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Trade Diplomacy Transformed

Why Trade Matters for Global Prosperity

Geoffrey Allen Pigman



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Why Trade Matters for Global Prosperity

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Trade Diplomacy Transformed

Why Trade Matters for Global Prosperity

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Research Associate, University of Pretoria, South Africa

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To my parents, Wendell Holmes Pigman (1931–1973) and Nancy Sweatland Pigman. Through their careers on Capitol Hill and in the executive branch of government, and by raising and educating me in the unique environment of Washington, D.C, they inspired my love of politics, diplomacy and international trade. The apple does not fall far from the tree.

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List of Abbreviations

ACP	African, Caribbean and Pacific countries
ACWL	Advisory Centre on WTO Law
AD	antidumping
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of South East Asian Nations
BATNA	best alternative to a negotiated agreement
BIT	bilateral investment treaty
CSO	civil society organization
CUSTA	Canada-US Free Trade Agreement
CVD	countervailing duty
DG	Director General
DSB	Dispute Settlement Body
DSM	Dispute Settlement Mechanism
DSU	Dispute Settlement Understanding
ECJ	European Court of Justice
EU	European Union
FTA	free trade agreement
GATT	General Agreement on Tariffs and Trade
IGC	inter-governmental conference
LDCs	Least Developed Countries
LMG	Like Minded Group
MFN	Most Favoured Nation
NAFTA	North American Free Trade Agreement
NAMA	non-agricultural market access
NTBs	non-tariff barriers
OMA	orderly marketing arrangement
PTA	preferential trade agreement
RTA	regional trade agreement

S&DT	special and differential treatment
SADC	Southern African Development Community
SPS	sanitary and phytosanitary regulations
TBT	technical barriers to trade
TPA	Trade Promotion Authority
TPP	Trans-Pacific Partnership
TPR	trade policy review
TPRB	Trade Policy Review Body
TPRM	Trade Policy Review Mechanism
TRIMs	Trade-Related Investment Measures
TRIPS	Trade-Related Intellectual Property Measures
TTIP	Transatlantic Trade and Investment Partnership
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Glossary

ad valorem duty	a duty imposed as a percentage of the value of the product sold
antidumping (AD) duty	a duty imposed on products sold abroad below their domestic market price to offset the price differential between the domestic market price and the foreign market price
common external tariff (CET)	a tariff imposed collectively by member states of a customs union on imports entering the customs union from non-member states
countervailing duty (CVD)	a duty imposed to offset the effect on the price of an imported good of a production subsidy impermissible under a prevailing trade agreement
customs union	a group of countries that adopt free trade between them and a common external tariff (CET) on imports to any member state from non-member countries
dumping	exporting products to be sold in foreign markets at a price below their domestic sale price
duty drawback	a government's reimbursement of a duty paid by an importer of raw materials when the same goods are reëxported after processing
excise tax	a sales tax on a product at the same rate whether the product is produced domestically or imported
export bounty	a government subsidy paid to a producer of a product that is exported
Fast Track	the original name for Trade Promotion Authority (TPA) (see)
first difference reciprocity	a method of assessing reciprocity of concessions in trade negotiation such that concessions, according to Bhagwati, reflect 'a balance of perceived advantages at the

	margin rather than via negotiations that result in a perceived full equality of market access and reverse market access'
free trade agreement (FTA)	an agreement between states in which they agree to remove tariffs and other barriers to trade between them on all or most products
Green Room	a subset of GATT or WTO members convened *in camera* by the Director General to facilitate negotiating an agreement amongst the full membership of the organization
max/min tariff structure	a tariff structure in which a government fixes unilaterally its lowest tariff, which it then offers to other countries in return for negotiating concessions, and sets a higher band of tariffs on imports from those countries with which no agreement is reached
Most Favoured Nation (MFN) status	a country granting another country MFN status assures that imports from that country will receive the most favourable duty and other conditions that the granting country offers to any trading partner
preferential trade agreement (PTA)	an agreement between a group of countries under which they agree to reduce tariffs and/or other barriers to trade between them to levels below levels that they offer to other trading partners
principal supplier principle	a GATT negotiating principle holding that bilateral tariff reduction negotiations over a particular good should take place between the principal suppliers of that good
revenue duty	a tax to generate government revenue imposed upon products at the same rate irrespective of whether they are produced domestically or imported (similar to an excise tax)
safeguards	provisions in trade agreements permitting signatories to impose temporary protective measures against sudden import surges or other adverse trading conditions

Special and Differential Treatment (S&DT)	a GATT/WTO negotiating principle under which developing countries are granted exceptions to and longer times to implement GATT/WTO trade liberalization obligations
specific duty	a duty assessed on imports based on the volume or weight (rather than the price) of the product
stare decisis	the use by jurists of judicial precedents from prior cases in ruling on disputes
tariff binding	a commitment by signatories to a trade agreement not to raise tariffs in future above agreed levels
Trade Promotion Authority (TPA)	authority granted by the US Congress to the US President to negotiate trade agreements that are then submitted to Congress for ratification without possibility of amendment (originally known as 'Fast Track')

Part One
International Trade as Diplomacy

1 Diplomacy and international trade: an introduction

International trade is no longer just about buyers and sellers, shipping and marketing, firms and distributors. Nor is it only about customs officials and border inspections, tariffs and quotas, export subsidies and import licences. Over the past three millennia, international trade has moved from being a series of infrequent journeys to meet unknown peoples, to exchange the familiar for the exotic for the benefit of rulers and elites, to being today a primary driver of global economic growth. International trade as a percentage of world economic output has increased from around two percent in the early nineteenth century to nearly 35 percent in the year 2000.[1] Trade today is an inescapable, indispensable component of a global economy that enables the world's billions to work, earn a living, and consume and invest the fruits of their labours. Without international trade, there can be no global economic prosperity. The dramatic increase in trade relative to overall global economic activity is a metaphor for the increasing necessity for people across the world to engage with one another: to deal with each other's differences and to do business with one another. Alongside this great rise in international trade has been a parallel increase in another fundamental and essential human activity: diplomacy.

