the multilateral framework itself should be such as to ensure the achievement of this objective and it is here that one intensely feels the inadequacy of the GATT model. (GATT, 1987b: para 15)

The contrast drawn here between the trade regime's approach to trade in goods, which was informed by the US objectives of trade expansion, and what the developing countries hoped would be its approach to trade in services, brings the differences between the developed countries' views and the development discourse into sharp relief (see also Rolland, 2012). For the latter, trade liberalization, and even trade expansion, is no more than a means to an end.²¹ The developing countries' commitment to trade lawmaking stands and falls by their perception of whether the law at issue would contribute to their development.²²

In one respect, however, the US narrative and the development discourse converged. They both established a powerful connection between 'developed country' status and trade liberalization. While the development discourse allows discursive room for debates about the necessity and wisdom of trade liberalization for 'developing' countries, it associates, by negative implication, 'developed' country status with liberal trade.²³ Once a country is 'developed', there is no discursive refuge for trade protection. This tightening of the discursive breathing space arguably constitutes a powerful disincentive for 'developing' countries to 'graduate' to 'developed' country status.

4. Differentiation in the trading system

Entangled with the contestation of the historical trajectory and telos of the trading system was the question of the relationship between the members of the trade regime. At the time when the GATT and the ITO Charter were negotiated, 'development' was a relatively new concept; in fact, according to some authors, it was not 'invented' as an issue of international concern until Truman's proclamation of his 'Four Points' in 1949 (Rist, 2010: 71; Escobar, 1995: 4).²⁴ Unsurprisingly, the

21 See GATT (1988a: 1): 'For the developing countries, the expansion of international trade is not an end in itself. It is an instrument for economic development, which in turn provides the only solution to the chronic problems of structural imbalance, poverty and unemployment. The development dimension must, therefore, be made the focus of whatever rules we evolve for the world-trading system.'

22 See GATT (1988b: 1): 'Obviously, for developing countries such as our own, the main touchstone or criterion for such a review is the way the Uruguay Round negotiating process is affecting or would affect the process of development. The participation of developing countries in GATT is necessarily centred on the contribution that such participation makes to their development process.'

23 See Oxley (1990: 104): 'Consistent with the prevailing philosophy of development, trade liberalization was not generally regarded as an obligation of developing countries ... liberalization was what the industrialized countries had to do.'

24 US President Truman announced 'four major courses of action' in his 1949 Inaugural Address, namely, (1) support for the United Nations, (2) efforts towards recovery of the world economy, (3) the conclusion of collective defence agreements, and (4) 'a bold new program for making the benefits of our scientific advances and industrial progress available for the improvement and growth of underdeveloped areas'.

differentiation between more or less 'developed' countries remained very fluid at this time; in the trading system, the very desirability of such a differentiation remained contested. In the decades since the establishment of the trading system, the distinction between developed and developing countries has become deeply entrenched. As I will argue, this differentiation may be the development discourse's most consequential, but also most problematic legacy.

Pre-war trade agreements provided no precedent for differentiation between countries according to their 'stage' of development. The agreements concluded by the United States with less-developed countries under the Reciprocal Trade Agreements programme, 16 in all, made no distinction between the contracting parties (Hudec, 1987: 6–7). According to Evans, it was under the influence of this tradition that the drafters of the GATT 'went to some lengths to avoid making any formal distinction between different classes of members' (Evans, 1971: 114). Countries were to be regarded as formally equal (Hudec, 1987: 4).

During their bilateral discussions, British and US officials mostly described less-developed countries as 'countries in an early stage of (industrial) development', without however establishing a legal category (FRUS, 1945b: 2–3; FRUS 1945d: 20; FRUS 1945c: 34–35). During the Preparatory Conference, the attributes 'undeveloped' (UNESCO, 1947a: 36), 'non-developed' (UNESCO, 1947b: 39), 'underdeveloped' (UNESCO, 1947a: 5, 15; UNESCO, 1947b: 27), 'less-developed' (UNESCO, 1946d: 5), 'developing' (UNESCO, 1946d: 5), 'inadequately developed relative to their potential' (UNESCO, 1946d: 8), 'less industrialized' (UNESCO, 1946d: 8), and 'young' country, as opposed to 'more' or 'highly developed', 'advanced', and 'industrialized' country were used interchangeably. But not only was the terminology unsettled; the concept of 'development' itself was fluid, and many countries were unsure in which category they fell. Australia, one of the chief proponents of provisions on 'economic development' in the Charter, saw itself as 'an under-developed country in relation to the potential resources of our country', but admitted that there were 'countries even less developed than we are' (UNESCO, 1947a: 5).²⁵ Canada cautioned that 'there are very few economies which can be said to be fully developed, certainly ours is not' (UNESCO, 1947a: 21). Belgium found the entire distinction dubious, pointing to the heterogeneity, in terms of size and factor endowments, of the countries 'lump[ed] together' under the categories of 'underdeveloped' and 'industrial' countries, respectively, though it did not hesitate to describe itself as 'an industrial country with ... a highly developed population' (UNESCO, 1947a: 33). Britain thought the distinction to be 'totally unreal', and counselled against portraying the issue at hand – the

Of course, the concept of 'development' and the economic theory underlying it had roots in ideas and modes of thinking that go back at least to the eighteenth century; see Rist (2010: Chapters 2–3) for an overview.

