The World Economy (2006)
doi: 10.1111/j.1467-9701.2006.00833.x

Fairness in International Trade Negotiations: Developing Countries in the GATT and WTO

Amrita Narlikar

University of Cambridge

1. INTRODUCTION

DOES fairness matter in the hard bargaining and horse-trading associated with international trade negotiations? Even a cursory glance at the speeches and proposals of member countries in the WTO – rich and poor – reveals an ample occurrence of references to fairness, justice and legitimacy. But arguments appealing to fairness are at least as contested as they are well-rehearsed, and as changeable as they are frequently occurring. Indeed, philosophical abstractions and normative theories about justice and fairness aside, what one regards as a fair bargain depends on several factors: who the actor is, who the other negotiating parties are, and the forum in which negotiations are taking place. Parties can apply different criteria in defining fairness, resulting in claims that are mutually contradictory and yet equally legitimate. North vs. South stalemates going back to the 1970s and extending into recent times (as at the Cancun Ministerial Conference in 2003) may be seen as a direct product of such differing claims.

In this paper, I conduct a positivist analysis of the particular concepts of fairness that developing countries have appealed to in their trade negotiations within the auspices of the GATT and WTO, how these notions have evolved, and the impact that they have had on negotiated outcomes. Treating the concept of fairness as my central dependent variable, I argue that its substance and evolution

The author thanks the Nuffield Foundation for its financial support that enabled her to conduct research for this paper, and also the organisers of a conference on the Political Economy of Fairness, Murphy Institute of Political Economy, Tulane University, New Orleans, April 2005, where this paper was presented. She is grateful to Andrew Hurrell, Duncan Bell and the conference participants for useful discussions, and especially Sheila Page for providing detailed comments on an earlier draft. These friends should not be held responsible for the use that the author made of their advice or any errors that might remain in this paper.

can be best explained by learning and adaptation by these countries within the very particular institutions of the GATT and the WTO, and the coalitions that they form a part of and interact within.

Before launching into the paper, a brief word on the focus on developing countries is in order. It is true that both developed and developing countries attempt to legitimise their positions before domestic and international audiences. But the latter, as late entrants into the international system and rule-takers rather than agenda-setters, have been particularly strident in their call for global redistributive justice, across international organisations, since the decolonisation movements of the 1940s–1950s. Their collective revisionist vision of the international economic system and its limited successes, most visibly manifest in the call for the New International Economic Order, has already attracted several tomes of analyses. Significantly understudied, however, has been the role that particular countries played in enunciating this vision in the GATT and WTO.[1]

In this paper, developing countries are treated as a group that includes the sub-group of least developed countries (LDCs). It is worth bearing in mind, however, that the collective vision of fairness bore a strong imprint of the more powerful countries of the developing world, such as Brazil and India, and this paper devotes greater attention to the role of such leaders. Particularly in the early years of the GATT, the role of middle powers such as Brazil and India from the developing world was key. Both played a leading role in formulating and voicing the demands of the South in the GATT since the negotiations for the aborted International Trade Organisation and as original signatories of the GATT. They continue to play this role in the WTO today. Even though they may have put the notion of fairness to instrumental use, they also present us with instances when they have continued to advance or support certain types of fairness that entail costs to themselves. Further, these countries present particularly hard cases in that they have historically been among the most influential developing countries in the GATT and WTO. Their large size, regional and international presence, and economic weight means that unlike the LDCs, they have no obvious reasons to rely on discourses of fairness rather than discourses of power. That they do so nonetheless suggests that fairness matters in international organisations. The middle powers of the developing world are also interesting in the tutelage that they have exercised over the smaller developing countries and helped shape their demands in the GATT. Particularly as the LDCs emerge as increasingly accomplished players in the WTO system, it is not far-fetched to

[1] This omission may be traced partly to the old GATT practice of denying the existence of bloc-based diplomacy within it (in contrast to the UNCTAD), which resulted in the exclusion of any collective ideology or action from study. Further, a general assumption that the GATT was concerned centrally with the gains from trade liberalisation may have led to an exclusion of contending political notions of fairness that underlay its rules and calls for reform.

expect that differing notions of fairness and interest may lead to some divergence between the sub-sets of developing countries.

This paper proceeds in four parts. Following this introductory section, I discuss the notion of fairness within its specific institutional context in Section 2. In doing so, I take into account various theories that have been advanced to explain when fairness might matter in international institutions and the forms that it might take. I argue that the notion of fairness can only be understood in terms of the institutional context it is embedded in, which includes institutional structure as well as the participatory processes that underlie it. I further advance three hypotheses on the relationship between institutional context, the fairness discourse, and the influence and manoeuvre that member countries can have in shaping that discourse. In Section 3, I trace the participation of the developing world in the GATT and the WTO and identify three phases over which their ideas about fairness have evolved and provide an explanation for these changes. I attach primacy to the role of institutional learning and adaptation by the developing countries, and their interaction with other developing countries in the form of coalitions. Domestic interests provide a facilitating explanation rather than the primary one. Section 4, the concluding section, takes stock of the three hypotheses that we started out with, examines some possible alternative explanations, and presents a future research agenda.

2. FAIRNESS IN THE INTERNATIONAL INSTITUTIONAL CONTEXT

Neoliberal institutionalism provides us with a simple explanation for the motivation of states to form international organisations and abide by their rules: states try to overcome classic problems of collective action by providing institutions of monitoring and penalty, and thereby facilitate the gains of efficiency that derive from inter-state cooperation. Efficiency, however, does not suffice; as recent public demonstrations against the international economic organisations have shown, decisions arrived at in international forums must also be seen to be fair by their stakeholders. The key to the acceptability of international agreements lies in this perception, which is why the staff and members of international organisations engage in the fairness discourse.

Definitions of fairness remain contested, and the substance of a fair agreement depends considerably on who the affected parties are. But Thomas Franck's conception of fairness provides a useful starting point:

> . . . fairness is a composite of two independent variables: legitimacy and distributive justice. Fairness discourse is the process by which the law, and those who make law, seek to integrate those variables, recognizing the tension between the community's desire for both order (legitimacy) and change (justice), as well as the tensions between different notions of what constitutes *good* order and *good* change in concrete instances (Franck, 1995, pp. 26–27).

Franck further associates concerns with legitimacy as fairness with procedural matters, and concerns with distributive justice as fairness with substance and equity of outcomes.

For a discourse on fairness to exist, Franck identifies two preconditions. The first is moderate scarcity:

> Where allocations are made in zero-sum settings of resources which are valuable and scarce, fairness discourse is at its most difficult (Franck, 1995, p. 9).

The second is community:

> It is only in a community that the bedrock of shared values and developed principles necessary to any assessment of fairness is found (Franck, 1995, p. 10).

The international trade regime is one regime where both preconditions can be found; the environmental regime is another. Irrespective of distributive consequences domestically, international trade has long been acknowledged to be a positive-sum game, while globalisation and interdependence have contributed to the strengthening of the notion of an international community. Interestingly, however, the fairness discourse in international institutions has been mixed.