Until recently, diplomacy that addressed international trade issues tended to be viewed as a narrow and technical subset of diplomacy,

[1] Angus Maddison 2001 data cited in Max Roser, 'International Trade', OurWorldInData.org, 2014, ourworldindata.org/data/global-interconnections/international-trade/, accessed 4 February 2015.

peripheral and subordinate to international security issues. But the diplomacy that makes international trade possible and profitable is no longer just about nation-state governments, bilateral trade liberalization treaties, multilateral trade organizations and Free Trade Areas. Trade diplomacy as it has evolved to this day is about much more than that, as the following story attests. In 2008, a Canadian energy transportation company, TransCanada, proposed to build an 875-mile pipeline that would transport Canadian oil pumped from tar sands fields in Alberta, Canada south across the Canada-US border through the north central United States to a hub in the US state of Nebraska, from which it would be distributed for refining and consumption in the United States and for re-export to third countries. But in order for this trade to flow through a newly constructed pipeline, first TransCanada would have to obtain a Presidential Permit issued by the US Department of State certifying that the 'Keystone XL' pipeline would serve the US national interest. The national interest in this case was constructed broadly, including foreign policy, energy security, economic growth and the environment. The pipeline project soon attracted media attention as it faced opposition from civil society organizations (CSOs) contending that the pipeline's route would traverse the environmentally sensitive Sand Hills region of Nebraska. Support for the project was deep on both sides of the border, including the Canadian government, Canada's energy industry, the US energy industry (shale oil pumped in the Dakotas would also benefit from the pipeline), US consumers, US political supporters of energy independence from non-North American energy and pro-business, pro-trade groups. Opposition to the project, in addition to those concerned about sensitive regions that the pipeline would traverse, attracted 'dark Green' adversaries of US consumption of tar sands oil and fossil fuels more broadly. During the review process the Nebraska legislature approved rerouting the pipeline so it would avoid passing through the Sand Hills and their delicate ecosystem. As of early 2015, the project remained stalled awaiting the issuance of a final environmental impact statement by the State Department, which was required before the US President could make a final determination of whether constructing the pipeline was in the national interest.

US Representative Tim Griffin, a member of Congress who represented the second district of Arkansas from 2011 to 2015, became involved directly in the diplomacy surrounding the pipeline debate for several reasons. Whilst the pipeline itself would not pass through Griffin's Arkansas district, a major pipe producer, Welspun Tubular, employed over 600 Arkansans in Griffin's district. The job security of Welspun's mostly high-skilled workers was dependent upon the demand for pipe

that Keystone XL would bring. Welspun Tubular, itself owned by an India-based parent company, was itself an example of the economic growth and job creation that liberal international trade and investment rules can bring. Griffin, whose own policy priorities were focused on economic growth and national security, was a staunch advocate of liberal trade and of the independence from energy sourced in conflict regions of the world that sourcing more oil from Canada would bring. Griffin, a member of the US Army Reserve who had served as a Judge Advocate General (JAG) in Mosul, Iraq in 2006, was keenly aware of the importance of the multifaceted diplomatic relationship between the United States and its most important ally, Canada, in which security, trade, and investment all feature prominently. Griffin met with the Canadian ambassador to Washington, Gary Doer, and spoke directly with Alison Redford, the Premier of Alberta, the province from which oil would be exported to the US via the Keystone XL pipeline. Recognizing shared interests between Alberta and Arkansas workers, Canadian and US firms and consumers, Griffin worked with representatives of Canadian federal and provincial governments to communicate to US policy makers Canada's interest in seeing the pipeline approved. Making the case for Keystone XL to colleagues on Capitol Hill, Griffin pointed out that, were the pipeline not approved, Canada would build another pipeline to the Pacific coast, from which it would export the oil primarily to China, at considerably higher environmental cost and with lost jobs and energy security for US nationals. At a November 2011 press conference with fellow members of the House of Representatives, Griffin argued:

> We all agree that the greatest challenge facing our country is our weak economy and high unemployment. By delaying a decision on the Keystone XL Pipeline permits, the President is putting politics over paychecks. Approval of this truly 'shovel ready' private sector stimulus of $7 billion should be a no-brainer for anyone interested in creating jobs. We are talking about 20,000 direct and 100,000 indirect high-paying jobs.[2]

In addition to voting for legislation in the House that would have streamlined the approval process for cross-border pipelines, Griffin

[2] 'Griffin: Keystone Delay a Result of President Putting Politics over Paychecks', Congressman Tim Griffin, press release, 15 November 2011, http://griffin.house.gov/press-release/griffin-keystone-delay-result-president-putting-politics-over-paychecks, accessed 28 February 2014.

communicated with US Secretary of State Hillary Rodham Clinton urging that the State Department approve the pipeline.[3]

The Keystone XL pipeline and a US Congressman's rôle as a diplomatic protagonist is illustrative both of the enduring aspects of international trade diplomacy and of how it has been transformed by successive systemic changes. International trade has traditionally been analyzed from the perspectives of economics and politics, and thus by extension political economy. The main questions addressed on the economic side have focused upon how trade works and who gains and loses from trade. On the political side, questions have focused upon how interests related to trade and commerce are articulated through domestic political systems and represented at the international level and upon how trade objectives are reconciled with other social and economic objectives through political bargaining. Yet an understanding of international trade and commerce from the perspective of diplomacy and the literature of diplomatic studies has been lacking up to now. This has meant that a number of important questions about international trade and its impact upon the polities, economies, and societies that engage in it have been neglected or marginalized.

