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On the Obituary of the Doha Round: A Path for Reinventing the WTO's Future

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Abstract

The World Trade Organization is in decline. Its dispute settlement mechanism faces an existential crisis. The Doha Round is all but dead. With the Covid-19 pandemic wrecking economies and exacerbating the spiraling income and wealth inequality, the road ahead for the WTO looks precarious. While many factors have contributed to the decline of the WTO, most can be traced to its design flaws. With the adoption of the Marrakesh Agreement, the scope of the multilateral trade regime expanded. However, such expansion was pointedly selective. While business and corporate interests were protected through the incorporation of traditionally nontrade subjects, such as intellectual property and investment, labour and development issues were sidelined. In reality, the operative rules of the WTO are not only inconsistent with the standard justifications for trade liberalization but also with the organization's own stated goals. As a result, many came to view the WTO as an agent of neoliberalism spearheading the diversion of the wealth of nations into the wealth of corporations. Such single-minded pursuit of profit has not only undermined the legitimacy of the WTO but also has contributed to the creation a conducive environment for the rise of nationalism, populism, and protectionism, threatening the liberal international order.

Keywords: Comparative advantage, embedded liberalism, justice, justifications for free trade, legitimacy, mercantilism

I. Introduction

The World Trade Organization (WTO), the most powerful multilateral trade organization in history, is in decline. Its renowned dispute settlement mechanism, once praised as revolutionary in international adjudication, faces an existential crisis. With the United States blocking the appointment of new judges, and the term of the last remaining judge having expired in November 2020, the Appellate Body (AB) has currently no judges. The Doha Round is all but dead.¹ With the Covid-19 pandemic wrecking economies and exacerbating the spiraling income and wealth inequality between and within nations, the road ahead for the WTO looks precarious. The pandemic has also laid bare once again that at the WTO, profit trumps human lives, as the rules of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) preempted the desperate needs of billions of people in the developing world for the COVID-19 vaccine. The organization's ability to address trade issues and resolve trade dispute has generally waned. What went wrong with the WTO? Clearly, the wave of populist sentiment that proliferated even in matured democracies has brought significant challenge to the liberal international order. Ironically, the most boisterous assault to the liberal international trading system (established by US-led efforts) came from former President of the United States, who not only started a trade war with China and other nations, in total disregard of WTO rules, but also strangled the WTO's Appellate Body. For observers of the Trump administration's aggressive assault on the trading regime, therefore, it may be tempting to think that the change in the United States administration would help revive the WTO's authority. However, the WTO was on a downward spiral long before Trump's rise to power. Crucially, it was the populist reaction to the globalization of neoliberal ideology, which the WTO helped spearhead, that propelled Trump into office in the first place. Trump's attack on the WTO is thus a consequence of the constitutional defects of the institution, not its cause.

It is also hard to downplay the impact of the Great Recession (attributable mainly to excessive deregulation), which has not only made governments more cautious, but also has made the case for liberalization less alluring. That is without mentioning the popular discontent that resulted from the hypocrisy involved in the practice of neoliberalism as financial institutions that were responsible for the recession were lavishly rewarded.² Yet, again, the WTO was struggling even before the Great Recession. The deadline for the conclusion of the Doha Round had already been missed, and it was already palpable that its revival needed a miracle.³ As a matter of fact, having failed to save the Doha Round, WTO members had already begun turning towards regional and transcontinental trade alliances, the most notable of which is the Trans-Pacific Partnership (TPP).

Others point to the shift in the North-South trade (in)balance, particularly the rise of China as a global trading powerhouse.⁴ However, while the world is no longer unipolar, it must be remembered that when tens of thousands of labour rights activists, environmentalists, and anti-poverty campaigners rocked the streets of Seattle in late 1999, protesting against the Third WTO Ministerial Conference, China had yet to accede to the WTO.⁵ What animated protestors was rather the conviction that the WTO represented the ascendance of corporate power over social and environmental concerns. Indeed, the WTO has always struggled for legitimacy, as it is widely seen as an icon of corporate globalization.

The WTO's legitimacy deficit, which is its primary political and operational handicap, I would argue, runs deep into its design. The recent wave of populism, nationalism and concomitant protectionism stem in part from the malaise in neoliberal trade policy. With the adoption of the Marrakesh Agreement in 1994, the scope of the multilateral trade regime expanded by leaps and bounds.⁶ That in turn has fueled popular discontents at least in two ways. First, not only the effects of trade, but also the rules of international trade now cut across traditionally nontrade spheres.⁷ That means WTO rules influence domestic policy more than ever before, among other things, further resonating longstanding legitimacy and sovereignty concerns. Such expansion was, however, pointedly selective. While business and corporate interests were protected through the incorporation of traditionally nontrade subjects, such as intellectual property and investment into the WTO at the Uruguay Round, labour and development issues remain sidelined. That broke with the original comprehensive postwar policy of embedded liberalism. With the creation of the WTO (which occurred and at the height of the era of market triumphalism), social and development issues have effectively been displaced with corporate interests. That is despite the hallow declaration under the first substantive paragraph of the WTO Agreement that the organization was set up for the purpose of, *inter alia*, raising standards of living and ensuring full employment around the world. Such selective expansion of the rules of international trade was justified by the classic theory of *comparative advantage*.

This Article argues that restoring the legitimacy of the WTO requires nothing short a radical reconfiguration of global trading system. Part II demonstrates why comparative advantage is an inadequate justification for trade liberalization. To be sure, the theory of *comparative advantage* provides a compelling economic case for free trade. However, the legitimacy of any system must ultimately be judged by reference to its consequence to the lives of people, and the theory of comparative advantage shows almost nothing about how the actual lives of people go. It argues that WTO rules are tailored to corporate interests in much the same fashion the mercantilist system, as

Adam Smith described it, was tailored to the interests of merchants and manufacturers. Therefore, the WTO's *modus operandi* is, it's argued here, inconsistent with the theoretical foundations of free trade as advocated by classical political economists. Part III demonstrates why the WTO is radically different from the International Trade Organization (ITO) envisioned in the aftermath of WWII. It maintains that the creation of the WTO marked a policy retreat from the postwar comprehensive vision of harmonizing trade with development and employment issues. Under the WTO, there exists no meaningful mechanism to redress the grievances of those whose preexisting entitlements are compromised as a result of trade liberalization, much less for promotion of labour and development issues. Onerous WTO obligations of member states coupled with the exigencies of competitiveness put the plight of the poor and the working class off the radar. Part IV suggests a path for reorienting the WTO.

II. Justifying Trade Liberalization

The case for free trade is not self-evident, or if it is, how free it should be is not. Thus, addressing the basic question of why it should be liberalized is the point of departure for any discussion about international trade. There are essentially two arguments for free trade. One is a moral argument, which alludes that freedom to trade as such is a right; and, the other is the more familiar economic argument that free trade leads to economic prosperity.⁸ While moral arguments are marginal, if plausible, economic arguments provide a compelling justification for free trade. Nobel Laureate Paul Samuelson provides a representative summary of economic arguments. He writes: 'there is essentially only one argument for free trade or freer trade, but it is an exceedingly powerful one: Free trade promotes a mutually profitable regional division of labour, greatly enhances the potential real national product of all nations, and makes possible *higher standards of living all over the globe*.'⁹ That is the central premise underpinning the establishment of the WTO. The Preamble of the WTO Agreement reaffirms that trade (and economic relations in general) should be conducted with a view to, *inter alia*, raising standards of living of people worldwide.¹⁰ The WTO's *raison d'être* lies in the enhancement of standards of living for all. Thanks to the classic theory of *comparative advantage*, it is commonly argued, each trading nation derives net gain from trade liberalization, and that lifts up peoples' living standards.

There is little dispute over the economic virtues of free trade. There is profound disagreement, however, on whether trade under the WTO proceeds in accordance with the stated goals. Also, to argue that free trade can help enhance the economic welfare of nations is one thing; whether it is enhancing the standards of living of people equitably is something else altogether. But one thing is clear: the economic argument

with which the WTO reckons is not based on some *intrinsic* value of free trade. It is rather based on the *instrumental* value of free trade in improving the standards and conditions of human life. Economic arguments are *consequentialist*.¹¹ Hence, the way free trade is pursued must be judged entirely by its consequence on the lives of people.

The WTO's stated goals of helping promote standards of living, employment, and so on, draw striking similarity, both in language and essence, with socioeconomic rights. They are about people. However, whether and to what extent the promises translate into the real lives of people needs serious scrutiny. The WTO reckons with the theory of *comparative advantage* to assert the economic virtues of trade and, by extension, justify its existence. Yet, *comparative advantage* theory is concerned about the individual advantage of nations; it shows almost nothing about the lives of people.

Unarguably, trade is a means to an end. Expanding trade may help maximize wealth. Yet, wealth is, as Aristotle observed, 'merely useful as a means to something else.'¹² Thus, while comparative advantage explains why liberalization may spur economic growth, it does not show how aggregate economic welfare thus derived ensures that people eat enough and better, live longer and healthier, enjoy more freedom, and engage in activities that, to borrow from Samuelson, 'convert existence into living: education, travel, recreation, and charity,' among others, which standard of living – ostensibly the central goal of the WTO – entails.¹³ It is these noneconomic goals that provide the ultimate justification for trade liberalizations. Hence, if the WTO is true to its stated goals, it seems an imperative to look beyond economic theories and connect *means* and *end* in a more tangible way.