It is true that many international declarations today – whether they come from inter-state organisations like the United Nations or non-governmental organisations (NGOs) – often make explicit attempts to engage with the question of fairness in trade matters. Often this concern is based on an understanding of fairness as equity. Hence, for instance, the Millennium Development Goals state that:

> We are committed to an open, equitable, rule-based, predictable and nondiscriminatory multilateral trading and financial system.

To this end, the Millennium Declaration urges developed countries to adopt a policy of duty-free and quota-free access for 'essentially all exports' from the LDCs, provide debt relief, and grant more generous development assistance. These goals enjoy the imprimatur of developed countries, at least in a minimal, formal sense, and thereby present a contrast to the call for the New International Economic Order in the 1970s that was driven by the South. Today, developed countries have devised several programmes to implement goals similar to or corresponding with the Millennium Declaration's, and include schemes that deal specifically with trade instruments. For instance, the US grants duty-free access to many exports from countries in Sub-Saharan Africa under the African Growth and Opportunity Act (AGOA). The EU too has adopted the so-called 'Everything but Arms' (EBA) Initiative, which aims to grant duty-free access to all imports from LDCs except for arms and munitions.[2] But interestingly, these

[2] Note, however, that the schemes, in practice, include several exceptions and conditions. For instance, key exports such as bananas sugar, and rice are not integrated within the EBA scheme. In the case of AGOA, market access to the US is linked with requirements of good governance.

developments have not been matched in the one organisation around which the rules of the entire international trade system are based – the WTO.

The apparently limited homage that the WTO pays to the fairness discourse, particularly its distributive justice component, has attracted the ire of many non-governmental organisations. 'Special and differential treatment' (S&D) for developing countries, for instance, had a long and tumultuous history in the GATT. In the WTO, its provisions are weaker still; Hoekman and Kostecki (2001) point out that most of the 97 S&D provisions in the agreements are non-binding, 'best endeavour' commitments (pp. 392–93). Differences in commitment to the fairness discourse across regimes are even more marked, for instance between the WTO and the international environmental regime. Andrew Hurrell (2001) points out that in the case of the environment, Northern countries have taken on both aspirational declarations as well as legal obligations. He writes:

> These obligations do involve principles of equity and a degree of commitment to distributive justice – as with the acceptance by the North of responsibility for past environmental harms; the idea of differentiated responsibilities in moving towards more sustainable futures; and the acceptance of resource and technology transfers (as within the ozone, climate change and biodiversity regimes). The industrialized states have even made concessions in terms of decision-making processes that allow for more balanced representation between North and South (as on the Global Environmental Facility). Without wishing to make too much of these gains, it seems clear that considerations of justice have had a greater degree of play here (p. 51).

Given that the general trend in global and international discourses towards the incorporation of fairness norms involving equity concerns, the WTO's apparent imperviousness to these demands explanation.

A closer examination of the norms that underlie the rules of the WTO reveals that while commitments to distributive justice are indeed limited, its commitments to order and legitimacy are not. Even if provisions in the WTO on distributional fairness are few (e.g. it does not allow increased protection to shield low-skill workers in developed countries from a depression in their wages that results from freer trade), its dedication to fair process, order and legitimacy is borne out in its rules of non-discrimination and reciprocity.[3] In fact, on applying Franck's distinction between legitimacy and equity as the two independent components of fairness, we find that most international institutions pay considerable attention to questions of fairness but differ in their emphasis on either component. Which particular notion of fairness will win out in a particular regime is determined by power differences and distributional implications; differences within specific institutions in the same issue area, however, can perhaps be better explained by institutional design. What follows below is a brief discussion of the first two

[3] Suranovic (2000), in an interesting analysis, identifies seven fairness principles that may be identified in international trade: Equality fairness comprises non-discrimination fairness, distributional fairness and golden-rule fairness, while reciprocity fairness includes positive reciprocity fairness, negative reciprocity fairness, privacy fairness and maximum benefit fairness. He provides concretes examples of each type and further illustrates the contradictions that they entail.

explanatory variables, drawing on the works of Franck (1995), Hurrell (2001) and Young (1999). I then advance some hypotheses about the impact of institutional design on the fairness discourse and develop these in the remainder of the paper.

The importance of power differences in determining the choice of the legitimacy discourse vs. the equity discourse is best illustrated through a cross-regime comparison. Returning to the contrast between the environmental regime vs. the economic ones, and the successful incorporation of justice considerations in the former regime vs. limited successes in the latter, is easily explained in terms of power balances. Hurrell (2001) writes:

> Crudely speaking, the global environment is an area where the poor matter to the rich and where concessions have had to be made in the interest of creating new cooperative regimes (p. 51).

The differences between the environmental and economic regimes also illustrate the importance of the 'veil of uncertainty' – an idea that Young develops from the initial work of Brennan and Buchanan. Young (1999) argues that in negotiations of regimes that are expected to extend over an indefinite period of time and which involve uncertainty about their impact on the welfare of the participants, negotiators are likely to incorporate widely accepted notions of fairness:

> If an actor does not know or cannot predict how the operation of a regime will affect its interests over the course of time, it will experience an unmistakable incentive to favor the creation of arrangements that can be counted on to generate outcomes that are fair to everyone regardless of where they stand on specific issues (p. 254).

In an earlier work, Young (1994) provides the examples of the problems of ozone depletion vs. global warming. The harmful effects of the former are likely to be dispersed globally, whereas the latter produces some clear winners and losers (e.g. low-lying coastal areas would be much more adversely affected than other areas). Unsurprisingly, there already exists a well-functioning regime on ozone depletion, which has built into it a multilateral fund that finances the phase-out costs of reducing ozone-depleting substances for developing countries. Negotiations on climate change, on the other hand, have been considerably more difficult.

The two explanations work well together in helping us understand differences in the fairness discourse across international regimes and issue areas. Their use is limited, however, if one focuses on the differing and contradictory organisations, treaties, rules and norms that can exist within the same international regime covering one issue area, as well as changes over time within a particular organisation. To explain differences at this level, we must examine the particular institutional context, including the substance of the rules and the processes that underlie the workings of the institution, which helps explain which notion of fairness will prevail in different treaties and organisations within the same regime. Hence, for instance, while the rules of the GATT and WTO broadly reflect legitimacy concerns, questions of distributive justice feature in a much bigger way in trade-related debates in the UN General Assembly as well as the programmes and

proposals of the United Nations Conference on Trade and Development (UNCTAD).[4] I suggest three working hypotheses on how institutional context and design affects the fairness discourse,[5] and the degrees of freedom that countries can enjoy in agenda-setting within these institutional constraints.

Hypothesis 1: International organisations with near-universal memberships and majority-based voting rules are likely to attach greater weight to fairness conceptualised as distributive justice and equity. In contrast, international organisations with near-universal memberships and weighted voting or consensus-based diplomacy are likely to be driven by a legitimacy as fairness agenda.

Hypothesis 2: Countries that conform to the dominant fairness norms of the particular institution are likely to have greater success in agenda-setting than countries that go against the established norms.[6]

Hypothesis 3: Even within institutional constraints, members can enjoy certain degrees of freedom in successfully setting the fairness agenda and influencing outcomes. These degrees of freedom depend on the prevalent epistemic consensus and external shocks, but also strategy choices that they make that include adaptation and learning, framing/re-framing the issue to fit into the dominant norm, and building supportive inter-state and transnational coalitions.