Despite the focus of diplomacy upon issues of *haute politique* and security since founding of the modern diplomatic system of nation states, generally pegged at the 1648 Peace of Westphalia, and particularly during the Cold War, trade since ancient times has been at the core of the agenda of diplomats.[4] But trade has not only been a primary object of diplomatic representation and communication. In an important sense, trade itself *is* a key form of diplomacy. Trade, broadly understood as the exchange of goods, services, capital, and labour, by its nature reconstitutes, redefines, and changes the subjectivities and the identities of the polities that engage in it. Trade, or exchange, is an ongoing process. The 'we' who are doing it become different by doing it. Even as it creates value by realizing economic efficiencies through specialization of production, trade also redistributes wealth, assets, and power both within and between polities. This process invariably brings social change, which can redress or aggravate inequality and distribution of wealth between economic sectors, regions, and social groups. For example,

[3] At the time of writing, the ultimate fate of the Keystone XL pipeline was yet to be determined.

[4] Donna Lee and David Hudson, 'The old and new significance of political economy in diplomacy', *Review of International Studies* vol. 30, June 2004, pp. 343–360.

what we now understand as trade in services often involves the movement of persons across borders either to deliver or consume a service. A new diplomatic studies paradigm illuminates these processes by focusing not only upon the negotiation and politics of trade agreements but also upon the ongoing diplomatic representation and communication required to manage trading relationships.[5] More broadly, the diplomatic studies perspective on international trade highlights new developments such as the emergence of non-state actors, such as global firms and civil society organizations, as diplomatic actors in their own right.



Iranian and U.S. pistachios on sale at St. Lawrence Market, Toronto

Photo: G.A. Pigman.

Thinking about international trade from the perspective of diplomacy encourages the asking of key questions that might otherwise appear peripheral. How do the ways that diplomatic representation and communication are undertaken affect the diplomacy of international trade

[5] Geoffrey Allen Pigman and Brendan Vickers, 'Old Habits Die Hard? Diplomacy at the World Trade Organisation and the "New Diplomatic Studies Paradigm"', *International Journal of Diplomacy and Economy* vol. 1, no. 1, 2012, pp. 19–41.

and commerce in particular? What effects do the changing nature of diplomatic 'actor-ness' and the emergence of new venues and institutions for diplomacy have upon trade diplomacy? What is the impact of the rising importance of public diplomacy upon the diplomacy of international trade? How does diplomacy facilitate or hinder political tradeoffs between trade issues and other major social and economic issues on the global agenda, such as monetary coöperation, reduction of greenhouse gas emissions, intellectual property rights, etc.? How have diplomats negotiated and re-negotiated what trade means, in the sense of which issues count as international trade issues for purposes of negotiation and governance? For everyone seeking a deeper understanding of international relations and politics, global political economy and diplomacy amongst other things, the issues and questions under the purview of trade diplomacy are central. The European Union, which originated as a customs union, and the World Trade Organization (WTO), which originated as an agreement without an institution to manage it, can be seen as some of the world's greatest diplomatic achievements. Yet the challenges for the WTO from the difficult and limited progress of its Doha Development Agenda of multilateral trade negotiations over thirteen years and for the EU from the recent financial and monetary crises besetting the euro zone represent some of the greatest tests for diplomacy ever. A fuller understanding of international trade from a diplomacy perspective will equip decision makers better both to analyze and to contribute to solving these crucial global problems.

An understanding of trade diplomacy rests to a significant degree on how one understands the reasons why international trade does, or should, take place. In a penetrating analysis of the contemporary World Trade Organization, Rorden Wilkinson argues from a normative perspective that the purpose of international trade should be to promote economic development of the less developed parts of the world and to lessen inequality. In his book *What's Wrong With the WTO and How to Fix It*, Wilkinson contends that the international trading system and the institutions established to facilitate it should be reformed in such a way as to place international trade in service of these normative objectives.[6] Wilkinson poses the challenge of trade reform fundamentally as a task of global governance. This framing presupposes global governance as something natural, in which sovereign states will eventually be willing to subordinate their powers to global social objectives. Were that the

[6] Rorden Wilkinson, *What's Wrong with the WTO and How to Fix It*, Cambridge: Polity Press, 2014.

case, diplomacy would occupy a much less central and less essential place in international relations than it does.