David Ricardo's theory of *comparative advantage* is invariably invoked as the economic rationale for free trade. Building upon Adam Smith's thesis, Ricardo fashioned a powerful economic theory that provided a perdurable theoretical underpinning for free trade. Although Ricardo developed the theory of *comparative advantage* nearly two centuries ago to refute *mercantilism*, the prevailing doctrine at the time, its intellectual influence still endures. Indeed, it is the single most important trade theory that the WTO itself reckons with.¹⁴ The essence of this theory is that free trade enhances aggregate economic welfare by promoting a mutually beneficial international division of labour. Ricardo was by no means the first to champion the cause of free trade. Other pioneers, most notably Adam Smith, had already shaken the theoretical underpinnings of *mercantilism* and laid down a solid foundation for liberal trade. Indeed, any discussion about *comparative advantage* will not be complete without mentioning Adam Smith's theory of *absolute advantage*. Smith not only refuted the *mercantilist* trade edifice in the sharpest of terms, but also provided a compelling argument for free trade.¹⁵

For mercantilists, trade surplus defined national wealth and power. Accordingly, a nation should strive to generate a trade surplus by ensuring that the value of its exports exceeds that of its imports, and maximizing the accumulation of economic assets (typically in the form of gold and other precious metals).¹⁶ Logically, therefore, *mercantilists* would advocate trade distorting measures, such as import barriers and export stimulants. *Mercantilists* believed that trade should be harnessed towards national wealth and power aggrandizement. Conversely, traders could use state power to maximize their profit. In short, *mercantilists* saw a symbiotic relationship between the state and merchants.¹⁷ Such state support for merchants is often perplexing as it could serve as a recipe for the creation of monopolies and oligopolies. Adam Smith and other classical political economists who championed liberal trade aptly recognized that danger. In fact, they pointed out many other theoretical flaws of *mercantilism*. From a monetary point of view, they argued, that accumulating a stock of precious treasures could lead to inflation.¹⁸ From strategic point of view, accumulation of gold and silver could not necessarily enhance national power.¹⁹ From a social point of view, mere accumulation of monetary assets would not necessarily warrant better standards of living.²⁰ On the contrary, attempts to maintain an artificial trade surplus through import restriction, as *mercantilists* advocated, unduly subjected the public to monopolistic prices. Adam Smith strongly argued that mercantilism was a system that sacrifices the interests of the public in favour of the business interests of merchants and manufacturers.²¹

In general, mercantilists believed that a strong sovereign authority was necessary to maintain peace and order, whereas classical political economists believed in human harmony. This fundamental difference parallels the progression from absolutism to liberalism in the realm of political philosophy.²² Mercantilists viewed trade through the prism of nationalism, while classical political economists emphasized basic human freedom and social welfare.²³ Adam Smith, in particular, was as much unambiguous in defending the interests of the poor and the powerless as in exposing the economic follies of *mercantilism*. His criticism of mercantilism can thus be viewed at least from two vantage points. For one, Smith refuted mercantilism as uneconomical. For another, he strongly argued that *mercantilism* was an extractive system crafted and sustained by powerful traders and manufacturers who seek to maximize their business interests at the expense of the rest of the society.²⁴ In other words, Smith observed that mercantilism was inimical to social justice.

A. Economic Rationale

In his celebrated *Wealth of Nations*, Adam Smith powerfully refuted the doctrine of *mercantilism* as, *inter alia*, uneconomical. He provided a compelling explanation of

how nations may mutually benefit from engaging in free trade. He argued that since each country is endowed with unique conditions of production, each could benefit from capitalizing on what it can produce best and trade with others. Therefore, he maintained, free trade would lead to an efficient international division of labour by convincing each nation to specialize in the production of commodities in which it has *absolute advantage*. He summed it up as:

It is the maxim of every prudent master of a family, never to attempt to make at home what it cost him more to make than to buy. The tailor does not attempt to make his own shoes, but buy them of the shoemaker. The shoemaker does not attempt to make his own clothes, but employs a tailor. The farmer attempts to make neither the one nor the other, but employs those different artificers. All of them find it for their interest to employ their whole industry in a way in which they have some advantage over their neighbors, and to purchase with a part of its produce...What is prudence in the conduct of every private family can scarce be folly in that of a great kingdom. If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage.²⁵

Although the theory of *absolute advantage* has limitations and exceptions, some of which were recognized by Adam Smith himself, it provided the fundamental theoretical basis for liberal trade. It had also laid the groundwork for subsequent trade theories, the most influential of which is the theory of comparative advantage. Even today, advocates of free trade (and liberal economic policies in general) commonly appeal to Smith's theory. Typically, Smith's *Wealth of Nations* is invoked to justify the economic virtues of free enterprise. Yet, Smith's arguments suggest much deeper virtues of liberal trade than just profit maximization. Smith recognized that absolute free trade was neither feasible nor desirable. He identified certain scenarios where economics should give way to greater values. He, for example, argued, that defense being the first duty of a state, trade distorting measures are justified regardless of the economic cost. He also warned that liberalization should take place gradually so as not to affect the employment and livelihood of people all at once.²⁶

A. *Fair Opportunity for All*

'To us the *Wealth of Nations* is so obviously the first ever book of economics that it is natural to go through trying to pick 'the economics' out of it and forget the rest,' observes Parker.²⁷ Indeed, whereas concepts such as liberal international trade, *laissez faire* domestic economic policy, or 'invisible hand' of the market, are almost intuitively associated with Smith's *Wealth of Nations*, extra-economic dimensions of the book are undertheorized and less known. However, the *Wealth of Nations* is not a book of economics; it is a book of *political economy*. It does not treat trade (or economics, for

that matter) as an isolated realm. Far from that, it discusses free trade from the perspective of sociopolitical goals ranging from socioeconomic equity and stability to international harmony.²⁸ In other words, in *Wealth of Nations*, economic and trade issues are ‘embedded’ in social and political relations. Also, while Smith powerfully argued for freedom of trade, he never viewed commercial pursuit as unmixed blessing. On the contrary, he argued with equal vigour that in the pursuit of their business interests, traders might threaten social welfare. In a much similar way that multilateral corporations are accused today of influencing governments and intergovernmental organizations such as the WTO, Adam Smith was unrestrained in criticizing merchants and manufacturers, who, he argued, were intent to highjack state power to promote their narrow business interests. Smith held that traders would seek to maximize profit even when that entails dire social consequences, like exporting grain at a time when there is acute famine at home.²⁹

Adam Smith was concerned as much for fairness as for freedom. He advocated for the wealth of a nation shared among the people, as opposed to one monopolized by the powerful few.³⁰ Beyond the question of what kind of trade policy best promotes national economic growth, the issue of how economic gains are distributed is central in his criticism of *mercantilism*. He provided extensive expositions of the conflict of interest between that of wealthy traders and manufacturers on the one hand and of the public on the other. Indeed, he argued that the *mercantile* system was sustained by powerful merchants and manufacturers to serve their narrow business interests at the expense of the society. He reiterated the threat powerful merchants pose to the interests of workers, smaller merchants, consumers, the integrity of the market system, and by extension, to the overall socioeconomic prosperity. He observed:

It cannot be very difficult to determine who have been the contrivers of this whole mercantilist system; not the consumers, we may believe, whose interest has been entirely neglected; but the producers whose interest has been so carefully attended to; and among this latter class our merchants and manufacturers have been by far the principal architects. In the mercantile regulations...the interests of our manufacturers have been most peculiarly attended to; and the interest, not so much of the consumers, as that of some sets of producers, has been sacrificed to it.³¹

The *Wealth of Nations* rigorously rejects a market system dominated by few powerful merchants and manufacturers (corporate interests of the time) that could influence government legislation. What it advocates is a market system that offers a fair chance for all traders, big and small.³² Contrary to the conventional depiction of Smith as an advocate of minimal state presence in the economy, he argued that the state should maintain command over the marketplace— put a check on powerful traders and ensure

fair competition. Smith's rejection of market system where powerful traders could reap unjust benefits by maneuvering government machineries is unequivocal: He wrote:

It is not by their work, but by the complete work of the weavers, that our great master manufacturers make their profits... By extorting from the legislature bounties upon the exportation of their own linen, high duties upon the importation of all foreign linen, and a total prohibition of the home consumption of some sorts of French linen, they endeavor to sell their own goods as dear as possible... They are as intent to keep down the wages of their own weavers, as the earnings of the poor spinners, and it is by no means for the benefit of the workman... It is the industry which is carried on for the benefit of the rich and the powerful, that is principally encouraged by our mercantilist system. That which is carried on for the benefit of the poor and the indigent is too often, either neglected, or opposed.³³

In sum, Smith argued that the mercantile system was animated by merchants, who would constantly strive to monopolize the market by twisting the state machinery or even in violation of the law.³⁴ Hence, a free trade in which not only the rich and the powerful, but also 'the poor and the indigent' could benefit logically requires checking the monopolistic derives of merchants. The kind of free trade Adam Smith envisaged was not, therefore, unregulated trade. It presupposes a government that is capable of protecting the interest of the society against powerful traders so that the productive efficiency of free trade can be harnessed towards social ends.³⁵ It is thus fair to conclude that Adam Smith observed twin virtues of free trade. One, free trade spurs economic growth; and two, free trade advances distributional parity by neutralizing the monopolistic propensity of powerful merchants (the Amazons and the Googles of the time).

The crucial question here is this: does the WTO system embrace the above twin virtues of free trade as powerfully articulated by Adam Smith? The answer to this question depends, among other things, on whether or not the WTO rules are tailored to the interests of powerful corporations, rather than the peoples of the world; whether or not powerful corporations influence the rules and operations of the WTO (in much the same way as powerful traders and manufacturers influenced government policies during Adam Smith's time); whether or not concrete mechanisms are in place to ensure not only that trade is liberalized but also that the fruits of free trade are distributed equitably; and whether or not the rights and interests of those who have little or no influence on the course of trade are taken into account.

III. A Retreat from Embedded Liberalism

In the immediate aftermath of WWII, peace was the overriding global agenda. The multilateral trading architecture was designed as part of the overall strategy for peace and stability.³⁶ It was agreed that free and fair trade would make the world prosperous, and safer too. That means the traditional economic case for free trade is now backed by an even more compelling international public policy – peace. Of course, there is not much novelty in the recognition of the relations between trade and peace. Classical thinkers have articulated that greater freedom in the pursuit of commerce would provide a secure foundation for international peace, stability and prosperity.³⁷ Montesquieu, for example, stated: ‘[t]he natural effect of commerce is to bring about peace. Two nations that trade with each other become reciprocally dependent; if one has an interest in buying, the other has an interest in selling, and all unions are founded on mutual needs.’³⁸

The postwar trading system was informed by what is known as ‘embedded liberalism.’³⁹ Virtually all the political foundations for the postwar international organizations—from the ‘bilateral’ Atlantic Charter to the universal United Nations (UN) Charter and the ill-fated Havana Charter—envisage a comprehensive approach to socioeconomic issues, and establish responsibilities for states to cooperate. Among others, the Atlantic Charter, for instance, sought to:

[F]urther the enjoyment by all states, great or small, victor or vanquished, of access, on equal terms to the trade and to the raw materials...[and] bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labor standards, economic development and social security.⁴⁰

President Roosevelt left no ambiguity where he stood as regards the vitality of socioeconomic security for a peaceful and prosperous postwar world. The United States was the major architect in the design of the postwar world order and meant that Roosevelt’s vision was mainly reflected in the UN Charter as well as in the failed ITO Charter.⁴¹ There are many explanations for the unprecedented emphasis on socioeconomic issues at the time. First, it is argued that the reconstruction of wartime destructions naturally required interventionist state policies. Second, with the memory of how the economic depression in the 1930s emboldened nationalists, who exploited popular frustration, fresh in mind, adequately addressing socioeconomic issues was an imperative to preserve peace and even democratic values. It is also argued that the economic depression and the socioeconomic chaos that followed convinced leaders that the governments’ own legitimacy required addressing the needs of the poor.⁴² It is also apparent that communism has put significant pressure on Western liberalism to embrace welfarism. In other words, the quest for domestic order and tranquility in the face of

postwar social desperation and communism in the east required adequately addressing of social issues within the framework of market liberalism.⁴³ With respect to labour rights in particular, the International Labor Organization (ILO) had, from the beginning, maintained that ‘universal peace can be established only if it is based upon social justice.’⁴⁴ At the end of the war, there were simply more reasons than ever before to reconcile trade and economic policies in general with social issues.