3. DEVELOPING COUNTRIES IN THE GATT AND THE WTO

The origins of the GATT go back to the aborted ITO, and it is to these origins that we must turn to understand why the GATT came to favour the particular

[4] It is important to bear in mind that there are important institutional differences between the UNCTAD and General Assembly vs. the WTO: most important perhaps, the latter has real, enforceable effects whereas the former do not. I thank Sheila Page for raising this point. Developing this idea further, it could be argued that it is not surprising that the legitimacy discourse has appeared in the institution that 'matters', whereas idealistic concerns with distributive justice dominate those that do not. However, this hypothesis is not confirmed by the evidence provided in this paper. Evolving notions of fairness as justice have entered the WTO at a time when its enforceability has not diminished.

[5] Note that these hypotheses presume the existence of the institution and are therefore not about the initial negotiations of regime creation. Rather, their central focus is on how countries negotiate within institutional constraints, and further how the institution itself and the agenda of members evolve in the process of these ongoing negotiations.

[6] Ricupero (1998) suggests a broader version of this hypothesis, and points out that countries that conform to the norm of organisation (e.g. liberalisation) are likely to go further in achieving their demands in contrast to those that go against the dominant norm; also see Narlikar and Odell (2006). For the purposes of this paper, we hold the norms of the organisation as constant; in practice, however, we would expect to see norm evolution within the institution in response to lobbying efforts by member countries as well as external pressures. One would then also expect that countries would adapt their demands to conform to those changing norms, for the purposes of effective bargaining.

notions of fairness that it did, and why these notions were met with considerable suspicion by developing countries. The proposals for the formation of the ITO – drafted initially by the US – were put forth in the shadow of the Second World War. Clair Wilcox summarised the US vision at the start of negotiations for the ITO in the following words:

> If the peoples who now depend upon relief are soon to become self-supporting, if those who now must borrow are eventually to repay, if currencies are permanently to be stabilized, if workers on farms and in factories are to enjoy the highest possible levels of real income, if standards of nutrition and health are to be raised, if cultural interchange is to bear fruit in daily life, the world must be freed, in large measure, of the barriers that now obstruct the flow of goods and services.[7]

However, negotiations for the ITO demonstrated that this US-led vision of free trade would be impossible to realise in the postwar political climate when states, particularly the war-torn economies of Western Europe, were primarily concerned with issues of economic recovery. These differing aims effectively translated into the two different notions of fairness that were discussed in the previous section. The initial proposals, largely a US initiative, emphasised the importance of free trade as the solution to the problems of postwar unemployment and economic stability. The focus here was on the importance of processes that facilitated international trade; once these processes were in place, they would automatically produce beneficial outcomes for all members. However, the US vision was countered by an alternative vision of fairness as advanced by Keynesian Britain and many other economies of Western Europe. Here the emphasis was directly on equity and outcomes. For instance, Diebold (1952) points out that European countries saw no chance of reducing trade barriers without American assistance:

> with substantial aid, and the further protection of escape clauses if their difficulties recurred, they could look forward, with varying degrees of hope and skepticism to a successful transition period after which an agreement liberalizing international trade could come fully into play (p. 4).

After much protracted negotiation, mainly between the US and Britain until 1946, to reconcile these different visions, the Havana Charter came to include some difficult compromises and many exceptions to the rules of liberal trade. It explicitly allowed the system of imperial preferences, and provided escape clauses for countries experiencing balance-of-payments difficulties. At the London Conference in 1946, developing country participants in the negotiations disrupted the cosy Anglo-American consensus by demanding that the Charter also take their development needs into account by allowing them to impose special quantitative and other restrictions. Their demands led to additions in the Charter, including a section that identified economic development as a central objective of the ITO,

[7] Cited by Diebold (1952).

and the list of exceptions grew. The Charter for the ITO that was successfully negotiated in Havana in 1948, lacked domestic support in the US. In its attempts to reconcile two very divergent notions of fairness, and the resulting lists of exceptions, the Charter satisfied neither the 'perfectionists' nor the 'protectionists' (Diebold, 1952). It is not surprising that key US officials feared that Congress would refuse to ratify the Charter, and the ITO died before it was born.

What emerged in place of the aborted ITO was the GATT – a trade treaty that was a significantly less ambitious project than the ITO. Almost in tandem with the ongoing negotiations for the ITO, the US had proposed that the signing of a multilateral trade treaty, which would not require the ratification of the Congress but could be negotiated and implemented by the Executive under the authority that had been granted to it by the Reciprocal Trade Agreements Act in 1945. The GATT was negotiated between 23 countries in 1947, and came into force in 1948. It lacked the scope of the ITO – unlike the Charter, it made no mention of employment, development, restrictive business practices, or commodity agreements, let alone cover issues such as labour standards. It limited itself to border measures among governments, and did not concern itself with domestic practices, in contrast to the rules of the Charter that had dealt with the monopolistic practices of firms. In fact, the GATT covered little more than the commercial policy chapter of the Havana Charter with a weak dispute settlement mechanism; it was meant to be no more than an interim agreement until the ITO came into existence. When the ITO failed to materialise, the GATT became the *de facto* arrangement governing trade relations in the postwar economy for the next four decades. Yet with all the other chapters in the Charter dealing with equity-related issues within and among countries shorn off, the GATT effectively came to espouse the notion of fairness emphasising process and legitimacy. Chapters in the Havana Charter, which had dealt with the equity-related concerns and outcomes that were to be implemented through the employment, development and other provisions of the ITO, had fallen off the agenda.

Admittedly, the limited intrusiveness of the GATT worked to the advantage of developing countries, which were jealous guardians of their new-found independence and sovereignty.[8] But the two central principles of non-discrimination and reciprocity, that underpinned the entire GATT system, undermined the agenda that developing countries had advanced since 1946 claiming that they should be allowed exceptions to the rules to facilitate their economic development. These two GATT principles embodied a commitment to procedural equality as fairness. By ensuring that concessions granted to one country had to be granted to all

[8] Note that Suranovic (2000) includes 'privacy fairness' in his category of different types of fairness, which he defines as, 'An agent should be free to take any action which has effects only upon himself. Any action by another which restricts private actions of some agent is considered unfair.' Any attempts by states or international organisations to influence the domestic policies of other nations may be seen as a violation of the notion of privacy fairness.

(most favoured nation, MFN), and further that national treatment had to be applied to foreign imports,[9] multilateralism in the GATT guaranteed equal trading opportunities to all its members. The reciprocity principle made trade liberalisation politically palatable at home and guarded against free-riding. Both represented fairness conceived of as process-based equality *par excellence*. But the emphasis on process automatically excluded the priority to equality of outcomes that was so dear to developing countries. The protest of developing countries against such a prioritisation was vociferous and recurrent.

The fact that the GATT had ended up espousing process-related fairness rather than outcome-related fairness was at least partly a result of the failure of the ITO, and had led to the survival of the commercial policy chapter of the Charter in the absence of supportive provisions that were contained in other chapters on development, employment and so forth. But the decision-making processes of the GATT contributed to reinforce this emphasis on fairness understood in terms of process rather than outcomes.