The arguments of this book follow from very different presuppositions. The arguments herein are based upon the historical observation that trade (be it local or international) takes place when it makes the parties that engage in it better off. The increase in trade over time has brought gains to a wider range of participants in the international economy and has made the now global economy immeasurably wealthier than it would have been otherwise. Hence this book seeks to understand the diplomacy required to facilitate international trade as a worthy end in itself. Redistribution of the economic, political, and social gains from trade to less developed countries and less wealthy populations is an important project in itself, both on ethical grounds and because, economically, raising the capacity of the poor to engage in trade ends up making everyone wealthier. However, the problem faced in seeking to redistribute gains from trade and in seeking other trade objectives is fundamentally not one of global governance. Rather, it is a problem for diplomacy, which mediates between sovereign and estranged powers. The understanding of diplomacy on which the argument is based assumes that sovereign nation-states use their power on the diplomatic stage to advance their interests (as their governments perceive them). Hence the interests of larger and wealthier states are likely to prevail, *ceteris paribus*. Governments of such states are unlikely to transfer power to others unless they can be persuaded that it is in their interest to do so.

Thus the use of diplomacy to facilitate international trade today appears as a challenging paradox, with much riding upon its successful execution or lack thereof. On the one hand, international trade flourishes: trade growth is a driving force behind the explosive economic growth in emerging economies from Asia to Africa to Latin America. Yet at the same time much of the diplomacy that takes place within the institutional structures established to facilitate trade expansion, such as the WTO, feels as if it has slowed to a crawl by post-World War II standards. Prospects for successful completion of the more than decade-long WTO Doha Development Agenda negotiations remain uncertain despite the successful outcome of the 2013 Bali Ministerial Conference. Regional and bilateral preferential trade agreements (PTAs), the product of another channel of trade diplomacy that many argue thwarts the progress of multilateral trade liberalization, continue to be signed. Ongoing regional integration around the world threatens to change the nature and standing of the nation-state actors that have hitherto negotiated trade agreements. As the balance of global power shifts toward large

emerging economies such as China, monetary policy clashes again pose increasing risks to trade relations, as they did between the two World Wars. The ubiquity of real-time communication channels, which make it much easier for non-state actors and the global public to be aware of and participate in trade diplomacy, also makes that diplomacy much more difficult. Trade and financial diplomacy today serve as a vehicle for how actors talk to one another about globalization, how it works or fails to work, and how it should work. Domestic political battles between winners and losers from globalization within states result in positions taken that diplomats must represent to their counterparts and for which they must negotiate. In order to make sense of the many seemingly incoherent and incongruous aspects of trade diplomacy today, a genealogical exploration of how successive transformations in how and why trade diplomacy is undertaken have driven change in the international trading system is an essential starting point.

2 Three transformations that changed the diplomacy of international trade

Just as diplomacy in the broadest sense has continued to evolve as the actors in the international system have evolved, trade diplomacy has changed quite dramatically over the past three and a half centuries. Diplomacy relating to international trade can be understood to have undergone three significant transformations in the era since nation-states and their governments emerged as major actors in the international system in the mid-seventeenth century. Each transformation has changed in fundamental ways how and why trade diplomacy is undertaken. Each successive transformation has foregrounded particular processes, mechanisms, and objectives of trade diplomacy: the purposes of trade missions, the types of treaties that structure trade relations, the use of institutions as venues for trade diplomacy, the processes by which trade disputes are resolved, the goals themselves of international trade agreements and organizations. These transformations in turn have been driven by changes in the nature of the actors in the international system and by changes in the processes of diplomatic representation, communication, and negotiation. The nature of states as actors has changed. How interests are represented in the politics of states has evolved. Non-state actors, such as global firms, multilateral organizations, and global civil society organizations have emerged as major players alongside states in the international system. Hence states first became the dominant actors, and then they became somewhat less so,

notwithstanding the emergence of multilateral institutions such as the WTO that are organized primarily around state representation. As with most processes of historical change, each transformation in trade diplomacy has not been due solely to structural factors, such as changes in technology, the Industrial Revolution, changes in political systems and in the diplomatic system as a whole. Agency is also an important determinant of change: the ideas and actions of particular individuals at particular times and places, such as Richard Cobden and Michel Chevalier driving trade liberalization in the nineteenth century, Jean Monnet and Robert Schuman driving European integration in the twentieth century. Ideologies that capture the public imagination, such as free trade ideology in mid-nineteenth century Britain and northwestern Europe, or demands for special and differential treatment for developing countries in the late twentieth and early twenty-first centuries, have also played a transformative rôle.

The three transformations in trade diplomacy effectively divide trade diplomacy into four historical phases: trade-as-diplomacy; liberalization; institutionalization; and judicialization. However, what emerges from closer study is that the processes of transformation are more instructive than the attributes of the phases that extend between and during the transformations. During each phase, particular modes of diplomatic representation and communication may have dominated. For example, during the earliest phase, trade-as-diplomacy, the sending and receiving of bilateral diplomatic missions, in which trade was central to and inseparable from other core issues to be negotiated, tended to be most common. But the transformations have not been tidy, clean, step changes, as positivists might imagine. Rather, each transformation has appeared initially in traces before reaching a tipping point. The occurrence of these transformations has been messy and discontinuous, not taking place all at once with one signal event or shift. It is difficult to pinpoint an exact time at which a transformation began or could be said to be complete. Each transformation has tended to create new layers of activity and purposes for undertaking trade diplomacy alongside and on top of existing practices. The availability of different means of and reasons for trade diplomacy did not mean older approaches and processes uniformly came to be perceived as inferior and were superseded by newer, better methods and justifications. A shifting jumble of approaches to and rationales for trade diplomacy characterizes contemporary international politics. Today, the highly judicialized WTO Dispute Settlement Mechanism has become a primary site for trade diplomacy, even as multilateral and regional trade