A. The ITO

The UN Charter envisions an international order where states strive to address problems of economic, social, cultural or humanitarian character through cooperation. It also establishes the basic institutional framework necessary to achieve those goals. In addition to the principal organs it establishes, the Charter envisages the establishment of various specialized agencies that are aimed at facilitating international cooperation in economic, social, cultural, educational, health, and similar fields.⁴⁵ The UN Charter entrusts the Economic and Social Council (ECOSOC) with the task of coordinating the various specialized agencies of the UN, among other things.⁴⁶ Responsibilities of ECOSOC include undertaking studies and formulating policy recommendations with a view to facilitating the realization of the goals stated under Art 55 of the UN Charter; namely, lifting up living standards, universal respect for human rights, and enhancing international cooperation. In its very first meeting on February 18, 1946 ECOSOC adopted a resolution calling for an international conference on trade and employment.⁴⁷ Accordingly, a preparatory committee was set up and a series of negotiations took place until it came to culmination in 1948 with the adoption of the ITO Charter in Havana, Cuba. The Havana Charter, which is the Final Act of the UN Conference on Trade and Employment, envisioned an organization (i.e., ITO) that would comprehensively deal with trade, employment and development issues within the UN framework.

Chronologically, the ITO Charter was negotiated subsequent to the establishment of the Bretton Woods institutions. Yet, it is well documented that the idea of establishing an international trade organization was entertained at the 1944 Bretton Woods Conference.⁴⁸ Yet, whether the ITO was meant to constitute a third leg of the Bretton Woods system is not clear. What is rather undisputed is that all of these institutions were basically designed to promote international economic cooperation.⁴⁹ Crucially, however, the ITO never came into existence mainly because the US Congress did not ratify it (although it was the United States that submitted the initial draft).

At about the same time as the ITO Charter was being negotiated, a related, albeit less ambitious, negotiation resulted in one of the most remarkable agreements, the General Agreement on Tariffs and Trade (GATT). Although the ITO was meant to serve as an umbrella institution which would administer the GATT and other issues enshrined

in its Charter, the GATT had already entered into force by virtue of the Protocol of Provisional Application (PPA) prior to the Havana Conference. As a result, while the failure of the ITO project kept social and development issues largely at bay, GATT would prove to be a remarkable document and *de facto* institution for decades until it eventually evolved into the WTO in 1995.

B. The WTO, Not a Delayed ITO

The WTO is radically different from the ill-fated ITO. Institutionally, the WTO, unlike the ITO, which, if it came to life, would have been a UN specialized agency, was created outside of the UN framework. Substantively, employment and development issues envisioned in the original ITO agenda, were effectively left out of the operative rules of the WTO. By contrast, all of the so-called *new issues* added into the multilateral trading regime at the Uruguay Round, i.e. TRIPS, trade-related investment measures (TRIMS), and trade in services represent the longstanding interests and aspiration of rich nations, and were by and large outcomes of corporate lobbying power.⁵⁰

Of these, the TRIPS Agreement has provoked the most pronounced public anger. At least three factors have contributed to that. Technically, TRIPS is not about trade per se; it is about trade related issues of intellectual property (IP) rights. Thus, rights advocates ask: if IP is included as part of the WTO deal, then why not labour rights? That is even more puzzling in view of the fact that labour rights have more intimate and historical connections to trade than IP.⁵¹ Second, the TRIPS Agreement is not even about liberalization; it is the contrary – monopoly rights protection. As a result, it does not generally lend itself to some of the compelling justifications for free trade. Also, while technology transfer has always been considered as one of benefits of free trade, many believe the TRIPS Agreement reinforces the prevailing ‘knowledge gap.’⁵² Third, the TRIPS, pharmaceutical patents in particular, have life and death consequences for the world’s poor. The much publicized controversy over generic drugs in the late 1990s is a glaring evidence.⁵³ Following the incorporation of the TRIPS agreement into the GATT/WTO system, emerging economies were forced, under threat of sanctions (mainly by the United States), to change their patent laws. However, the spread of the HIV/AIDS pandemic, particularly in developing countries, put some countries in a great dilemma. Antiretroviral drugs sold by Western pharmaceuticals were beyond the reach of most AIDS patients in the developing world. This being a matter of life and death, some developing countries that were hit the hardest and had the manufacturing base decided to combat the pandemic by, among other things, taking measures that aimed at keeping drugs available, even if that meant disregarding patent laws. South Africa did so.⁵⁴ Brazil, India, Thailand, and others followed suit. These measures angered the United States and the European Union (EU). The United States responded by partially

withholding preferential tariff treatment under the General System of Preferences and even threatened to use the notorious Section 301 of its Trade ACT of 1974 against South Africa.⁵⁵ Pharmaceutical firms brought legal action against the South African government. The latter defended along the lines of its legal (constitutional and international) obligation to fulfill the health rights of its citizens by facilitating the availability of life-saving generic drugs at a fraction of the price for which the drugs were sold by the Western drug companies.⁵⁶ The profit *versus* public health controversy generated by the TRIPS amplified the broader social discontent against the WTO. Some even came to view the TRIPS as an instrument of *neocolonialism*.⁵⁷

It should not come as a surprise therefore that now history is repeating itself as the profit of a handful pharmaceutical companies takes precedence over human lives in relation to the COVID-19 vaccine. Repeated calls from developing countries and UN human rights agencies for the suspension of the TRIPS obligations for the duration of the pandemic have so far fallen on deaf ears. When it conflicts with private property rights, states conveniently forget their obligation under international human rights law to respect, protect and promote the right to health, both individually and through cooperation, including ‘enhancement of immunization programmes.’⁵⁸ Yet, at the WTO, governments essentially represent the interests of their respective commercial communities, while the poor have neither standing nor representation.⁵⁹

C. Distributional Effects

For trade advocates, few countries provide a better example to demonstrate the virtues of trade liberalization than South Korea. ‘Take South Korea. Thirty years ago, it was as poor as Ghana; now it is as rich as Portugal,’ claimed Mike Moore, former Director General of the World Trade Organization (WTO).⁶⁰ While the relative role of trade *vis-à-vis* other factors in any nation’s economic success is debatable, few would dismiss Moore’s claim altogether. For Lee Kyung-hae, a well-known Korean farmer, however, neoliberal trade represented a perilous threat for which he paid the ultimate price. Lee was an outstanding farmer, awarded by his government and by the United Nations (UN).⁶¹ He played a leading role in the formation and leadership of a farmers’ association in Korea. He was also a member of provincial legislature. In whatever position he held, Lee had never relented from voicing against WTO and neoliberalism. Before he reportedly stabbed himself to death at the WTO Ministerial Conference in Cancún, he called on his fellow farmers to fight against neoliberalization, and challenged WTO negotiators for whom they were negotiating: for the people, or for themselves?⁶²

For Lee and millions of smallholders around the world and working class people, the familiar argument that opening markets increases the aggregate economic welfare

of nations is largely inconsequential.⁶³ Beyond aggregate numbers and volumes, the question of who benefits and who pays the price is critical. In fact, that is the crux of the debate about trade liberalization in general. Trade affects different nations and different interests within nations differently. Proponents of liberalization maintain that even though some sections of society may be victimized, opening markets is still ‘the surest way...to help the poor.’⁶⁴ That in essence is the trade variant of the tried and failed trickle-down economics. There has to be a mechanism whereby individuals affected by liberalization can get redress. Otherwise, the whole enterprise will be illegitimate if some sections of society were to pay the price in order for others to reap the benefits. Trade, like other state policies, has to be reconciled with preexisting entitlements of individuals.

The WTO itself concedes that in trade, like in any competition, some win while others lose, temporarily or permanently.⁶⁵ That is however generally considered as an incidental cost of liberalization. There should be no equivocation, however, that a trade policy that compromises individuals’ entitlements without any meaningful remedy is an injustice. The amount of aggregate gains derived to the rest of the society does not make such violations any legitimate. As we shall see a little later, it is a question of justice that the burden and benefits of liberalization be shared fairly, and that requires clearly defined rights and obligations as well as accountability structures through which victims can get redress.

In general, there is little disagreement that trade may wreck individuals’ ability to provide for themselves and their families. Even where a trading nation fares well overall, some sections of society may still find it difficult to support themselves.⁶⁶ That happens because comparative advantage dictates that nations should focus on those sectors in which they have competitive edge (at the expense of other sectors). ‘New export opportunities and the increased competition from imports will lead to the expansion of some activities and the reduction of others...some individuals may gain and others may lose in the process.’⁶⁷ However, while efficiency and economic welfare may justify the pursuit of a particular trade policy as opposed to another, no amount of welfare gain justifies a trade policy that results in the violation of individuals’ entitlements. Therefore, trade rules must necessarily be made consistent with individual’s preexisting entitlements.

Almost every aspect of international trade may impact upon the lives of people, adversely or otherwise. Both liberalization and distortions associated with protectionism can compromise individuals’ ability to lead a decent life. First, trade affects incomes (both in absolute and relative terms) as well as expenditures (through its effect on the price of goods).⁶⁸ In trade, as in any competitive game, some gain,

others lose. The poor and the powerless who had no voice in the design of trade rules are likely to lose out. In human terms this may mean, among other things, loss of jobs and livelihoods, starvation, and even loss of life. Empirical studies show that smallholding farmers and family businesses, who are driven out of the market due to cheap (even subsidized) imports, and the urban working class, who are out of work as the result of manufacturing plants moving elsewhere in search of cheap labour or are simply unable to cope with the rising rent and commodities with stagnant or declining wages, are typical victims.⁶⁹ Such repercussions are not, of course, always straightforward. Cheap imports of agricultural products do, for example, hurt local producers by pushing food prices down, but cheap food is good for the needs of poor consumers.