On paper, Article XXV of the GATT on Joint Action by the Contracting Parties stated that each member was entitled to one vote, and further that the Contracting Parties were to take all decisions by a majority of the votes cast except when stated otherwise. Such decision-making practices could have worked to the advantage of developing countries; the 11 developing countries of the 23 original signatories had soon expanded to become the overwhelming majority in the GATT. Akin to their 'tyranny of the majority' in the UN General Assembly, developing countries could have successfully launched a revisionist agenda targeted towards greater distributive justice in the GATT whose decision-making rules worked so strongly in their favour. But interestingly, developing countries never attempted to exploit the power of large numbers in the GATT. This is because the actual practice of decision-making in the GATT was based not on majority voting but consensus.

The norm of consensus-based decision making, which later found its way into the Agreement establishing the WTO, requires that for a decision to be passed, no member, present at the meeting at which the decision is taken, formally objects to the proposed decision. This resulted in three problems for developing countries. First, consensus decision-making assumes presence in the meeting, and several developing countries lacked permanent representation in Geneva. Second, consensus was arrived at through an open show of hands rather than a secret ballot. Many developing countries feared that open dissent to a motion that a developed country was supporting would result in retaliatory consequences and penalties against them outside the meeting room, and hence chose to remain

[9] Exceptions to national treatment were allowed under the Protocol for Provisional Application ('grandfather clause') in the GATT, but were removed under the WTO.

silent. Silence, however, was also interpreted as consensus. Third, to facilitate consensus-building, many 'Green Room' meetings, which often worked on the invitation of the Director General and resulted in the exclusion of many developing countries from the key discussion and negotiation stages.

Of course, one could argue that developing countries could have collectively overridden the norm of consensus decision-making and insisted on majority voting as per the GATT rule-book. However, besides the obvious problems of collective action in employing such a strategy, this strategy would have entailed the risk that developed countries might withdraw their commitment to the GATT and turn to alternative bilateral and regional arrangements. The costs of such arrangements and the decline of the multilateral trading system would have been the highest for developing countries. These would include susceptibility to greater bilateral arm-twisting, but also the losses that would result from the end of the free-ride that they had enjoyed on tariff reductions by developed countries.[10] As a result, despite the commitment of the GATT to variations of fairness other than equity, developing countries remained members of a forum that they frequently dubbed 'The Rich Man's Club'. But in the first phase, lasting into the launch of the Uruguay Round, their participation was sullen, and they tried hard to incorporate their own concerns with equity and distributive justice into the GATT and in other parallel forums.

Phase I: Emphasis on Equity and Outcomes

The agenda of developing countries in the first phase of their participation in the GATT was typified in the eloquent statement of the Indian representative, as quoted by Kock (1969):

> Equality of treatment is equitable only among equals. A weakling cannot carry the burden of a giant.

In practical terms, this view translated into the demand for preferential treatment by developing countries in the GATT, which took two forms – special market access for the products from developing countries, and exemptions from GATT obligations – and went back to the days of the ITO negotiations. These demands took more concrete shape as the writings of economists like Raul Prebisch achieved greater prominence, and fitted well with the economic nationalism of the newly-independent countries of the South. Developing countries were convinced that

[10] Most tariff reductions in the early days of the GATT were conducted under the 'Principal Supplier Principle' whereby tariff concessions were negotiated bilaterally between the principal suppliers and then multilateralised. As developing countries were seldom principal suppliers or demandeurs in the areas that fell within traditional GATT rules, it meant that they could free-ride on the tariffs thus negotiated. The downside, however, was that developing countries found themselves marginalised from the agenda-setting process.

despite its one-member-one-vote system, the GATT was an institution weighted against them due to its commitment to liberalisation, lack of balancing development provisions or special treatment for primary commodities, the shenanigans of the consensus diplomacy of the Green Room that worked to their exclusion, and negotiating formulae such as the Principal Supplier Principle. As a result, they made few attempts to engage actively in the give-and-take of GATT negotiations, and instead tried to lobby for a change in the norms of the GATT to a qualified liberalisation that involved notions of fairness emphasising equitable outcomes rather than just equitable processes by institutionalising preferential treatment for development purposes. Given institutional constraints in the GATT against majoritarian voting and coalition-building, many of these lobbying efforts took place outside the GATT in forums like the UN General Assembly and subsequently the UNCTAD.

These demands of developing countries generated some successes. The only clause in the GATT that had allowed limited infant industry protection was Article XVIII. This was modified in 1954–55 to include XVIII*b* that allowed countries the use of Quantitative Restrictions for balance-of-payments purposes whenever foreign exchange reserves fell below the level they considered necessary for economic development. In 1958, the Haberler report was issued to provide guidance for the work of the GATT, and recognised that:

> prospects for exports of non-industrial policies in industrial countries, and on balance their development will probably fall short of the increase in world trade as a whole.

As a result of the efforts of developing countries to bring development onto the agenda of the international economic organisations, the 1960s was designated as the UN Decade for Development. Dissatisfaction of developing countries also led to the formation of the UNCTAD in 1964, which was presented as an alternative to the notion of fairness that the GATT had emphasised. This organisation was formed pointedly under the auspices of the UN General Assembly to address the trade and development concerns of developing countries, to correct, by implication, the failures of the GATT in this area.

Faced with these epistemic and institutional alternatives to its own vision, the GATT incorporated some changes. The Committee on Trade and Development was established, and Part IV, devoted specifically to Trade and Development, was added on in 1965. While much of the language of Part IV suggests good intentions rather than obligations (e.g. the recurrent use of the term ‘there is a need for’, and qualifications such as ‘to the fullest extent possible’), the addition was important and unprecedented as it recognised the principle of non-reciprocity for developing countries. Article VIII thus stated:

> The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.

For the first time, developing countries had successfully introduced a concept of fairness into the GATT that recognised the importance of equity of outcomes rather than just legitimacy of process as a general principle. Institutionalising this principle further, in 1968, the UNCTAD passed a resolution in favour of an early establishment of a 'generalised, non-reciprocal, non-discriminatory system of preferences'. The GATT followed in 1971 with a waiver to the MFN principle allowing the Generalised System of Preferences (GSP) for the next ten years. The GSP was given a permanent and legal basis in 1979 when the contracting parties passed the 'Enabling Clause'.[11]

While all these changes might appear to suggest norm evolution in the GATT to incorporate a notion of fairness as extended to outcomes and equity, and preferred by developing countries, a closer look at S&D in the first phase suggests that this might not have been the case. First, even though the Enabling Clause had been negotiated in the Tokyo Round, it was accompanied by inclusion of the 'Graduation Principle'. This was an important qualification to the Enabling Clause that ensured developing countries would be progressively taken off the GSP lists of particular developed countries as they began to show higher levels of development. In other words, the Enabling Clause was only a stopgap measure before developing countries assumed their 'normal' responsibilities of reciprocal trade liberalisation. Second, the Enabling Clause was no more than a waiver to the MFN and reciprocity rules, which continued to be the foundational principles of the GATT. The waiver meant that developed countries could, if they so chose, remove or reduce trade restrictions on the specific imports of particular developing countries, but it was not a universal obligation imposed upon developed countries. Developed countries could unilaterally withdraw concessions granted under the GSP, unlike the commitments to which they had bound themselves in the GATT. As a result, the institutionalisation of S&D within GATT rules was little more than permission to have a temporary exception to its norm of reciprocal trade liberalisation; what the GATT treated as fair continued to be a matter of process and legitimacy, rather than outcomes and equity.