Table 1 Three Transformations in Trade Diplomacy

TRADE DIPLOMACY TRANSFORMATIONS	Initial system: trade-as-diplomacy	First transformation: liberalization	Second transformation: institutionalization	Third transformation: judicialization
Method	Trader-diplomats, state mercantilism	Bilateral trade liberalization treaties	Establishment of multilateral, regional, plurilateral trade organizations	Stepped up trade dispute settlement mechanisms
Intent/ objective	Use trade as instrument of state power	Lower tariffs and other trade barriers, promote peace	Establish multilateral trade rules, lock in gains, expand participation	Resolve trade disputes more effectively
Results/ advantages/ strengths	Global diplomacy, modern state power	Increased trade, political stability through more commerce	Broadened participation, expanded remit, multilateral liberalization	Rules enforced, mediation of differences becomes obligatory
Weaknesses/ limitations	Limited economic growth from trade	Instability when treaties expire, vulnerability to tariff increases	Weak dispute settlement, diverging interests, differential PTA liberalization	Judicial procedure substitutes for diplomatic negotiation

liberalization negotiations continue at the WTO and in regional bodies like ASEAN, NAFTA, MERCOSUR and SADC. Likewise, bilateral and regional trade treaties are still signed occasionally, as the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP) negotiations underway in 2015 attested. Diplomatic missions combining trade with security, cultural, and other issues still take place regularly. Hence the transformations, the processes of adding to and changing the methods and reasons for trade diplomacy, reveal the most about why trade diplomacy has come to be as it is today.

The origins of international trade and the origins of diplomacy are closely intertwined. The desire that societies had to trade what they had with others for things that they did not possess but wanted was one of the primary reasons for encounter with others, with outsiders, with foreigners. Trade was a key reason for engaging in diplomacy in the first place. Trade missions, such as those that travelled the Silk Road between Asia and Europe or those that sailed from *La Serenissima*, the Venetian Republic, to Asia in search of spices and other exotic products, during the Middle Ages, were by their very nature diplomatic missions. These journeys, which required their participants to interact with and develop levels of comfort with those whom they met before

commerce would become possible, made social, cultural, and economic interactions inseparable. As modern nation-states evolved in Europe, trade-as-diplomacy increasingly took the form of military forces securing political control of distant lands with which their traders wished to do business. The first major transformation in trade diplomacy only occurred after trade-as-diplomacy had been practised for several millennia. The first transformation, which took place in the nineteenth century as widespread liberalization of trade policies became the norm in Europe, for the first time made trade diplomacy distinct from and often different from the rest of diplomacy. Trade issues and policy began to be debated on their own intellectual and ideological merits. The debates over trade liberalization focused on the benefits it might or might not bring. Specific diplomatic missions began to be sent to negotiate and sign trade liberalization treaties. The linkage between trade policy objectives and other diplomatic objectives was not severed, as Richard Cobden's championing of free trade as a means of promoting peace indicates (see Part Two below). Yet trade interests came to be understood separately from other foreign policy interests, sometimes congruent and sometimes in competition therewith.

The second transformation in trade diplomacy, which began in earnest as early as the beginning of the twentieth century with the signing of the Brussels Sugar Convention of 1902, saw multilateral trade diplomacy become the norm. Diplomats began to create institutions to serve as venues for and implementers of multilateral trade diplomacy, which had proved too difficult to conduct effectively *ad hoc* on an ongoing basis. The creation of institutions changed how trade diplomacy was done in part by introducing the institutions themselves as new diplomatic actors into trade diplomacy. Institutions were granted powers, limited at first, to engender compliance with the rules to which their members agreed upon joining. The Permanent Sugar Commission, created by the Brussels Sugar Convention to be the first such institution in trade diplomacy, had the authority to impose sanctions against states (whether signatories to the convention or not) not complying with the convention's ban on trade-distorting export subsidies on sugar. The General Agreement on Tariffs and Trade (GATT), signed in 1947, contained a dispute settlement mechanism enabling states to withdraw trade concessions, under limited conditions, from fellow GATT members deemed to have violated their GATT obligations. The WTO contains a much more robust dispute resolution system backed by the threat of penalties. The transformation that brought about institutionalization is also significant for creating venues in which diplomats have debated

a broadening sphere of economic, social, environmental and cultural issues under the rubric of trade relations. Whereas the prior transformation had the effect of distinguishing and separating trade issues from other subjects of diplomatic negotiation, institutions such as the GATT, the United Nations Conference on Trade and Development (UNCTAD) and the WTO have facilitated the broadening of the definition of what constitutes 'trade', both in terms of what is traded (to include services and investment capital) and in terms of trade-related issues (to include economic development, for example). Particular policy domains of national governments, such as environmental and labour regulation, intellectual property protection, competition policy and industrial policy, became subjects for negotiation in trade diplomacy institutions owing to the trade institutions' assessment of the ability of hitherto 'domestic' policy issues to affect trade relations between states.