Beyond the repercussions of external competition, trade also indirectly affects the poor through its influence on government revenues, spending, and other policy choices. Trade has a veritable regulatory chill effect. To boost their competitiveness and export earnings, states are tempted to relax social and environmental standards.⁷⁰ Productive resources, such as land are increasingly being diverted away from growing staple foods for the poor towards cultivating livestock feed that would go to satisfy the dietary taste of the rich (i.e. expensive protein-rich animal products) and biofuel production. In so doing, states pay little regard to the environment, as the unprecedented destruction of the Amazon rainforest in recent years illustrates. In other words, the theory of *comparative advantage* can be animated to the benefit of a nation only if that nation focuses on sectors in which it has comparative efficiency. That obviously requires the reallocation of resources to those sectors. The implication of resource reallocation is that other sectors in which the nation has comparative disadvantage will inevitably suffer, which in turn may mean that jobs are lost, people's lives and livelihoods are shattered, and much more. Raising the benefits of some group of people at the expense of another group is inconsistent with the essence of justice.

D. A Question of Justice

Aristotle identified two categories of justice: one that seeks to redress past wrongs (compensatory justice); and another which is concerned with a fair and just distribution of honors, wealth, income, and other valuables among members of the body politic.⁷¹ Of the two, the second one is more complex. Even within the camp of moral liberalism, a libertarian and an 'egalitarian liberal' sharply differ on the question of distributive justice.⁷² However, there is no basic disagreement among philosophers that under ordinary circumstances anyone who has been made worse off by some positive action ought to be compensated. Even libertarians concede (in fact they advocate) that anyone whose rights has been violated by another, be it his neighbour or his

government, is entitled to commensurate compensation. That is simply because it is now a question of compensating the harm done, not of redistribution of income or wealth in the ordinary sense. In what follows, I will argue why those whose preexisting entitlements have been compromised by trade measures are entitled to adequate compensation.

According to John Rawls, no amount of welfare gain to the society as a whole justifies sacrificing an individual's freedom.⁷³ It may be argued that Rawls basic rights and liberties that are the subject of the first principle of justice (which are beyond cost-benefit considerations) concern traditional political rights and civil liberties, such as freedom of speech and assembly, liberty of conscience and freedom of thought, the right to hold personal property, among others.⁷⁴ It cannot be argued, however, that any of these freedoms is more basic than the freedom to earn one's livelihood. 'Of what use is the right to free speech to those who are starving...?'⁷⁵ Indeed, if at all some freedoms have priority over others by virtue of their being more basic, it is difficult to claim that any freedom has priority over the freedom to feed oneself without contradicting nature. It should be noted also that none of the above cases involves a question of distribution, which is the subject of the Rawls' second principle of justice.⁷⁶

From the utilitarian perspective, the question of whether the above hypothetical scenarios involve injustice depends on one's interpretation of the doctrine. According to Rawls, utilitarianism is essentially *teleological* in that it prioritizes the good over the right.⁷⁷ Thus, welfare generated to the satisfaction of the greatest number may not justify the loss sustained by the few. That seems indeed the main ground for Rawls's rejection of utilitarianism.⁷⁸ Kymlicka believes that Rawls's characterization of utilitarianism is seriously flawed.⁷⁹ 'The most natural and compelling form of utilitarianism is not teleological, and does not involve any "antiindividualistic" generalization from the individual to society,' he argues.⁸⁰ That is, contrary to Rawls's depiction, utilitarianism does not admit sacrificing the interests of some to maximize those of others. Accordingly, even from utilitarian perspective, the above hypothetical scenarios may constitute manifest cases of injustice.

Note that both Rawls and Kymlicka agree that each member of the community is entitled to equal rights. Accordingly, they both reject the idea of sacrificing the interests of some in order to promote those of others. Their disagreement is on the question of whether utilitarianism is essentially *teleological*. Whichever interpretation is correct, the WTO does not seem to adhere to utilitarian principles anyway. Indeed, the main accusation against trade under the WTO is not that the few are being sacrificed to maximize the interests of the majority; it is the other way round – that 'too few share in its benefits,' while the greatest number are left out in the cold. A world order where the

number of billionaires and that of poverty levels grow at the same time does not simply fit into utilitarian ethos. The WTO may not be to blame for global poverty. It contributes, however, to the perpetuation of the *status quo* by exacerbating inequality, thereby compounding the plight of the poor. Conversely, neither the desire nor the mechanisms to ensure that the majority share from the fruits of trade is evident. There is no meaningful, deliberate, and purposeful effort to narrow down the bizarre income gap between and within nations. In fact, it appears clear that nothing has condemned the Doha Round as the introduction of the notion of development. Doha is (was?) the first 'development round' in GATT/WTO history. Tariff reduction and expansion of trade had practically been the goal of trade rounds during GATT era. The Doha Development Round promised a decisive break from that corporatist tradition and view of trade, not as an end itself, but as a means to foster development and prosperity for all. The declaration that 'development is at the heart of the round' seem to have given rise to high expectations in the developing world.⁸¹ The expectation is however in stark contrast with what developed nations are willing to concede.⁸²

E. Rectifying the Damage: Accountability

Once it is conceded that WTO trade may compromise individual's entitlements, even as it enhances the fortunes of others, it remains to reason that such violations must be rectified. On the other hand, although liberalization involves risks, there is a prevailing consensus that trade can be instrumental to the overall socioeconomic progress. Hence, protectionism cannot and should not be the way forward. Indeed, criticisms against the WTO-led trade has not been for a reversion to protectionism, but for a substantively fair-trade arrangement that benefits everyone, rather than just the powerful few. As a matter of justice, both the benefits and the burden of trade must be shared equitably.

As stated above, the WTO concedes that trade may reinforce economic inequality both within and between nations.⁸³ It maintains, however, that since trade is a positive-sum game overall, 'everybody can be made better off if appropriate domestic policies are put into place.'⁸⁴ According to the WTO, although trade liberalization may devastate the livelihoods of individuals, the decision as to whether the damage caused should be made good is the responsibility of national governments.⁸⁵ However, there are fundamental reasons why that may not work. First, trade may not necessarily be a positive sum-game for all member states.⁸⁶ Second, WTO trade liberalization is clearly underpinned by a neoliberal economic thought that prescribes a shift in the role of politics from a pursuit of common goals to one of facilitating the pursuit of private ends.⁸⁷ Accordingly, trade liberalization is accompanied by privatization and at times even austerity measures prescribed by international financial institutions. Indeed, a country that seeks accession to the WTO must expect to be pressed hard by the IMF to

take comprehensive privatization measures.⁸⁸ The diminished role of the state in the economy results in weakening its practical ability to provide safeguards for the poor.

Third, and most importantly, the WTO rules constrain member states' ability to discharge their obligations domestically. While WTO agreements impose international obligations, it is a basic principle of international law (reinforced by Art 27 of the Vienna Convention on the Law of Treaties) that national law or policy cannot be relied upon to avoid international obligations. If that still leaves any doubts, Art XVI (4) of the Marrakesh Agreement expressly obliges member states to ensure that their internal laws, regulations and procedures are consistent with their WTO obligations.⁸⁹ Thus, WTO members have to ensure that any legislation or policy that is aimed at enhancing socioeconomic conditions is consistent with WTO commitments rather than the other way round. Given the relatively stronger accountability mechanism under the WTO, member States are likely to prioritize their WTO obligations over their social and environmental obligations. In the face of a deadly COVID-19 virus, WTO members must adhere to their obligations under the TRIPS even if such inaction means condemning people to die.

F. Justice as the Advancement of Welfare

According to utilitarian doctrine, human beings are governed by the 'laws' of pain and pleasure. In anything we do, we try to avoid/minimize pain and maximize pleasure. Accordingly, a just system would be one that produces the greatest happiness for the greatest number. It would be one that eliminates or at least reduces poverty, which is an evil that diminishes happiness, as Jeremy Bentham, regarded as the founder of utilitarianism, recognizes.⁹⁰

Trade liberalization is almost exclusively justified on utilitarian grounds of collective welfare maximization and peace.⁹¹ However, the philosophical foundation of the WTO does not map neatly into utilitarian principles. Indeed, it seems inconvenient for the WTO to adhere to utilitarian principles. The number of people who live in poverty far exceeds the number of those who live in affluence. Utilitarian principles require promoting the interests of the greatest number of people as opposed to the powerful few, which is almost the reverse of what the WTO's *modus operandi* shows. WTO agreements, such as TRIPS, which obviously restrict the dissemination of technology (including the much-needed agricultural and pharmaceutical technologies) runs counter to utilitarian ethos.⁹² And this has life and death consequences.

G. Justice as the Protection of Freedom

John Locke, a Christian, believed that it was unjust to own in excess of what one can use (although this is often forgotten, as Lockean theory is typically invoked to justify

the libertarian conception of private property). Although Locke believed that individuals were responsible for their own poverty, he nonetheless maintained that where individuals are unable to support themselves, government had a moral obligation to assist them since God's law obliges the preservation of mankind.⁹³ For Rousseau, fair distribution of material wealth is the very foundation of equality of freedoms. Rousseau, like Plato, sees extreme wealth and poverty as ruinous. He argues, for example, that the state ought to root out luxuries, which 'corrupts both the rich and the poor, the former by possession, the latter by covetousness.'⁹⁴

John Rawls, like Immanuel Kant, rejects utilitarianism.⁹⁵ He believes that utilitarianism is contrary to justice as it proceeds without providing 'satisfactory account of the basic rights and liberties of citizens as free and equal persons, a requirement of absolutely first importance for an account of democratic institutions.'⁹⁶ As an alternative to utilitarian thought, Rawls provides his theory of *justice as fairness*. Justice as fairness emerges out of a hypothetical social contract in an original position of equality.⁹⁷ The novelty of Rawls's conception of social contract lies in that principles of justice are chosen behind a *veil of ignorance*. The notion of *fairness* is not only central to Rawls's conception of justice, but it is also foundational in the sense that it is the bedrock upon which the principles of justice are developed. To ensure a fair agreement – one in which no one can influence terms to favour his particular conditions and interests—everyone is prevented from knowing anything about his identity or particular circumstances: be it gender, class, race, religion, political affiliation, health condition, education, or whatsoever.⁹⁸ Yet, although completely ignorant of how they will wind up in society, individuals at the initial position are still rational beings, and thus would desire to promote their interests. According to Rawls, two principles of justice would emerge from a hypothetical social contract. The first one would be everyone would agree to have equal basic rights and liberties.⁹⁹ Then comes the second principle of justice which concerns social utility and welfare. In this, parties to the initial agreement would rationally agree to have equal opportunities, while socioeconomic inequalities are permitted only where they serve the interests of the least well-off members of the society.¹⁰⁰