While the successes of developing countries in inducing norm change in the GATT remained limited, their gains from S&D as institutionalised by the GSP were also few. Wolf (1984), for instance, has argued that the GSP was used as a bait to divide the South. For late entrants in an area covered by GSP, the costs were especially high in the form of distorted international markets that were already occupied by the more advanced among the developing countries enjoying preferences. Even for the beneficiaries, the scheme had declining marginal utility as increasing overall trade liberalisation undermined the utility

[11] The official name for this provision is 'Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries'.

of preferences. And in return for such ad hoc and uncertain preferences, developing countries paid a heavy price. By accepting schemes such as GSP that represented a violation of the MFN principle, developing countries could not legitimately demand the end to exceptions on areas that were of key exporting interest to them. These issues would be picked up by developing countries in Phases II and III.

Phase II: Equal Process and Reciprocity

By the time of the launch of the Uruguay Round, notions of fairness that developing countries appealed to seemed to be changing. The most concrete manifestation of this lay in the gradual willingness of developing countries to engage on an equal and reciprocal basis in what came to be later known as the 'Grand Bargain' of the Uruguay Round. Developing countries had agreed to an inclusion of the so-called 'new issues' (services, TRIPs and TRIMs). In return, for the first time, agriculture and textiles and clothing were placed within the multilateral rules of the GATT. This was unprecedented and resulted in some important *quid pro quos* for developing countries. It also induced institutional innovations within the GATT, the most important of which were the creation of the Single Undertaking and the establishment of the World Trade Organisation.

Many economists of a liberal disposition have argued that the willingness of developing countries to accept reciprocal exchange was a result of their ideational conversion to the liberal enlightenment. Hoekman and Kostecki (2001) trace the changes in the attitudes of developing countries to the debt crisis, the lessons of the East Asian experience with export-oriented growth, the failures of central planning, and the emergence of export interests within developing countries that created new domestic constituencies for liberalisation. However, these accounts omit the significance of power politics in influencing the greater engagement of developing countries, their limited successes in the pursuit of their fairness-as-equity agenda in Phase I, and their adaptation and learning experiences within the institution over the years.

Interviews with developing country negotiators of the time suggest that the economic downturn of the 1980s made it almost inevitable that they would be driven to the negotiating table. Rather than a choice voluntarily exercised, economic liberalisation was seen almost as an inevitability. It was also nearly certain that given their weak Best Alternative to Negotiated Agreement (BATNA), developing countries would have to negotiate on the terms of the developed ones. These included an acceptance of the developed country notion of fairness as defined in terms of legitimacy and equity in process.

While power politics and economic imperatives rendered rhetorical appeals to equity of outcomes an indulgence that few countries could afford, institutional learning specific to the GATT had thrown considerable doubt on their old

strategies. First, it was becoming clear even to the most ardent supporters of S&D that the free-ride on the Principal Supplier Principle had generated heavy costs, and benefits from the GSP in its existing form did not compensate for these costs. Non-tariff barriers in the form of various grey-area measures were increasing, and developing countries recognised that one of the few defences that they had against the 'aggressive unilateralism' of the developed countries was the multilateralism of the GATT. Developing countries also began to realise that they could not influence the expanding rules of the GATT – rules that would have far-reaching implications for them – by standing on the sidelines.

Second, the experiments with different coalition types by developing countries also revealed the limitations of bloc-type coalitions that had stood on a moral high horse, emphasised the concept of fairness in terms of equity, used strict distributive bargaining tactics, and refused to engage in any reciprocal exchange. The euphoria accompanying the call for the New International Economic Order had melted into the debt crisis. The last traditional-type Third World-ist coalition in the GATT was the G10. In the face of all odds, led by Brazil and India, the G10 attempted to block the inclusion of services into the Uruguay Round, and refused to engage in any trade-offs until its demands were met. In contrast, under the initiative of Colombian Ambassador Felipe Jaramillo, and almost simultaneously with the machinations of the G10, a counter-coalition emerged that used integrative bargaining tactics. This group showed a willingness to enter into exploratory discussions on services, in marked contrast to the 'just say no'[12] attitude of the G10, and also signalled a commitment to the reciprocity principle by recognising the possibility of trade-offs. The Jaramillo process, begun as an informal discussion group, evolved into the G20 or the Café au Lait (so-called as it was led by Colombia and Switzerland!), and finally the G48 that brought together countries from the developed and developing worlds. The successes of this coalition were borne out in the fact that its draft proposal provided the basis for the Punta del Este Declaration. Meanwhile, the demands of the G10 had come to naught; see Narlikar (2003).

The contrasting experiences of the G10 vs. the Café au Lait resulted in some long-lasting lessons for developing countries.[13] The Café au Lait had demonstrated the successes of using an integrative bargaining strategy. Rather than simply resist the expansion of the GATT agenda on the strength of a commitment to distributive justice, the Café au Lait had engaged in extensive research, discussion among members as well as outsiders, and an issue-based focus and trade-offs that suggested a commitment to fairness in process rather than end results. The Cairns Group of agricultural exporters, also combining developed

[12] Cohen (2001) uses this phrase to describe Indian diplomacy.
[13] On the concepts of learning and adaptation, see Breslauer and Tetlock (1991).

and developing countries, took the modest strategies of the Café au Lait several steps further. First, the coalition was devoted exclusively to bring agricultural liberalisation within the fold of the multilateral rules of the GATT. As such, its demands conformed to the dominant norm of the institution, i.e. trade liberalisation, and gave them a veneer of legitimacy while placing the EU and the US on the defensive. This was unprecedented; until the time of the emergence of the Cairns Group, most demands of developing countries had been associated with an abrogation of GATT principles rather than a reinforcement of them. Second, there were no unilateral demands for the redistribution of wealth by the Cairns Group (unlike previous Third World-ist blocs). In fact, successfully exploiting the terms of the Single Undertaking, members of the Cairns Group threatened to block negotiations until it had received the *quid pro quo* that it had been promised at Punta del Este in the form of substantive commitments to agricultural liberalisation by the US and the EU. And finally, all these changes in alignments and strategy by developing countries reflected a change in their fairness discourse from distributive justice that directly affected outcomes, to equal and reciprocal processes that involved trade-offs and integrative bargaining. The success of the Cairns Group in ensuring that agriculture was included as part of the Uruguay Round drove home the benefits of this coalition model, and the ideas of fairness that underlay it.

The response of developing countries to the experiences of Café au Lait and the Cairns Group was enthusiastic to an extreme. Learning from the failures of the G10 and the successes of the Café au Lait and re-calculating their odds, developing countries attempted to modify their behaviour accordingly and transferred their faith from the bloc-type coalitions that had emphasised the importance of distributive justice, to the pragmatic issue-based coalitions that combined developed and developing countries and involved an unprecedented willingness of developing countries to engage in reciprocity and multilateralism. Their calls for S&D became considerably muted. This phase lasted for almost a decade, and was characterised by a genuine, good faith effort by developing countries to participate in the GATT – and subsequently the WTO – as per the rules of the institution.