²⁵ At another point in the discussions, Australia thanked the delegate of China for 'kindly restor[ing] Australia's status as an under-developed country' (UNESCO, 1947b: 34).

prohibition of quantitative restrictions – as ‘a definite division between two classes of countries’ (UNESCO, 1947b: 28).

The original GATT did not contain the term ‘less-developed contracting parties’.²⁶ Instead, the ‘economic development’ exception was made available to countries described in terms of elaborate criteria, namely a ‘contracting party, the economy of which can only support low standards of living* and is in the early stages of development*’, with ad notes further defining the key terms (GATT, Article XVIII and Notes Ad paras. 1 and 4).²⁷ Presumably, these criteria would have made it possible, whenever a contracting party invoked the provision, to examine whether it met all the criteria, instead of having to rely on the self-designation of the respective party.

In practice, however, this was not attempted. In the context of tariff negotiations, the contracting parties early on found it ‘extremely difficult, not to say impossible’ to solve the problem of the definition of ‘under-developed countries’ by ‘means of general provisions’, and recognized that this was a problem that ‘cannot be dealt with otherwise than on a case basis’ (GATT, 1952: 1). Attempts to ‘define developing country status in terms of objective economic criteria’ were made in UNCTAD over several years, but were ultimately abandoned (Paemen and Bensch, 1995: 19). The principle of self-designation prevailed. At the same time, given the discretionary nature of most special and differential treatment, the extent to which a country would enjoy the benefits of developing country status depended heavily on the developed countries’ recognition of that status.

The case of South Africa is perhaps the best illustration of the melange of economic, ideological, and even emotional factors that make up the meaning of ‘developed’ vs. ‘developing’ country status. During the Preparatory Conference, South Africa was clearly uncomfortable with the distinction (UNESCO, 1947c: 10). It tentatively put itself in the ‘under-developed’ country category – on the basis that Australia, which saw itself as an under-developed country, had ‘done things in its development which we have not yet dreamed of in South Africa’ – but then proceeded to employ this status not to make demands on the developed countries, but rather to lecture its fellow ‘under-developed’ countries about the advantages of the American design for the ITO (UNESCO, 1947c: 10). The desire of the representative to be regarded as a peer by the developed countries – he switched in the course of his statement from describing South Africa as an ‘under-developed’ country to characterizing it as a ‘not-fully-developed country’ (UNESCO, 1947c: 14) – was unmistakable. It was precisely this aspiration that the US invoked 46 years later, when it rejected South Africa’s request to be re-classified as a developing country as it was emerging from apartheid (GATT, 1993a: 106–107). ‘South Africa’, the

²⁶ This term now appears in Part IV of the GATT, which was added in 1965.

²⁷ The asterisks in the quote are included in the original and indicate that the term or concept is further defined in explanatory notes annexed to the GATT.

US representative stated, 'had never been viewed as a developing country and had itself taken pride in its capabilities as a world-class trader'. Given that South African 'ranked among the top 30 trading nations of the world' and was widely seen as a 'predominantly manufacturing economy', the US government was 'not disposed to recognize South Africa as a developing country' in the GATT context (GATT, 1993b: para. 54). It appears that, for South Africa under white rule, being seen as a developed country was partly a point of pride; the African National Congress, by contrast, saw no shame in South Africa being classified as a developing country.

Given these ideational connotations of 'developing country' status, it should perhaps not be surprising that, for a country to decide to change its status, it will often take more than the mere fact that it has ascended in the economic league tables. Despite the phenomenal growth experienced by many formerly poor countries over the past decades, the most important trend with respect to the relations between the members of the trading system has not been the 'graduation' of developing countries to developed country status, but rather an increasing differentiation *within* the developing country category.

This differentiation has its origins in the Tokyo Round: the Tokyo Declaration was the first major policy document to call for 'special attention' to be given to the 'particular situation and problems of the least-developed among the developing countries' (GATT, 1973: para. 6). The move towards differentiation held attractions for both sides of the 'graduation' debate. For the more advanced developing countries, it was a superior alternative to full graduation: while they might have to forego some preferential treatment, the fundamental distinction between them and the developed countries was preserved. For the developed countries, in turn, increased differentiation, while inferior to full graduation, opened up the opportunity to ratchet up obligations on the advanced developing countries to an extent that would be unfeasible if the same obligations also applied to the least-developed countries.