Of course, the *social contract* is only hypothetical. Neither states nor global institutions emerged out of a fair initial agreement of a kind that underpins Rawls' theory of justice. And that, for critics, makes Rawls' theory of justice (and by extension the entire social contract edifice) seriously defective.¹⁰¹ Advocates of *comparative justice* generally believe that the goal of theory of justice should be identifying feasible ways of mitigating manifest injustices of the real world than romanticizing what a perfectly just world would be like.¹⁰² However, it is possible that the two approaches of

justice are more complementary than they are competing. To say that perfect justice is unattainable should not be a ground to reject the powerful insight it provides regarding how institutions ought to be structured. It is undeniable that there was nothing like Rawls' conception of *foundational fairness* in the establishment of any state, the WTO, or any other institution (it seems self-evident that some are always more equal than others in shaping institutions, be it at local or global levels). Yet, reality may not always be the right lens through which one shall evaluate the validity of a theory rather than the other way round. Rawls' theory of justice provides a brilliant insight to evaluate the fairness of institutions, and thus to reform or replace them, if necessary. Imagine, for example, a WTO created under circumstances whereby member states were prevented from knowing their respective powers, opulence or population, comparative advantage or geographical location, or any particular circumstances; where there are no special interest and lobby groups, but every state tries to get a fair deal under an imaginary state of equality. Imagine WTO rules negotiated behind a *veil of ignorance* whereby delegates know neither the country they represent nor their own place in the society they represent. Since no one would wish to risk the possibility of winding up as one of the billions of people deprived of available vaccine to a deadly pandemic or of a victim of deindustrialization, it is fair to believe, that negotiators would craft agreements that would enhance substantive equality; that facilitate the dissemination of technical and scientific knowledge, as opposed to those ensuring monopoly (as TRIPS largely represents); that genuinely seek to fulfill minimum conditions for all, etc. In sum, once it is conceded that trade may directly undermine individuals' entitlements to acquire adequate livelihood, then it is obvious that WTO law in general should be made coherent with the preexisting entitlements of people.

IV Reinventing the WTO

Global trade is a complex phenomenon, impacting upon virtually every aspect of our lives. As such, discontents against the WTO-led trade are complex and multifaceted. Generally, however, the debate goes in two related arenas. At the state level, there is a heightened difference among member states, as shown by the dismal failure to conclude Doha Round or any other meaningful agreement since the organization was established a quarter of a century ago. Both developing countries that feel disadvantaged by past agreements and industrialized nations who have lost millions of jobs as their corporations moved their productions abroad (and as a consequence are facing social and political backlash at home), find it difficult to make any further concessions. On the contrary, some members are reverting back to protectionism, as the recent US-China tit-for-tat tariffs have demonstrated. Among the general public, there has always been a

suspicion of the WTO, which many view as a symbol of global inequalities that spearheads the diversion of the *wealth of nations* into the *wealth of corporations*.¹⁰³

A. From Mercantilist Competition to Cooperation

The GATT/WTO is statist in structure. As such, there is veritable mercantilist competition among member states who seek to expand their respective exports and minimize their imports by engaging in all sorts of trade distorting practices. In some sectors, such as agricultural trade (in which poorer member states have comparative advantage), protectionism and trade distorting practices (such as domestic support and even export subsidies) are norms rather than exceptions.¹⁰⁴

Historically, developing countries had little influence in shaping trade rules. Despite a one nation, one vote system, the requirement of unanimity means that negotiations were more important than the actual voting. And given their limited market share, they always had limited leverage around the negotiating table.¹⁰⁵ As a result, substantive trade rules are lopsided against the interests developing countries. Although many poor states joined the GATT in the early 1960s, it was apparent that with the prevailing institutional structure, they would not fare well in the global trade competition. As a matter of fact, some developing countries witnessed a decline in their export earnings after joining the GATT.¹⁰⁶ In an attempt to mitigate the effect of their historical disadvantages, developing countries have since been calling for reforms. The validity of their demands was corroborated by the GATT's own investigations.¹⁰⁷ However, the GATT could not address their demands. As a result, they turned to the UN to push for a structural change in the global economic order. That resulted in the establishment of the United Nations Conference on Trade and Development (UNCTAD) in 1964. The UNCTAD was established with the principal objective of integrating developing countries into the world economic system by improving the trading structure and other international economic institutions that were crafted at a time when many developing members did not even exist as independent states. Accordingly, developing countries lodged various demands, including better trade terms to their exports, which mainly constituted primary goods; the removal of protectionist measures (particularly agricultural subsidies) by rich countries; nonreciprocal trade preferences; and so on.¹⁰⁸ Taking advantage of their numerical advantage, they pushed through the General Assembly resolutions and declarations that were aimed at reforming existing global economic relations, the most ambitious of which was the 1974 General Assembly Declaration on the Establishment of a New International Economic Order (NIEO).¹⁰⁹

The GATT contracting parties added provisions dealing with 'trade and development,' as Part IV of the GATT in 1965. The added agreement recalls the fundamental objectives of the GATT, namely raising living standards of the peoples of

all contracting parties, among others, and recognizes that the attainment of those objectives requires according preferential treatment to least developed contracting parties.¹¹⁰ The persistent pressure of developing countries also resulted in the adoption by the GATT of a Generalized System of Preferences (GSP) in 1971.¹¹¹ As an exception to the principle of non-discrimination, the GSP permits granting nonreciprocal tariff preferences to products from developing countries for an initial trial period of ten years.¹¹² However, the overall structure of global trade remains biased against less powerful economies.

The very culture of negotiation at the WTO excludes many members from ‘important aspects of deal-brokering’ that take places in the ‘green room.’¹¹³ The Uruguay Round that created the WTO was not any different, as it was largely an outcome of a political struggle between the US and the European Community (EC).¹¹⁴ In reality, therefore, some members are more equal than others. And member states are driven by a mercantilist competition to maximize export and limit imports, as the current trade war between the world’s biggest economic powers demonstrates. The keen drive for national wealth aggrandizement at all costs is all but palpable. That explains the elevation of profit over human lives, as evidenced by the opposition to a temporary waiver of IP rights to facilitate global access to COVID-19 vaccines. It must be acknowledged, therefore, that the WTO carries the vestiges of mercantilism. Indeed, the WTO’s *modus operandi* mirrors more *mercantilism* than the alluring goals stated in its own Preamble.

It’s an imperative, therefore, that WTO rules are reconciled with the classical justifications for free trade, as advocated by the likes of Adam Smith as well as organization’s own stated goals. That requires reconfiguring the WTO system away from neoliberalism and embracing embedded liberalism, along the lines of the original postwar vision. It requires addressing the historical disadvantages of developing nations, especially in labour intensive products, such as agriculture. It means reconsidering whether non-trade issues, such as the TRIPS and TRIMS, belong in the WTO or at least reconciling them with the socioeconomic obligations of member states. It also means incorporating core labour standards and environmental considerations, which goes a great length in addressing the longstanding demands of industrialized nations. It takes reconciling GATT/WTO agreements to the realities of the 21st century. Absent meaningful reforms, member states are likely to continue to look away to regional trade alliances, further undermining the WTO.

B. From Wealth of Nations to Wealth of the People

It is unarguable that trade liberalization and the single-minded pursuit of profit maximization has dispossessed many of their livelihoods. Millions of workers in rich

countries have fallen victims of deindustrialization (dealing a blow to their economic security and self-esteem). Competitiveness exigencies and the quest for profit means their counterparts in poor countries often work under appalling conditions for low wages. Corporation that move their production abroad have little or no obligations either to the workers they leave behind nor to those in their new destinations. Innumerable small businesses and small holding farmers who are unable to cope with cheap imports have been driven out of the market as a result of trade liberalization.¹¹⁵ The quest for competitiveness and the diminished role of the states in the economy (which WTO membership requires) means their policy options and practical ability to safeguard those who are left behind are limited. Importantly, while the WTO was deliberately created outside of the UN framework, how its complex legal regime fits into the broader corpus of public international has not been articulated, apparently out of policy choice rather than an oversight. As result, WTO members are reluctant to abrogate from their WTO obligations even when their socioeconomic obligations call for action. That is precisely why even when it's a matter of life and death for millions, developing countries are only hoping that the WTO would grant them temporarily waiver of their TRIPS obligations to provide desperately needed vaccines to the COVID-19 virus.¹¹⁶

‘People are the real wealth of a nation. The basic objective of development is to create an enabling environment for people to enjoy long, healthy and creative lives. This simple truth...is often forgotten in the immediate concern with the accumulation of commodities and financial wealth,’ reads the opening lines of the first *Human Development Report* by the UNDP.¹¹⁷ Indeed, regardless of the intellectual persuasiveness of the theory of *comparative advantage*, or any other theory, both trade and its economic gains remain a means to achieving far-reaching socioeconomic ends. The whole rhetoric about the virtues of trade would be empty unless it is shown that not only traders but also the whole society benefits from it. It should be remembered that even mercantilism had tremendous economic benefit for traders (at least for the powerful few), as Adam Smith observed. Thus, for the economic justification of free trade to be complete, the issue of equitable distribution of the returns to trade must be addressed. Economic efficiency, which is the chief justification for international trade agreements and institutions, explains why nations may benefit from liberalized trade; it does not, however, show how the aggregate economic growth translates into improved living standards for the society at large. It leaves the question of distribution unaddressed. Equitable distribution absent, comparative advantage shows nothing more than an enlightened mercantilism.

The quest for a fair distribution of the dividends of trade is not new. As discussed above, the normative and welfare aspects of trade were at the heart of classical trade theories. Indeed, the chief criticism against *mercantilist theory* was that it conflated means and ends in the sense that mere accumulation ‘of gold or other treasures would not improve a country’s living standards.’¹¹⁸ In other words, the economic rationale for free trade is underpinned by the assumption that consumers ultimately benefit from free trade. Modern free trade theories invariably argue, based on the assumption that trade not only enhances the potential real national product of nations, but also ultimately leads to higher standards of living – all over the world.¹¹⁹ Conversely, one of the strongest arguments against trade barriers, such as tariffs and quotas, is based on the social costs such barriers involve in terms of exposing consumers to higher price.¹²⁰ As stated above, the WTO itself views trade as a means to enhance far-reaching socioeconomic objectives.