These strategies seemed to yield success, or at least more success than developing countries had encountered in Phase I. Issues such as agriculture and textiles and clothing were indeed included within the Grand Bargain. But the Grand Bargain came at a high cost. First, developing countries found that in their enthusiastic attempt to replicate the successes of the Cairns Group through issue-based coalitions, they had lost even the limited collective strength. Most developing countries found that issue-based coalitions had short lives, high transaction costs and offered limited bargaining leeway (Narlikar, 2003). Second, in return for a promise of concessions on agriculture and textiles and clothing in the future, developing countries had bound themselves to a considerably intrusive system of

rules. The Single Undertaking, taken in conjunction with the strengthened Dispute Settlement Mechanism with its requirement of negative consensus, meant that rule violations could be penalised through cross-sectoral retaliation. Third, despite the fact that agricultural liberalisation and a phase-out of the MFA were placed on the agenda, they were not included within the general rules of the GATT 1994, but formed part of a set of sector-specific agreements. Actual commitments on agriculture remain highly contested even today, a decade later since GATT 1994 was signed, whereas the Agreement on Textiles and Clothing (ATC) allowed developed countries to phase out protection in critical sectors to the last phase that ended only in 2004. Fourth, developing countries found themselves facing very high, unanticipated costs of implementing the commitments that they had taken on. For instance, Finger and Schuler (2002) estimate that the costs of implementing just the customs valuation agreement for Jamaica will be US$840,000. Add to these the implementation costs of other agreements for developing countries, and the words of Sylvia Ostry ring clear: The Grand Bargain had turned out to be a 'Bum Deal' (Ostry, 2001).

Phase III: Process and Outcomes

Even after having participated in the GATT in accordance with its dominant norm of liberalisation, and on terms of fairness based on reciprocity rather than distributive justice, developing countries found themselves effectively in a disadvantaged position in the WTO. Faced with the disappointments as well as new problems of the Uruguay Round, negotiators from developing countries acknowledged that while the old Third World-ist calls for distributive justice had not generated adequate results, neither had their conversion in the 1980s to notions of fairness conceived as equal participation and reciprocity delivered the promised goods. Revised concepts and strategies were needed. Note that in contrast to the attitude of developing countries to the GATT in the early years that was underpinned by the economic theories of Raul Prebisch and others, the revision in the late 1990s was not driven by a change in the epistemic consensus that provided an alternative to trade liberalisation, or a return to the old orthodoxies of Import Substituted Industrialisation within the domestic constituencies of developing countries. Rather, adapting from the successes and failures of their experiences in Geneva, developing countries evolved new notions and ways of dealing with developed countries within the WTO. Under these new conceptions and strategies, developing countries couched the fairness discourse in terms of both equity in process and equity in outcomes.

A unique feature of the GATT (in comparison with the Bretton Woods institutions) – and one that developed countries had used as an important basis for demanding concessions from developing countries – was its one-member-one-vote system suggesting equality of process and opportunity. Equality at this

crucial level, ran the argument, was bound to produce fair outcomes in the Nozickian sense. Particularly from the Seattle Ministerial Conference in 1999, developing countries began to point to inequalities in decision-making processes in the WTO, and thereby challenge the fairness of the system on its own terms. GATT and WTO officials had often emphasised the merits of transparency and predictability that came from belonging to a rules-based system. Developing countries – individually and in coalitions – began to lambaste the WTO for its invitation-only Green Room meetings, and its various *de facto* and informal processes that were used to arrive at consensus and resulted in the effective marginalisation of the weaker countries with minimal representation in Geneva. At the Seattle Ministerial Conference, before the talks were brought to their ignominious close, African trade ministers issued the following statement on 2 December, 1999:

> . . . There is no transparency in the proceedings and African countries are being marginalised and generally excluded on issues of vital importance for our peoples and their future. We are particularly concerned over the stated intentions to produce a ministerial text at any cost including at the cost of procedures designed to secure participation and consensus.
>
> We reject the approach that is being employed and we must point out that under the present circumstances, we will not be able to join the consensus required to meet the objectives of the Ministerial Conference.[14]

In the aftermath of Seattle and leading up to the negotiations at Cancun and thereafter, developing countries advanced detailed formal and informal proposals on institutional reform within the WTO. All these proposals indicated their willingness and desire to participate actively in the WTO, and presented a far cry from their aloofness from the Rich Man's Club in Phase I. They also presented a direct attack on the notion of fairness that developed countries had uniformly advanced in the GATT and the WTO. Previously developing countries had questioned the notion that equitable and right processes sufficed to produce equitable outcomes; now they transformed their challenge into questioning the assumption that the much-vaunted decision-making processes of the WTO were equitable in the first place.

On issues of substance, developing countries began to realise soon after the formation of the WTO that they may have been hasty in their readiness to take on reciprocity. Problems of implementing the reciprocally negotiated Uruguay Round were many and expensive, the promises of the Grand Bargain had remained unfulfilled, and many LDCs had acceded to the WTO to find themselves particularly disadvantaged in the negotiation process as well as implementation of the agreements. The Like Minded Group (LMG) was among the first coalitions that

[14] Statement available at http://www.africaaction.org/docs99/wto9912.htm; a group of Caribbean and Latin American delegations issued a similar statement (http://www.twnside.org.sg/title/grulac-cn.htm, accessed on 7 May, 2006).

attempted to bring back equity on the agenda. The coalition was formed under Indian initiative in the run-up to the very first Ministerial Conference of the WTO at Singapore; it was the first to voice the problems of implementation at the second Ministerial Conference in Geneva in 1998 (Narlikar and Odell, 2006). Ambassador Munir Akram of Pakistan, a leading member of the LMG, delivered the following indictment of the Uruguay Round agreements, putting equity issues squarely back on the issue of rules and substance:

> The experience of the past five years with implementation of the Uruguay Round agreements has made it evident that the overall 'package' of agreements covered by the 'single undertaking' was inherently unequal. Moreover, several key agreements have been implemented in a manner that has eroded their spirit and compromised their objectives.[15]

The LMG insisted that until the imbalances of the Uruguay Round agreements were addressed, there was no question of starting a new round of trade negotiations that the developed countries had been proposing. It was especially vehement in resisting the inclusion of the Singapore issues. The coalition also brought back the demand for expanded S&D arrangements that were of special relevance for its least developed members (Tanzania and Uganda),[16] and was accompanied in this call by the coalition of LDCs. Individual countries made similar proposals. The Brazilian Foreign Minister, Celso Lafer, stated at the Doha Ministerial Conference of 2001:

> Developing countries have always attached great weight to the principle of special and differential treatment. Yet, after more than five decades, there is not much to show for it. On the contrary, if we look at the sectors that were left behind in the process of liberalisation, or even at many specific rules in the WTO Agreements, it is easy to perceive that there is a large measure of special and differential treatment in favour of the developed countries. Such is the case, for instance, of the Agreement on Subsidies and Countervailing Duties which grants a special exemption to members of the OECD Consensus with regard to rules on export subsidies that other Members of the WTO must comply with.[17]

Coalitions such as the G20 on agriculture continued to include strong language on S&D issues at the Cancun Ministerial Conference in 2003, sometimes even when members of the coalition were not direct beneficiaries of the demand.