The third and most recent transformation, which began with the coming into force of the Treaty of Marrakech in 1995 and the commencement of operations of the World Trade Organization and its stepped up mechanism for resolving trade disputes, is far from complete. This ongoing transformation has seen the primary focus of trade diplomacy move gradually away from more traditional bilateral and multilateral diplomatic representation, communication, and negotiation. The dominant method of trade diplomacy is moving toward becoming the legal, judicialized processes for resolving trade disputes created by the WTO and by regional trade agreements such as the North American Free Trade Agreement (NAFTA). *Stare decisis*, the principle of judicial precedent under which judicial decisions become part of the law considered in making future judgements and by which jurists effectively become policy makers, was not formally encoded as a principle of WTO dispute settlement. And yet, in effect, it has become the norm. Thus even as the WTO's Doha Development Agenda, the most recent round of multilateral trade liberalization negotiations begun in 2001, has lost momentum as a diplomatic process for liberalization, WTO dispute settlement panels and Appellate Body hearings are becoming leading venues for trade diplomacy. Trade diplomacy judicialized increasingly more resembles domestic political procedures for resolving disagreements rather than more traditional forms of diplomacy. It replaces direct diplomatic negotiations over contested issues with specialized consideration of and rulings on particular cases, which then must be generalized through subsequent rulings on future disputes. This judicialized form of trade diplomacy has a wide range of implications, not only in terms of the impact of its results on trade diplomacy and policy. Notwithstanding

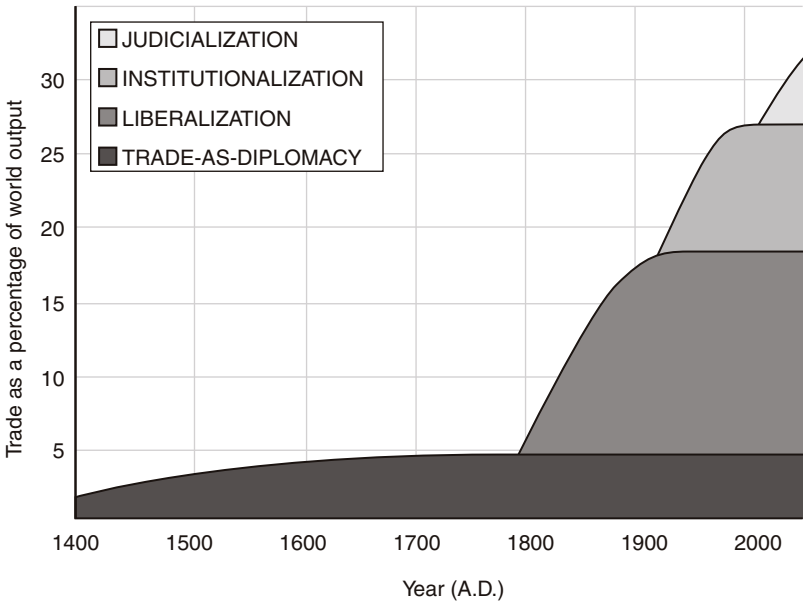


Figure 1.1 Successive transformations in trade diplomacy mapped against growth in global trade dependence

Note: The infographic plots the beginnings of three successive transformations in trade diplomacy against world trade as a percentage of world output at the approximate date that each transformation began. The image illustrates the accretive layered nature of trade diplomacy and the impact that transformations have had upon the expanding international trading system over the past two centuries.

Source: Historical data sets compiled by Max Roser, 'International Trade', OurWorldInData, 2014, ourworldindata.org/data/global-interconnections/international-trade/,accessed 4 February 2015. Data are approximate.

the continued dominance of nation-state actors in trade diplomacy, judicialization permits a more systematic articulation of the interests of non-state actors such as transnational firms and civil society organizations through mechanisms such as the filing of *amicus curiae* (friend of the court) briefs in dispute settlement cases.

3 Methodology and organization of the book

The book explores each transformation and the international trading systems from and to which each transformation led, giving proportionate weight to institutional and structural factors and to agents, the diplomatic actors without whom the transformations could not have been accomplished. The narrative is woven as a combination of broad

brushstrokes to frame the argument and deep dives into the detail of trade diplomacy, of who was negotiating and what was being exchanged for what. A different part of the book focuses on each major transformation. Each part features case studies of the trade diplomacy of major emerging economies of each era, rising great powers that challenged the respective dominance of Britain and the USA in the diplomatic arena: France, Germany, and Japan in the late nineteenth century, China and Brazil in the late twentieth and early twenty-first. In the narrative, the United Kingdom and United States occupy a special place of prominence over the course of the three transformations, owing to their positions as the dominant trading power and hegemon in the global economy during portions of the nineteenth and twentieth centuries, respectively. Hence the degree of effectiveness of the trade diplomacy of these hegemons at meeting their own trade policy objectives and at creating and shaping the international trading system of the day is of disproportionate importance. At the conclusion of each chapter, the limitations and weaknesses of the international trading system that each transformation in trade diplomacy has produced are highlighted. These limitations and weaknesses can be seen in many instances to have generated a perceived need for further reforms and transformation. But in each case such change to the international trading system would require particular historical catalysts to generate a shift in the objectives and the results of the diplomacy that could bring about transformative change.