However, even if all the assumptions of the theory of comparative advantage perfectly hold, and thus potential real national product of nations is enhanced, there is no guarantee that the living standards of people will be improved. Indeed, the global economy has grown to record levels over the last several decades. Such economic growth is, however, eclipsed by an astonishing level of income and wealth disparity, between and within nations.¹²¹ Over the last four decades, the richest 0.1 percent has captured as much income as the bottom half of the global population.¹²² Since the pandemic hit, this obscene level of income inequality has grown even higher, as billionaires amassed trillions as the poor and the middle class struggle to make ends meet.¹²³ Just a portion of the income captured by the top ten richest billionaires since the start of the pandemic is enough to pay for the COVID-19 vaccine for everyone.¹²⁴ When it comes wealth inequality, the figure is even more extraordinary. In 2015, for example, just 62 individuals in the world held as much wealth as the bottom half of humanity.¹²⁵ These disparities are systemic and structural both at national and international levels and are results of deliberately flawed economic and trade systems. It is not simply that rich and the powerful have less chance of dying of preventable disease than the poor, but it is also the case that their children have a far better access to education and thus to economic, social, and political power, ensuring the perpetuation of inequality across generations. It is likewise obvious that multinational corporations in industrialized countries (that, as private entities, are not WTO members) wield greater power and influence over WTO rules and its operations than most WTO member countries. And a WTO system that ranks the profit of a handful corporations above the lives of millions cannot hope to enjoy popular legitimacy.

Therefore, if trade is meant to help improve the standards of living of people, as the WTO claims, it is an imperative to put people at the center of trade agenda because standards of living are ultimately about people, not just national economic statistics. It is well established now that national economic growth, as traditionally gauged based on a given country's gross domestic product (GDP) grossly fails to show the lives of people in that country.¹²⁶ A nation's GDP does not show the prevalence of poverty or human suffering, but the relative opulence of that nation as a whole. WTO-led trade does not enjoy credibility (as well as it should) with the populace at large chiefly because free trade or the way trade is liberalized and pursued rests uncomfortably *vis-à-vis* nontrade values. Employment issues, development, food security and environmental concerns constitute some of the most common *non-trade values* which, many argue, have been either been neglected or are undermined by the pursuit of trade.

Individuals may not have standing or representation at the WTO. But power ultimately lies with the people. Ordinary people have always understood that their interests were not represented at the WTO. Indeed, before the protest in Seattle, there was generally limited intellectual scrutiny on the subject outside of the WTO circle and the few experts in the field concerning the multifaceted strands of social and environmental concerns associated with trade liberalization. Seattle was not even the first protest of its kind.¹²⁷ People, especially in developing world, had been protesting for decades against neoliberal trade policies and programs imposed upon them.¹²⁸ Not long before Seattle, many protested against the Multilateral Agreement on Investment (MAI) negotiations, contributing to the abandonment of the project in 1998. Similar protests were staged against the North American Free Trade Agreement (NAFTA) before and after its ratification in 1994.¹²⁹ If anything, therefore, Seattle symbolized merely the 'globalization of anti-globalization movements.'¹³⁰ People may not be constantly protesting against the WTO any longer. Yet, that is not because despair and helplessness have vanished but rather because the social backlash has been redirected against national governments. The prevailing mood of helplessness, which resulted from spiraling inequalities has created a conducive ground for the rise of nationalism, exclusionary politics, and even neo-fascist movements. As a result, less people now live in freedom compared to 1995 (incidentally the year of WTO's founding). Freedom declined in 73 countries, representing 75 percent of the global population.¹³¹ Domestic political pressure is forcing WTO members to revert back to protectionism. And this may not be the end. It is thus reasonable to conclude that a radical reconfiguration of global trade is not only a question of equity but also an imperative for the preservation liberal democratic political order.

V. Conclusion

The case for free trade carries an intuitive appeal. Statistics also show that free trade normally increases aggregate economic welfare. However, in the final analysis, trade is just a means to an end. Its overall legitimacy must be judged by reference to its results in human terms; by the extent to which it helps create jobs, pull people out of the traps of poverty and deprivation, combats hunger and diseases, improves the quality and standard of living, and enhances domestic and global harmony. The tally of commodities manufactured and traded, grain produced, services rendered, or money invested would be meaningless if it fails to enhance the above ends.

This article has shown that the WTO's *modus operandi* is inconsistent not only with the standard justification for trade liberalization but also with the goals stated in organization's own constitutive document. The WTO's *raison d'être* lies in the enhancement of people's standards of living. Yet, there are no concrete and deliberate mechanisms to ensure that the fruits of trade would go on to enhance human welfare. True, the pursuit of socioeconomic goals is primarily the responsibility of individual member states. However, besides the exigencies of competitiveness, there are reasons that inhibit member states' ability to provide safeguard to those who find themselves on the losing end of global trade. First, social and development issues (unlike corporate interests) have been kept out of the operative agreements of the WTO. Importantly, onerous WTO obligations (for example, under the TRIPS) and the neoliberal ideology that underlies WTO-led trade circumscribe their policy options and practical ability to fulfil their socioeconomic obligations. Such single-minded pursuit of profit at all costs has not only undermined the legitimacy of the WTO but also has contributed to the creation a conducive environment for the rise of nationalism, populism, exclusive politics and protectionism, threatening liberal democratic political order.

Endnotes

¹ That means not a single round of trade negotiations has come to conclusion under the WTO. Compare that to the eight successful rounds concluded under the auspices of its predecessor, i.e., the GATT.

² See generally David Harvey, *A Brief History of Neoliberalism* (Oxford, 2005) 73.

³ Bhala writes: 'following the July 2008 collapse...only truly optimistic trade souls could keep faith in the resurrection of the Doha Round.' Raj Bhala, *Resurrecting the Doha Round: Devilish Details, Grand Themes, and China Too*, 45 *Tex. Int'l L.J.* (2009) 9

⁴ See, for example, Kristen Hopewell, *Breaking the WTO: How Emerging Powers Disrupted the Neoliberal Project* (Stanford University Press, 2015); see also generally William Jannace and Paul Tiffany, *A*

New World Order: The Rule of Law, or the Law of Rulers? 42 Fordham International Law Journal (2019).

⁵ The Third Ministerial Conference that convened in Seattle at the end of 1999 was set to launch a new round of trade negotiations (the first within the WTO framework) that, if launched, would have been called the ‘Millennium Round.’ Disagreements on major trade negotiations compounded by a massive and violent protest (widely known as ‘Battle of Seattle’) meant that the launching of a new round of trade negotiations had to wait until 2001. See also generally Clyde Summers, *The Battle in Seattle: Free Trade, Labor Rights, and Societal Values*, 22 U. Pa. J. Int’l Econ. L (2001).

⁶ While the GATT dealt only with trade in goods, the WTO’s discipline extends to diverse substantive subject areas; from trade in services to intellectual property and trade-related investment measures; from agriculture to sanitary and phytosanitary measures, from technical standards to customs valuation, from preshipment inspections to rules of origin and import licensing, etc. See generally Sharif Bhuiyan, *National Law in WTO Law: Effectiveness and Good Governance in the WTO System* (Cambridge, 2007) 3-4.

⁷ Francesco Francioni, *Environment, Human Rights and the Limits of Free Trade*, in Francesco Francioni (ed.) *Environment, Human Rights and International Trade* (Hart Publishing, Oxford and Portland, Oregon, 2001) 1.

⁸ Proponents of the moral argument view free trade as an exercise of basic individual freedom or as a right *a priori*. Accordingly, they view autarky as a curtailment of individual freedom. Perhaps no other scholar has propounded the notion of ‘freedom to trade’ more persistently than Ernst-Ulrich Petersmann. See Ernst-Ulrich Petersmann *Theories of Justice, Human Rights, and the Constitution of International Markets*, 37 Loy. L.A. L. Rev. (2003) 420; Ernst-Ulrich Petersmann, *Time for a United Nations "Global Compact" for Integrating Human Rights into the Law of World-wide Organizations: Lessons from European Integration*, 13 EJIL (2002). Advocates of economic arguments, by contrast, view trade merely as a tool to promote socioeconomic ends.

⁹ Paul A. Samuelson, *Economics* (11th ed., McGraw-Hill International Book Company, 1980) 651. Emphasis added.

¹⁰ See the opening paragraph of the preamble of the Marrakesh Agreement Establishing the World Trade Organization (15 April 1994).

¹¹ Sen defines *consequentialism* as a component of *utilitarian* moral theory that judges the rightness of actions and choices ‘entirely by the goodness of the consequent state of affairs.’ Amartya Sen, *Resources, Values and Development* (Harvard University Press, Cambridge, Massachusetts, 1984) 278.

¹² Unlike virtue or happiness, which are desirable for their own sake, ‘wealth evidently is not the good of which we are in search, for it is merely useful as a means to something else.’ Aristotle, *The Nicomachean Ethics* (5th ed., Kegan Paul, Trench, Trubner & Co, London, 1893) 8.

¹³ See generally, Samuelson, *supra* n 9 at 75.

¹⁴ Although Ricardo’s theory of *comparative advantage*, based on a simple two nations-two commodities model has its own limitations, the WTO reckons that since no country is without comparative advantage, every country stands to benefit from free trade. According to the WTO, even a country that is good ‘at making bread’ may fare well trading with a country that is more efficient ‘at making automobiles.’ WTO, The Case for Open Trade:

http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact3_e.htm.

¹⁵ See generally Leonard Gomes, *The Economics and Ideology of Free Trade: A Historical Review* (Edward Elgar, Cheltenham, UK., 2003).

¹⁶ See generally Raj Bhala, *International Trade Law: Interdisciplinary Theory and Practice* (3rd ed., Matthew Bender & Comp, Inc., LexisNexis, 2008) 201-2.

¹⁷ It is worth noting the historical context here. *Mercantilism* emerged during late *renaissance* Europe when fierce trade rivalry among European powers often led to war, making trade a highly risky venture. It was against such historical backdrop that theorists attached paramount importance to national security; advocated for a strong state regulation of trade; and articulated a symbiotic relationship between the state and traders’ private profit maximization providing the necessary

resources for building a stronger nation state, which in turn provides security for its traders. See Gomes, *supra* n 15 at 6-7.

¹⁸ John H. Jackson, *The World Trading System: Law and Policy of International Relations* (2nd ed., The MIT Press, Cambridge, Massachusetts, London, 1997) 14.

¹⁹ Adam Smith wrote: 'it is not necessary to accumulate gold and silver, in order to carry on foreign wars, and to maintain fleets and armies in distant countries. Fleets and armies are maintained not with gold and silver, but with consumable goods.' Adam Smith, *An Inquiry into the Nature and Cause of the Wealth of Nations* (Maruzen Company Limited, Tokyo, 1776/1940) 409.

²⁰ See generally Richard F. Teichgraber III, 'Free Trade' and Moral Philosophy: Rethinking the Sources of Adam Smith's *Wealth of Nations* (Duke University Press, Durham, 1986) 1.

²¹ See Smith, *supra* n 19 at 609.