These specific proposals were accompanied by an enunciation of more general, vitriolic statements expressing very high levels of disappointment with the system. At Doha, the Indian Minister of Commerce, Murasoli Maran, was vitriolic in his indictment of the draft ministerial text and the process whereby it had been presented:

---

[15] Ambassador Munir Akram, 'Implementation Concerns – A Developing Country Perspective', *South Bulletin*, No. 6 (15 February, 2001, viewed at http://www.southcentre.org/info/southbulletin/bulletin06/bulletin06.htm).

[16] WT/GC/W/442, Proposal for a Framework Agreement on Special and Differential Treatment (19 September, 2001).

[17] Statement by Mr Celso Lafer, Brazil, WT/MIN(01)/ST/12 (10 November, 2001, www.wto.org).

> . . . the draft Ministerial Declaration is neither fair nor just to the view points of many developing countries including my own on certain key issues. It is negation of all that was said by a significant number of developing countries and least-developing countries. We cannot escape the conclusion that it accommodates some view points while ignoring 'others' . . . The only conclusion that could be drawn is that the developing countries have little say in the agenda setting of the WTO. It appears that the whole process was a mere formality and we are being coerced against our will.[18]

Countries continued to express their disappointments at the Cancun Ministerial. China's Minister for Commerce, Lu Fuyuan, stated at the Ministerial:

> . . . we must be aware that in the WTO the rights of developed and developing are not symmetrical, their obligations are not balanced and their gains are not equal . . .[19]

All these attempts to revive questions of equity and justice in the WTO are striking, especially when held against the apparent conversion of developing countries in the mid-1980s to multilateral liberalisation, reciprocity, and legitimacy-based fairness of Phase II. Note, however, that the revival of questions of equity today also presents some important differences from the discourse of Phase I.

First, the claims to equity by developing countries in Phase I were presented as little more than derogations from GATT norms. The claim to these derogations lay in the low levels of development of these countries, which rendered it difficult for them to assume the commitments that developed countries had taken on; the argument for developing country exceptionalism was backed by economic theories favouring infant industry protection, import-substituted industrialisation, and so forth. In contrast, exceptions that developing countries seek today take the form of longer implementation periods or greater technical assistance. These demands are framed in terms of facilitating the full conformity of these countries with WTO rules rather than sanctioning derogations from them. Demands for market access and other concessions from developed countries are couched in similar terms: developing countries have kept their end of the Uruguay Round bargain, whereas developed countries have not. The latter must abide by the system of rules that they have created before demanding any further concessions from developing countries. Contrast the tone of these arguments, with the attempt by developing countries to create an alternative organisation to the GATT in the form of the UNCTAD in Phase I, and the difference becomes clear. Phase I was characterised by a call for radical restructuring, driven by an epistemic consensus alternative to the one represented by the GATT. The challenge of the developing world today seems to be much more nuanced, which is based neither on an

[18] Statement by H.E. Mr Murasoli Maran, India (WT/MIN(01)/ST/10, 10 November, 2001, www.wto.org).
[19] Statement by H.E. Mr Lu Fuyuan, China (WT/MIN(03)/ST/12, 11 September, 2003, www.wto.org).

outright rejection of the reciprocal, multilateralism of the WTO nor a wholesale acceptance of it.

Second, the call for greater equity in process as well as outcomes in the WTO, within its rules-based system, is backed by many different coalitions involving developing countries. These may be seen as a rational reaction to the pendulum swings from the bloc-based, hard-line coalitions of Phase I and the issue-based, conformist coalitions of Phase II. Many of these coalitions go back to at least the Doha Ministerial, if not earlier, such as the African, Caribbean and Pacific (ACP) group, the LDC group, the Africa Group, the Like Minded Group, the Small and Vulnerable Economies Group. Others are a product of the politics of the Cancun Ministerial, and include the G20 on agriculture, the Alliance on Special Products and Special Safeguard Mechanism, the Core Group on the Singapore issues, and the Alliance on Cotton. In all these coalitions, memories of the failures of the old bloc-type, Third World-ist coalitions persist, and delegates are quick to deny any ideological leanings or identity politics of the coalition. Instead, they emphasise the importance of interests and research. Nonetheless, a closer inspection reveals some important continuities between these 'smart coalitions' and the blocs of Phase I. Most are restricted to developing countries, outlive the issue of focus, and frequently come to operate across a range of issues even while retaining emphasis on a central issue. Adapting to past failures and successes, these coalitions show high levels of coordination among themselves. Symptomatic of this coordination were the 'Alliances of Sympathy' that emerged at Cancun, which offered support to the agenda of other coalitions whenever possible, and at least attempted not to oppose them outright when their interests were in conflict.

4. CONCLUSION

In this paper, I have relied on the distinction made by Franck (1995) between the two notions of fairness of legitimacy and equity. Institutional structures determine, in good measure, which particular vision will provide the basis for its rules. I argued that in the case of the GATT, decision-making and negotiation processes that led to the effective marginalisation of developing countries in the early years also led to the dominance of the legitimacy-as-fairness view. Attempts by developing countries to bring equity-based fairness into the mainstream trade discourse generated poor results. The failures of Phase I prompted an extreme swing by developing countries to Phase II when traditional Third World-ist politics and demands for preferential treatment and exceptions took a back seat, and developing countries seemed to have converted wholesale to assumptions of reciprocal trade concessions. In the wake of the disappointments of the Uruguay Round, a more nuanced position is in evidence. Issues of equity have returned to the fore, but this time are premised upon at least a qualified commitment to

economic liberalisation rather than an epistemic alternative. Developing countries have been careful to frame their demands for equity of process and substance in the WTO within the norms and rules of the organisation.

How far could it be argued that the discourse about fairness is little more than a discourse about interests? It is certainly true that the two extreme positions that developed and developing countries have traditionally taken – the former emphasising equity of opportunity and process, the latter attaching primacy to equity in outcomes – reflect obvious differences between the status-quo powers and the revisionist ones, between the strong and the weak. However, the evolution in their positions of both, as was traced in this paper specifically with reference to developing countries, is not one determined by power but institutional adaptation and learning. In certain instances, we found evidence that the leading countries of the developing world were willing to support demands of redistribution and equity that had minimal or negative economic value to them.

It is possible that these changes may have been driven by changes in interests at the domestic level in individual developing countries. The economic downturn in the 1980s left the majority of developing countries extremely vulnerable to external pressures as well as a profound questioning of the economic models of the 1960s. It is not surprising, then, that this phase of ideological questioning and conversion at home was accompanied by a turn to legitimacy-based approaches to fairness rather than equity and distributive justice. Following the economic crises of the 1990s that swept through East Asia and Latin America, a reversal to some of the old ways was also inevitable. Domestic constituencies at home which had been adversely affected by the crises were bound to lobby their governments to demand preferential treatment and exceptions.