In the Doha Round Modalities for Agriculture, differentiation was taken to new heights (see also Pauwelyn, 2013). Apart from the three 'generally recognized categories of Members – LDCs, developing countries, and developed countries' (WTO, 2013: 1), the Doha Round Agricultural Modalities contain differentiated obligations for five groups of countries: recently acceded members (RAMs), very RAMs, small low-income RAMs with economies in transition, net food-importing developing countries (NFIDCs), and small vulnerable economies (SVEs). The criteria by which this increasing differentiation occurs do not exhibit a readily discernible pattern or trend. Very RAMs and small low-income RAMs with economies in transition are identified *ad hoc* in the modalities themselves (WTO, 2008: para 9); NFIDCs are identified in a list maintained by the Committee on Agriculture (WTO, 2012). Apart from the LDCs, which are recognized as such by the Economic and Social Council of the UN on the basis of a number of economic and social criteria (United Nations, 2008), only the SVEs

are explicitly identified on the basis of objective economic benchmarks (WTO, 2008: para. 157 and Annex I).²⁸ While the modalities state that the SVE designation is ‘not meant to create any sub-category of Members’, it is highly likely that the separate treatment of SVEs in the Agricultural Modalities will serve as a precedent for future negotiations. As Pauwelyn (2013: 30) has noted, ‘[t]he era of ‘special and differential treatment’ ... for all developing countries as a single group has ... come to an end’.

Differentiation has been taken to yet another level in the context of the Trade Facilitation Agreement (TFA) concluded at the Bali Ministerial in December 2013. The TFA allows each developing country to tailor its implementation schedule and to condition its implementation of specific provisions of the agreement on the receipt of technical assistance. As a result, it is likely that the obligations of no two developing countries will look the same. It is noteworthy, however, that the TFA preserves a categorical distinction between developing countries and developed countries.

One of the effects of the increased differentiation in the developing country category over the past two decades is that, by and large, WTO Members that remain in the developing country category without being part of any other subgroups comprise those countries that would fall within a hypothetical ‘emerging economies’ category, were they not so virulently opposed to giving up their developing country status, and the privileges that come with that status, in the context of multilateral trade lawmaking.²⁹ It is that dividing line – between the most ‘developed’ developing countries and the ‘old’ developed countries – that is increasingly at the centre of debates in multilateral trade lawmaking (Wolfe, 2015). The developed countries are ever less willing to accept that the emerging economies take refuge in a discourse of development that emerged at a very different historical juncture. The crisis in which multilateral trade lawmaking finds itself partly as a result of this conflict points to a blind spot in the development discourse: the discourse has yet to find an answer to the question of whether there is ever an endpoint to development. The classification of some countries as ‘developed’ implies that this must be the case, but the discourse provides no yardstick for when this endpoint is reached and a formerly developing country joins the ranks of the developed countries. As I noted at the beginning of this article, the development discourse shrouds the past of developing countries in mystery, substituting the image of a generic state of ‘underdevelopment’ for their varied colonial and pre-colonial histories. It increasingly appears that the discourse has just as little to tell us about their future.

²⁸ SVEs are defined on the basis of their share of world merchandise trade (no more than 0.16%), share of world trade in non-agricultural goods (no more than 0.10%), and share of world agricultural trade (no more than 0.40), averaged over the 1999–2004 period.

²⁹ Among these are China, India, Brazil, Argentina, South Africa, Malaysia, Indonesia, Mexico, and Thailand.

5. Conclusion

The development discourse has played a paradoxical role in multilateral trade law-making: on the one hand, the idea of development has naturalized the subordinate and dependent position of the poorer members of the trading system. By positing a generic state of underdevelopment from which the 'developing' countries were 'just' emerging, it not only obscured the colonial past, but also borrowed imagery that had informed the colonial project. On the other hand, the idea of development contained a powerful emancipatory claim, namely, the ambition of the 'less-developed' countries to escape the trading positions entrenched under colonial rule, and to attain the levels of productivity and material well-being of the industrialized countries – an aspiration that had for the most part been stymied under colonial rule.

In its emancipatory ambition, the development discourse clashed with the views held by the US and most other developed countries about the historical significance, the aims, and the relationships between the members of the multilateral trading system. Where the US saw the historical mission of the trade regime in overcoming the protectionist past, the developing countries viewed the regime as an endeavour that could prove its worth only in the future – and that could easily turn out to be more harmful than the 'liberty of the jungle' if it was unduly restrictive of the 'young' countries' development. Where the US saw trade expansion, to be achieved by unshackling trade from governmental restrictions, as the core objective of the trading system, the developing countries considered trade merely as a means to an end. They saw little use in a trade organization that protected established trade flows but did not play an active role in transforming the international division of labour. Finally, while the US did not want to introduce the issue of development into what it saw as a 'commercial' agreement – it would have preferred to leave the United Nations to deal with what it regarded as a complicated political issue – the developing countries always understood and defined their position in relation to the trade regime and its members in terms of development; as a result, the perceived degree of development, rather than ideological or geographical divisions, has been the primary principle of differentiation among the trade regime's members throughout its history.

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