²² Like the turbulent civil war in England convinced Thomas Hobbes to believe that life in the *state of nature* was *nasty, brutish, and short*, which, in his mind, called for an absolute authority, the fierce trade rivalry triggered wars of the time convinced mercantilists to advocate strong government regulation in the economic life of society. See generally Peter B. Kenen, *The International Economy* (4th ed., Cambridge University Press, New York, 2000) 8.

²³ See generally, Richard F. Teichgraber III, *supra* n 20 at 1-7.

²⁴ Smith, *supra* n 19 at 626.

²⁵ *Id* at 424.

²⁶ Smith, *supra* n 19 at 429-36.

²⁷ Noel Parker, *Look, No Hidden Hands: How Smith Understands Historical Progress and Social Values*, in Stephen Copley and Kathryn Sutherland (eds.), *Adam Smith's Wealth of Nations: New Interdisciplinary Essays* (Manchester University press, Manchester, 1995) 122.

²⁸ See generally David McNally, *Political Economy and the Rise of Capitalism: A Reinterpretation* (University of California Press, Berkley, 1988) 158; see also Gomes, *supra* n 15 at 35.

²⁹ Adam Smith argued that the motive of traders being to maximize profit both in times of plenty and scarcity, they may go as far as destroying a portion of the crop to keep the price high. Smith, *supra* n 19 at 491-2.

³⁰ See generally Asbjorn Eide, *The Importance of Economic and Social Rights in the Age of Economic Globalization* in Wenche Barth Eide and Uwe Kracht (eds.), *Food and Human Rights in Development: Legal and Institutional Dimensions and Selected Topics* (V.I, Intersentia, Antwerpen, Oxford, 2005) 18.

³¹ Smith, *supra* n 19 at 626.

³² Heinz Lubasz, *Adam Smith and the 'Free Market'*, in Copley and Sutherland (eds.), *supra* n 27 at 52.

³³ Smith, *supra* n 19 at 609.

³⁴ Smith, *supra* n 19 at 491-2.

³⁵ See generally McNally, *supra* n 28 at 256.

³⁶ Although wars are almost a constant in the history of human civilization, the level of destruction caused by WWII has made the preservation of peace a top priority. Interestingly, the imperative for an effective cooperation to maintain international peace and liberal trade agenda coincided with the interests of the main architect of the post-war order, the United States, which not only emerged as the indisputable military superpower but also produced around half of the world's goods at the time. See generally Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (University of California Press, Los Angeles, 2004) 174-179.

³⁷ See generally Teichgraber III, n 20.

³⁸ Montesquieu, *The Spirit of Laws* (Cambridge University Press, 1748/1989) 338.

³⁹ See Robert Howse and Brian Langille, *The World Trade Organization and Labor Rights: Man Bites Dog*, in Virginia A. Leary and Daniel Warner (eds.), *Social Issues, Globalization and International Institutions* (Martinus Nijhoff Publishers, Leiden, Boston, 2006) 157.

⁴⁰ See points 4, 5, Atlantic Charter (August 14, 1941).

⁴¹ There is no doubt that the United States was the major architect of both the UN and the GATT. Some even describe the GATT as the expansion and 'multilateralization' of the bilateral treaties the US had entered into pursuant to its 1934 Reciprocal Trade Agreement Act. See

Jackson, *supra* n 16 at 35-36; Robert E. Hudec, *Developing Countries in the GATT Legal System* (Trade Policy Research Center, London, 1987) 6-7.

⁴² Ishay, *supra* n 36 at 199.

⁴³ The Russian Revolution of 1917 is considered as one of the practical reasons for the establishment of the ILO in 1919. Western governments felt the need to neutralize distributional tensions through the creation of an international organization that would promote labour interests. With the deterioration of social conditions following the depression and the war on the one hand and the expansion of communism on the other, there was an even stronger reason to address socioeconomic issues within trade and economic frameworks.

⁴⁴ See Preamble, the ILO Constitution (1919): <http://www.ilo.org/ilolex/english/constq.htm>.

⁴⁵ Art 57, 59, the UN Charter.

⁴⁶ Arts 60, 62(1), 63(2), 64(1), the UN Charter.

⁴⁷ UN ECOSOC Res. 13, UN Doc. E/22 (1946).

⁴⁸ Here, the term United Nations refers to the Allied Powers of WWII. But it was that alliances that eventually evolved in 1945 into UN-the global organization. The Bretton Woods Conference resulted only in the establishment of the IMF and the World Bank, and not a trade organization mainly because finance ministries of Allied Powers, and not trade ministries, were the principal negotiators. Jackson, *supra* n 18 at 36.

⁴⁹ Petros C. Mavroidis, *The General Agreement on Tariffs and Trade: A Commentary* (Oxford University Press, 2005) 3.

⁵⁰ Indeed, developed nations and their corporations had long been championing the incorporation of all of these *new issues* into the GATT framework. It was only opposition from developing countries that kept these issues outside of the trading regime until the Uruguay Round. See Jackson, *supra* n 18 at 305-317.

⁵¹ The WTO dissociates itself from labour issues, claiming that it is the domain of the International Labour Organization (ILO). But this begs a question since IP is also the province of the World Intellectual Property Organization (WIPO).

⁵² See generally Joseph E. Stiglitz and Andrew Charlton, *Fair Trade for All: How Trade Can Promote Development* (Oxford University Press, Oxford, New York, 2005) 141-6.

⁵³ Holger Hestermeyer, *Human Rights and the WTO: The Case of Patents and Access to Medicines* (Oxford University Press, 2007) 11.

⁵⁴ The Medicines and Related Substances Control Amendment Act of South Africa was signed into law in 1997 by then President Nelson Mandela. With the objective of ensuring the supply of more affordable medicines to the public, Section 15C of the Act authorizes the Ministry of Health to, among others, determine certain aspects of patent rights as they relate to medicines. See Hestermeyer, *id* at 11-2.

⁵⁵ *Id*, at 13.

⁵⁶ By pressing such unethical (depending on how one looks at it, of course) legal actions against a country battling a dreadful epidemic, Western pharmaceutical firms did a disservice to the WTO. The issue drew strong international outrage that eventually forced pharmaceutical firms to back down. See generally Joseph E. Stiglitz, *Globalization and its Discontents* (Penguin Books, Ltd., London, 2002) 8.

⁵⁷ For elaborated discussion on this, see Hestermeyer, *supra* n 53 at 48-9.

⁵⁸ CESCR, General Comment No. 14 (2000) on the right to the highest attainable standard of physical and mental health (Art 14 of the Covenant), para 16, 43-45.

⁵⁹ ⁵⁹ For example, despite the obvious interactions between trade and labour, the ILO or any other human rights body has no observer status at the WTO, while the IMF, the World Bank, and similar institutions, have observer status almost at every single Council (including the General Council), Committee or Working Group.

⁶⁰ Mike Moore, Former WTO Director General, Trade, Poverty and The Human Face of Globalizations (London, June 16th 2000)

http://www.wto.org/english/news_e/spmm_e/spmm32_e.htm.

⁶¹ Peter M. Rosset, *Food is Different: Why We Must Get the WTO out of Agriculture* (Fernwood, 2006) 1.

- ⁶² Susan Ariel Aaronson and Jamie M. Zimmerman, *Trade Imbalance: The Struggle to Weigh Human Rights Concerns in Trade Policy Making* (Cambridge, New York, 2008) 33.
- ⁶³ See generally Jean Ziegler, Peasant Farmers and the Right to Food: A History of Discrimination and Exploitation, UN Human Rights Council Advisory Committee, A/HRC/AC/3/CRP.5 (4 August 2009).
- ⁶⁴ Moore, *supra* n 60.
- ⁶⁵ See WTO, *World Trade Report: Trade in a Globalized World* (Geneva, 2008) 123.
- ⁶⁶ According to the UN Special Rapporteur, even in countries that have registered spectacular economic growth and are credited for lifting millions of people out of poverty, there are still millions of others who are left behind and find it difficult to feed themselves. See generally Olivier De Schutter, the UN Special Rapporteur on the Right to Food: <http://www.srfood.org/index.php/en/component/content/article/1-latest-news/2064-unfinished-progress-un-expert-examines-food-systems-in-emerging-countries>.
- ⁶⁷ *Supra* n 65 at 123.
- ⁶⁸ *Supra* n 65 at 140.
- ⁶⁹ Armin Paasch, *World Agricultural Trade and Human Rights-Case Studies on the Violations of the Right to Food of Small Farmers* in Armin Paasch and Sophia Murphy (eds.), *The Global Food Challenge: Towards a Human Rights Approach to Trade and Investment Policies* (FIAN *et al*, 2009) 40-8.
- ⁷⁰ Studies show that as competitive pressure builds up following trade liberalization, developing countries tend to displace small holders to lure corporate agribusiness. See generally FAO, *Agriculture, Trade and Food Security Issues and Options in the WTO Negotiations from the Perspective of Developing Countries* (Vol. II, Country Case Studies, Rome, 2000).
- ⁷¹ Aristotle, *supra* n 12 at 143-4.
- ⁷² According to Nozick, theories of distributive justice are flawed; the exercise of state power that goes beyond the protection against force, theft, fraud, enforcement of contracts, and so on, will violate individual rights. See Robert Nozick, *Anarchy, State, and Utopia* (Blackwell, Oxford, UK, 1974) ix;149-59. For champions of egalitarian liberalism, such as John Rawls, however, fairness in the distribution of resources and opportunities is central to justice. See John Rawls, *A Theory of Justice* (Rev. ed., The Belknap Press of Harvard University Press, Cambridge, Massachusetts, 1999) 228-285.
- ⁷³ 'Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason, justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many.' Rawls, *id* at 3.
- ⁷⁴ *Id*, at 53.
- ⁷⁵ H. Steiner and P. Alston, *International Human Rights in Context: Law, Politics, Morals* (2nd ed., Oxford, 2000) 237.
- ⁷⁶ Of Rawls' two principles of justice, the first recognizes that each person has 'an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others,' while the second argues that socioeconomic opportunities shall be distributed fairly to everyone's advantage, inequalities permitted where they are to the benefit of the least advantaged. Rawls, *supra* n 72, at 3, 52-92.
- ⁷⁷ Rawls, *supra* n 77 at 22. Broadly, *teleological* moral theory derives rights and duties from ends (telos). Accordingly, a right is that which maximizes the good (ends), i.e. the good has priority over the right. It is also sometimes used interchangeably with a *consequentialist* theory (a subcategory of utilitarianism) and considered as the opposite of *deontological* moral theory. Such supposed prioritization of the good over the right (i.e., failure to take into account people's rightful claims for their own sake rather than as derivatives from the maximization of the good) seems Rawls's main ground for rejecting utilitarianism.
- ⁷⁸ Rawls believes that utilitarianism is unjust because, in his view, it does not provide a satisfactory account of the basic rights and liberties of each individual. In short, society has no legitimate authority to sacrifice the interests of some no matter the benefits to the majority.