The problem with such explanations, however, is that they require us to assume similar experiences across a range of developing countries at home to produce the same demands internationally. Exceptions to this expectation are important enough to throw such a hypothesis into some doubt. India, for instance, never converted to economic liberalisation on the same scale as Brazil had done, nor was it affected by economic crises at the same level as the Latin Americans were. If anything, cautious economic liberalisation has served India well as has its membership of the WTO. But India has been at the forefront in building new developing country coalitions that have once again begun to demand a fairer and more equitable international trading system, and changes in the rules and processes of the WTO to facilitate this.[20] Add to this the relative autonomy that some Geneva delegations from developing countries enjoy, and the domestic-international links become tenuous, at best, in certain phases and across many

[20] Hurrell and Narlikar (2005), working draft available at http://www.crisisstates.com/News/seminars4.htm

countries.[21] In contrast, adaptation by delegates at the Geneva level, along the lines advanced in this paper, reveals considerably more continuity. That the delegates themselves take such adaptation seriously is borne out in interviews in which they make frequent reference to past experiences and lessons learnt.

What does the evolution of the fairness discourse in the WTO tell us about the hypotheses that we started out with? Hypothesis 1 suggested that international organisations with near-universal memberships and majority-based voting systems are likely to attach greater weight to fairness conceptualised as distributive justice and equity. Similarly placed organisations with weighted voting or consensus-based decision-making systems are likely to be dominated by a fairness agenda that is legitimacy-oriented. The evidence from this paper suggests a confirmation of this hypothesis: GATT decision-making procedures, and related WTO ones, did lead to the marginalisation of the equity-based fairness agenda that developing countries had initially propagated. Contrast the legitimacy-based, process-related fairness that the GATT/WTO espoused against the equity-based, outcome-related fairness in the UNCTAD, and the importance of institutional rules becomes even more evident.

The second hypothesis proposed that countries that conform to the dominant fairness norm of the particular institution they are operating in are likely to have greater success in agenda-setting than countries that go against the established norm. The evidence here is inconclusive. The experience of developing countries in Phase I reveals that while demands that go against the dominant norm of the organisation are less likely to be successful, it does not automatically follow that demands that conform with the dominant norm are likely to be successful (as Phase II demonstrated). Conformity with the norm of the institution might well be a necessary condition for success in agenda-setting and influencing outcomes, rather than a sufficient one.

Taking into account the results on Hypotheses 1 and 2, so far we have a story of constraints on the weak. Developing countries find themselves facing a near-universal institution with consensus-based voting rules, which predisposes it towards a legitimacy-oriented, process-based fairness; adapting their notion of fairness to conform with the dominant norm does not automatically imply that they would have greater success in agenda-setting. Hypothesis 3, however, conjectured that members – even weaker members – can enjoy certain degrees of freedom in setting the fairness agenda and influencing outcomes. Besides exogenous factors, these degrees of freedom depend on adaptation and learning, framing and re-framing the issue, and coalition strategies. Developing countries

[21] That said, it is highly likely that the domestic political cultures of the leading countries of the developing world have gone a long way in influencing the collective notion of fairness that has evolved in the WTO. Such work is currently in progress with specific reference to Brazil and India across international regimes (Hurrell and Narlikar, Nuffield Project, 2003–2006).

have certainly demonstrated success in exploiting these degrees of freedom in recent years.

This paper has traced the process through which notions of fairness, as advanced by developing countries, have evolved in the WTO since the early days of the GATT. It is still too early to assess the effectiveness of re-introducing the fairness-as-equity discourse into the WTO, but the strategy of challenging the institution on its own terms by framing issues in conformity with its underlying norms seems to have already generated some success. Perhaps the biggest indicator of the new-found sensitivity to the concerns of developing countries is the name of the new round, the Doha *Development* Agenda. Paragraph 2 of the main Ministerial Declaration states:

> The majority of WTO members are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration.

Panagariya (2002) notes that the main Ministerial Declaration itself uses the expressions 'least developed' countries 29 times, 'developing' countries 24 times, and 'LDC' 19 times, while many of the annexes deal with issues of specific concern to developing countries. Admittedly, negotiations based on the mandate provided by the DDA are proving to be long and arduous. But we can see at least a possibility of a gradual norm evolution within the WTO in response to the equity concerns raised by developing countries. More studies are necessary, and ideally comparative ones across international regimes. In the evolution of the fairness debate might lie the key to understanding how international organisations change over time.

REFERENCES

Breslauer, G. W. and P. E. Tetlock (1991), *Learning in US and Soviet Foreign Policy* (Boulder, CO: Westview Press).

Cohen, S. P. (2001), *India: Emerging Power* (Washington, DC: Brookings Institution Press).

Diebold, W. Jr. (1952), 'The End of the ITO', *Essays in International Finance, No. 16* (Princeton University, Princeton, NJ: International Finance Section, Department of Economics and Social Institutions).

Finger, M. and P. Schuler (2002), 'Implementation of WTO Commitments: The Development Challenge', in P. English, B. Hoekman and A. Mattoo (eds.), *Development, Trade and the WTO: A Handbook* (Washington, DC: World Bank).

Franck, T. (1995), *Fairness in International Law and Institutions* (Oxford: Clarendon Press).

Hoekman, B. and M. Kostecki (2001), *The Political Economy of the World Trading System: The WTO and Beyond* (Oxford: Oxford University Press, 2nd edn.).

Hurrell, A. (2001), 'Global Inequality in International Institutions', in T. W. Pogge (ed.), *Global Justice* (Oxford: Blackwell).

Hurrell, A. and A. Narlikar (2005), 'The New Politics of Confrontation: Developing Countries at Cancun and Beyond', work in progress (working draft available at http://www.crisisstates.com/News/seminars4.htm).

Kock, K. (1969), *International Trade Policy and the GATT, 1947–67* (Stockholm: Almqvist & Wiksell).

Narlikar, A. (2003), *International Trade and Developing Countries: Bargaining Coalitions in the GATT and WTO* (London: Routledge).
Narlikar, A. and J. Odell (2006), 'The Strict Distributive Strategy for a Bargaining Coalition: The Like Minded Group in the World Trade Organization', in J. Odell (ed.), *Negotiating Trade: Developing Countries in the WTO and NAFTA* (Cambridge: Cambridge University Press).
Ostry, S. (2001), 'Why has "Globalization" Become a Bad Word?' (available at http://www.utoronto.ca/cis/ostry.html).
Panagariya, A. (2002), 'Developing Countries at Doha: A Political Economy Analysis', *The World Economy*, **25**, 9, 1205–33.
Ricupero, R. (1998), 'Integration of Developing Countries into the Multilateral Trading System', in J. Bhagwati and M. Hirsch (eds.), *The Uruguay Round and Beyond: Essays in Honor of Arthur Dunkel* (Ann Arbor, MI: University of Michigan Press).
Suranovic, S. (2000), 'A Positive Analysis of Fairness with Applications to International Trade', *The World Economy*, **23**, 3, 283–307.
Wolf, M. (1984), 'Two-edged Sword: Demands of Developing Countries and the Trading System', in J. Bhagwati and J. Ruggie (eds.), *Power, Passions and Purpose* (Cambridge, MA: MIT Press).
Young, O. (1994), *International Governance: Protecting the Environment in a Stateless Society* (Ithaca, NY: Cornell University Press).
Young, O. (1999), 'Equity in International Regime Formation', in N. Low (ed.), *Global Ethics and Environment* (London: Routledge).