What this book is not is a comprehensive history of international trade diplomacy or anything like it. Such a volume has not yet been written, and there is not nearly enough space to attempt to cover it here. This book also does not attempt to offer a thorough and complete explanation of the rules and operating mechanisms of the GATT and WTO. These volumes already exist and have provided vital information to underpin the argument in these pages.[7] Nor is this volume intended to serve as a primer on the negotiation of international trade issues. Negotiation is a specialism within diplomacy and as such is beyond the remit of this book, even though the diplomatic strategies and content of trade negotiations play a huge part in the entirety of the narrative that

[7] *Vide* Gerard Curzon, *Multilateral Commercial Diplomacy; The General Agreement on Tariffs and Trade and its Impact on National Commercial Policies and Techniques*, London: Michael Joseph, 1965; Amrita Narlikar, Martin Daunton, and Robert M. Stern, eds., *The Oxford Handbook on the World Trade Organization*, Oxford: Oxford University Press, 2012; Bernard M. Hoekman and Petros C. Mavroidis, *The World Trade Organization; Law, economics, and politics*, Abingdon: Routledge, 2007.

follows.[8] This book does not offer a complete review of diplomatic theory as it can be applied to international trade. Rather, this volume draws deeply on the theory and literature of diplomatic studies to understand international trade relations from the perspective of diplomacy. The objective of this book is to map the interrelationship between change in how and why trade diplomacy is done and the functioning of the international trading system that both results from and causes that change.

4 Theory and a brief history of trade diplomacy, or 'trade-as-diplomacy'

The argument begins by seating the diplomacy of international trade and commerce within a broader theory of diplomacy. It considers international trade as an originary and elemental form of interaction between human societies, one of the earliest forms of human encounter with the other.[9] It frames trade negotiations as the essential and original form of human negotiation, in that it resolves political disputes over who-gets-what questions.[10] It considers the trade mission as one of the oldest forms of diplomatic mission. Framing 'trade-as-diplomacy' as the starting point within diplomatic theory and within the evolution of international trade permits an understanding of what prevailed previously and that was subsequently to be transformed by the first major transformation in trade diplomacy, liberalization, the focus of the second part of the book.

Trade diplomacy is as old as diplomacy itself, which history suggests is nearly as old as the coexistence of distinct human civilizations geographically and culturally divided from one another. Trade, in the sense of exchanging goods or services with someone foreign, someone from far away, someone other, is in its essence an act of diplomacy. Trading achieves the core diplomatic objective of mediating estrangement and overcoming alienation, in Der Derian's words.[11] Sharp posits as an 'anthropological fiction', an account of how diplomacy between the most ancient of tribes may have originated. Before being willing to take

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[8] For an analysis of international trade negotiations from the perspective of negotiation theory, *vide* Amrita Narlikar, ed., *Deadlocks in multilateral negotiations: causes and solutions*. Cambridge: Cambridge University Press, 2010.

[9] Paul Sharp, *Diplomatic Theory of International Relations,* Cambridge: Cambridge University Press, 2009, pp. 93–96.

[10] Susan Strange, *The retreat of the state; the diffusion of power in the world economy,* Cambridge: Cambridge University Press, 1996, p. 68.

[11] James Der Derian, *On Diplomacy; a Genealogy of Western Estrangement*, Oxford: Basil Blackwell, 1987.

the risk of meeting a strange tribe face to face, emissaries of one tribe would leave gifts in a particular location that they know to be frequented by members of the other tribe. After a period of time they would return to the site to see whether the gifts were accepted, and, if so, whether the others had left behind gifts in return. These exchanges, if perceived as advantageous by both tribes, might lead in due course to the tribes taking the decision to come to know more about each other through direct contact, provided that each side deems the potential reward to be worth the risk (of the unexpected, particularly violence, occurring when strangers meet for the first time). This risk-reward calculation Sharp characterizes as 'thinking diplomatically'.[12]

> They are thinking diplomatically in the sense that they are proposing the possibility of a relationship with others to whom their people believe they are under none of the usual emotional, moral or legal obligations with which they bind themselves to one another. If those who propose such adventures may be regarded as thinking diplomatically, in part at least, then those who carry the gifts may be said to be acting in equal part as diplomats and traders.[13]

These initial trade-as-diplomacy interactions, which Sharp characterizes as 'encounter relations', in practice are not well documented, owing in part to the times in which they took place and their short duration relative to the relations that followed.[14] Sharp argues that encounter relations rapidly give way to what he describes as 'discovery relations', which are necessary if trade is to become established and to thrive. From the perspective of classical economics, trade takes place because it leaves each party to a trade better off; otherwise the parties would not have agreed to the deal. After trading, a relationship exists between parties to a trade that did not exist previously. However, the diplomatic act of trading goes far beyond economics in its significance. The establishing of relationships within which trade can occur is the essence of diplomacy. In order for trade to take place, communication must first occur between the parties about what is to be exchanged for what. Communication and negotiation are both core functions of diplomacy. The parties need to understand each other, and what is being offered for exchange, enough to agree to make a trade. The terms of a deal may then need to be negotiated.

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[12] Sharp, *Diplomatic Theory of International Relations*, pp. 94–95.
[13] *Ibid.*, p. 95.
[14] *Ibid.*, p. 89.