⁷⁹ According to Kymlicka, Rawls's distinction between *deontological* and *teleological* theories is distorted, and thus the prioritization of the right over good is misleading. 'People's rightful claims are entirely dependent on what best promotes the good, and hence the maximization of the good cannot be said to violate people's rightful claims.' Will Kymlicka, *Rawls on Teleology and Deontology*, *Philosophy and Public Affairs* (vol. 17, No.3, 1988) 173-4.

⁸⁰ Kymlicka, *id* at 176.

⁸¹ The multilateral trading regime claims to 'have placed development issue and the interests of developing countries at the heart of the WTO's work.' See WTO, Trade and Development: http://www.wto.org/english/tratop_e/devel_e/devel_e.htm.

⁸² Developing nations generally feel disadvantaged by previous trade rounds. There is an apparent sense of 'rich countries have got what they wanted in previous rounds that Doha ought to be our time.' Industrialized nations do not share that idea. While they recognize the special needs of poor nations and offer a variety of special and differential (S&D) treatments, they strongly demand reciprocal concessions from developing nations, as in any trade negotiation.

⁸³ Empirical studies show that trade liberalization has in many instances resulted in exacerbating not only inequalities between countries, but also in incomes and wages internally. See generally WTO Report, *supra* n 65 at 123-44.

⁸⁴ See WTO Report, *supra* n 65 at 125.

⁸⁵ 'Given that the overall gains from trade are positive, it is in principles possible to redistribute those gains to make everybody better off. Whether such redistribution policies are introduced or not are decisions that have to be taken at the domestic level.' WTO, Annual Report (2008)151.

⁸⁶ One may disagree with Eduardo Galeano's depiction of international division of labour as a scheme whereby 'some specialize in winning and other in losing.' One cannot dispute, however, that like individual traders, some countries win, others lose. There is no better evidence for this than the fact that some of WTO founding members are still among the poorest nations in the world.

⁸⁷ See generally Raymond Plant, *The Neo-liberal State* (Oxford, New York, 2010).

⁸⁸ Although the WTO and the IMF are separate institutions with different missions, their operations and influences do intersect where the special interests of the financial/commercial community matter. For example, China needed the support of the United States to get admission to the WTO. In return, it was put under enormous pressure from the United States and the IMF to open up its financial markets. Why? Because Wall Street was vying for the huge financial market in China and wanted to get there before other competitors woke up. Stiglitz, *supra* n 56 at 61-4.

⁸⁹ By contrast, WTO law does not provide any guidance as to how a member state should deal with conflicts between obligations deriving from WTO agreements and those from other fields of international law, such as labour law. For more on the interaction of WTO and national law, see Sharif Bhuiyan, *National Law in WTO Law: Effectiveness and Good Governance in the WTO System* (Cambridge, 2007).

⁹⁰ Jeremy Bentham, *Tracts on Poor Laws and Pauper Management in The Works of Jeremy Bentham* (Vol. 8, Russell & Russell, New York, 1797/1962) from 369.

⁹¹ See generally Frank. J. Garcia, *Trading Away the Human Rights Principles*, 25 *Brooklyn J. Int'l L.* (1999).

⁹² The TRIPS was brought into the WTO mainly at the insistence of the US, while most GATT contracting parties opposed. As *Pharmaceutical Manufacturers' Association of South Africa v. the President of South Africa* case, exemplifies, the TRIPS may be a choice between the profit of a handful of pharmaceutical firms and the lives of millions of poor. Stiglitz and Charlton argue that TRIPS go against the development aspiration of developing countries; hence, it should be removed from the WTO and go where it belongs, WIPO. Stiglitz and Charlton, *supra* n 52 at 141-6.

⁹³ John Locke, *An Essay on the Poor Law*, in Mark Goldie (ed.), *Locke: Political Essays* (Cambridge, 1697 (1997) 182-98.

⁹⁴ Jean-Jacques Rousseau, *Ideal Empires and Republics: Rousseau's Social Contract, More's Utopia, Bacon's New Atlantis Campanella's City of the Sun* (M. Walter Dunne, Washington D.C., 1901) 59-60.

⁹⁵ According to Rawls, utilitarianism is not the sort of principle that rational people behind the veil of ignorance would consent to. ‘Since each [participant of the social contract] desires to protect his interests, his capacity to advance his conception of the good, no one has a reason to acquiesce in an enduring loss for himself in order to bring about a greater net balance of satisfaction.’ Rawls, *supra* n 72 at 13.

⁹⁶ Rawls, *supra* n 72 at xii.

⁹⁷ According to Rawls, justice is not only a manifestation of equality, but also is the foundation of stability and cooperation. Rawls, *supra* n 72 at 119.

⁹⁸ Rawls, *supra* n 72 at 11.

⁹⁹ Rawls, *supra* n 72 at 25; 53.

¹⁰⁰ Rawls, *supra* n 72 at xiii;13; 52-3; 65-72.

¹⁰¹ See, for example, Amartya Sen, *The Idea of Justice* (The Belknap Press, Massachusetts, 2009) 58.

¹⁰² See generally Sen, *id.*

¹⁰³ See Eide, *supra* n 30 at 18.

¹⁰⁴ See Destaw A. Yigzaw, *WTO Agricultural Trade and the Unfulfilled Promise of Development*, 11 (2) South

Carolina Journal of International Law and Business 163-225(Spring 2015).

¹⁰⁵ See generally Hudec, *supra* n 41.

¹⁰⁶ See Harvard Law Review Association, *Developing Countries and Multilateral Trade Agreements: Law and the Promise of Development*, Harvard Law Review (1995) 1719.

¹⁰⁷ See General Agreement on Tariffs and Trade, Trends in International Trade: Report by a Panel of Experts (1958) 80-95.

¹⁰⁸ *Supra* note 107 at 1719-20.

¹⁰⁹ See General Assembly Declaration on the Establishment of a New International Economic Order A/RES/S-6/3201 (1 May 1974).

¹¹⁰ See Arts XXXVI, GATT.

¹¹¹ GATT, Generalized System of Preferences, Decision, L/3545 (June 25, 1971).

¹¹² However, prior to the expiry of that trial period, contracting parties adopted what is known as the ‘enabling clause,’ allowing the GSP for an indefinite period. See GATT Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries, Decision, L/4903 (Nov 28, 1979).

¹¹³ ‘The negotiating culture of the GATT served to exclude numerous Members from important aspects of deal-brokering. Policies and treaties were negotiated in notorious ‘Green Room’ meetings to which only certain Members were invited, and in which discussions were secret. Green Room decisions were then presented to other Members as *faits accomplis*.’ Sarah Joseph, *Blame it on the WTO? A Human Rights Critique* (Oxford University Press, New York, 2011) 63; see also UNDP, *Human Development Report: Deepening Democracy in a Fragmented World* (New York, 2002) 118.

¹¹⁴ Jackson, *supra* n 18 at 314.

¹¹⁵ WTO, Members Continue to Discuss on Proposal for Temporary IP Waiver in Response to COVID-19 (10 Dec 2020);

https://www.wto.org/english/news_e/news20_e/trip_10dec20_e.htm.

¹¹⁶ In October 2020, India and South Africa proposed that the WTO waive the applications of certain provisions of the TRIPS for the duration of the pandemic to ramp up global vaccine production. While the proposal was supported by most WTO members, industrialized members, especially the EU and United States opposed it. Outside the WTO, however, the proposal has overwhelming support from UN agencies (including World Health Organization) to international human rights and humanitarian organizations (such as Medecins Sans Frontieres), and even prominent personalities. Over 170 former world leaders and Nobel laureates have, for example, pleaded to President Biden to back the proposal, which they argued is vital to end the pandemic. Lately, the United States has reversed its stance and backed the proposed waiver, while countries such as Germany remain opposed to it. See the BBC, ‘COVID: Germany rejects US-backed

proposal to waive vaccine patents,' available at: <https://www.bbc.com/news/world-europe-57013096> (11 May 11, 2021).

¹¹⁷ The United Nations Development Program (UNDP), *Human Development Report* (Oxford University Press, New York, 1990) 9.

¹¹⁸ Paul A. Samuelson and William D. Nordhaus, *Economics* (15th ed., McGraw-Hill, Inc. 1995) 692.

¹¹⁹ Samuelson, *supra* n 9 at 651.

¹²⁰ The argument is that by discouraging imports and thereby killing off the fruits of international division of labour, tariff and other trade barriers subject domestic consumer to increased prices and diminished choices.

¹²¹ 'If unequal opportunities are large within many countries, they are truly staggering on a global scale.' World Bank, *World Development Report: Equity and Development* (Washington, D.C., 2006) 6; UNDP, *Human Development Report* (Oxford University Press, New York, 1999) 3.

¹²² *World Inequality Report 2018*. <https://wir2018.wid.world/files/download/wir2018-full-report-english.pdf>.

¹²³ See P. Espinoza Revollo (2021). *The Inequality Virus: Methodology note*. Oxfam <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621149/tb-inequality-virus-methodology-note-250121-en.pdf>.

¹²⁴ Oxfam, *The Inequality Virus: Bringing together a World Torn Apart by Coronavirus Though a Fair, Just and Sustainable Economy* (January 2021), <https://www.oxfam.org/en/research/inequality-virus>.

¹²⁵ Oxfam, *An Economy for the 1%: How Privilege and Power in the Economy Derive Extreme Inequality and How this can be Stopped* (18 January 2016); available at: https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/bp210-economy-one-percent-tax-havens-180116-en_0.pdf.

¹²⁶ Sen, *supra* n 11 at 497. Incidentally, the recognition of such limitations is the main reason underlying the shift from measuring economic welfare based solely national income to an increasingly more composite human development index (HDI) by the United Nations Development Program (UNDP).

¹²⁷ See generally, Jay R. Mandle, *Globalization and the Poor* (Cambridge University Press. 2003) 53.

¹²⁸ See Stiglitz and Charlton, *supra* n 52 at 3.

¹²⁹ Ishay, *supra* n 36 at 254-5.

¹³⁰ Robert Howse, *The End of The Globalization Debate: A Review Essay*, 121 Harv. L. Rev. F. (2008) 1530.

¹³¹ Freedom House, *Freedom in the World 2021: Democracy under Siege* (2021), available at https://freedomhouse.org/sites/default/files/2021-02/FIW2021_World_02252021_FINAL-web-upload.pdf.