It should not be surprising then that the oldest 'diplomatic' missions identified by historians involved trade at least as a major, if not a sole, objective. Historical documentation from the Amarna period of ancient history, during the fourteenth century B.C., chronicles a rich record of intensive diplomatic interaction between the governments of states in the Eastern Mediterranean, the Levant and West Asia: Egypt, Babylonia, Assyria, Mittani, Hatti, Alashiya, Arzawa, and numerous vassal states thereof.[15] One of the primary forms of diplomatic interaction between the kings of these states was the exchange of gifts, which often were of significant value. These gifts served ritual diplomatic functions of symbolizing respect and affection. Diplomacy in the Amarna system, Zaccagnini argues, replicated family relationships with understood obligations particular to the time, in which kings of major states treated their counterparts as brothers. But fraternal relations between distant kings, if they were to be maintained, required certain ongoing diplomatic practices. 'On a practical level, brotherhood, friendship, love and so on, become evident only if supported by a constant and adequate flow of material exchanges…'[16] The exchange of gifts at the same time played a particular economic rôle of transferring goods and services of value from rulers who produced surpluses to those in need. Egypt, for example, provided all the gold needed by neighbouring states in the Amarna system, and much ebony, ivory, and alabaster as well. By contrast, Egypt received silver, lapis lazuli and copper from other states.[17] 'Thus, simply from the viewpoint of the procurement of the most prized luxury items of trade…, a dense network of reciprocal ties was firmly established.'[18] Not insignificantly, this diplomatic exchange of goods and services included the sending abroad of skilled service providers, such as physicians, exorcists, and interpreters of vulture augury, to provide their services as a gift to the recipient monarch's court.[19] This in-person mode of cross-border trade in services presaged the 1994 General Agreement on Trade in Services

[15] Raymond Cohen and Raymond Westbrook, 'Introduction: The Amarna System', pp. 1–12 in Cohen and Westbrook, eds., *Amarna Diplomacy: The Beginnings of International Relations*, Baltimore: The Johns Hopkins University Press, 2000.
[16] Carlo Zaccagnini, 'The Interdependence of the Great Powers', pp. 141–153 in Cohen and Westbrook, eds., *Amarna Diplomacy: The Beginnings of International Relations*, Baltimore: The Johns Hopkins University Press, 2000, pp. 144–145.
[17] Zaccagnini, 'The Interdependence of the Great Powers', pp. 145–146.
[18] *Ibid*., p. 146.
[19] *Ibid*.

(GATS) services trade Supply Mode 4, wherein a service is provided to the buyer in the buyer's home country by a foreign 'natural person'.

Perhaps the most comprehensive trope of trade-as-diplomacy was the silk trade that developed between China and Europe over two millennia. The desire of Chinese silk producers to export their thread and that of European consumers to acquire the strange and beautiful fabric created a link between two distant and unfamiliar parts of the world that required successful diplomacy to be opened and maintained. Silk fabric, which was originally produced in China, was introduced to ancient Greece, where it was immediately prized both for its beauty and because it was exotic. Evidence exists of a trade route used for shipping silk from China to Europe as early as the second century B.C. Silk came to be used in Europe in clothing and as a writing surface. Silk fabric was extremely expensive in Europe not only because it was labour-intensive and thus expensive to produce in China but also because the journey from China to Europe was very long and arduous. Silk was costly also because it was subject to customs duties, other trade barriers, and trade monopolies en route.[20]

In the second century B.C. the leaders of Han Dynasty China, fearing the threat to trade of their Hun neighbours to the north, began seeking to establish diplomatic relations and develop military alliances with states that lay to the west of China and through which silk bound for Europe travelled. Chinese Emperor Wudi sent Zhang Qian and a retinue of staff on a series of official missions over a period of 30 years beginning around 140 B.C. through several states, including the kingdom of Dayuezhi, as well as Daxia, Kizil, Kangju, Dawan (which lay in present-day Uzbekistan), and Parthia. The missions included the presentation of diplomatic credentials and silk cloth as gifts to the foreign heads of state and in many cases resulted in the establishment of diplomatic relations, sometimes including military coöperation.[21] Zhang's diplomatic missions on behalf of Emperor Wudi at the same time served as trade missions, indicating that the imperial court viewed trade and diplomacy as compatible and related functions.

> Among the travelers to Western Regions, there were many merchants to follow Zhang Qian and his fellow envoys and many of them even disguised as members of imperial envoys.[22]

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[20] Zhang Yiping, *Story of the Silk Road*, Jia Zongyi, tr., Beijing: China Intercontinental Press, 2005, pp. 12–17.
[21] *Ibid.*, pp. 19–25.
[22] *Ibid.*, p. 24.

Some decades later in the first century B.C., Ban Chao, Han Chinese military governor of the Western Regions, sent diplomatic missions as far west as Tiaozhi (in present-day Syria) and to the Roman Empire.

East-west trade on the Silk Road over the subsequent centuries oscillated between periods of flourishing, facilitated by diplomacy between the dominant states of the day, and periods of disruption, punctuated by wars between the states and domestic political disorder. A treaty signed in A.D. 297 between Byzantine emperor Diocletian and Persian king Narses designated the city of Nisibine (present-day Nusaybin, Turkey) as the exclusive trading point and customs frontier for trade in silk between the two empires. The two empires signed additional trade treaties in A.D. 408 and 409, but a century later the two empires went to war again, and the silk trade was once again disrupted.[23] The next period of a flourishing silk trade was under the Tang Dynasty in China (AD 618–907). China's government, which then sat at Chang'an (present-day Xi'an) instituted the use of passports for traders and a system of taxation for the use of roads. Traders were also used by the Tang government periodically as diplomatic envoys.[24]

The first successful recorded overland journeys between Western Europe and China once again combined trade and diplomacy.[25] Venetian merchants Marco Polo and his father and uncle travelled extensively through the Levant to Central and East Asia and the Subcontinent for over twenty years beginning in A.D. 1260. *La Serenissima*, the Venetian Republic, was already known as a trading state, sending missions to Asia and Africa to exchange goods. The Polos' journey was originally conceived as a 'market opening' mission to convince Barka Khan, the ruler of the Western Tartars, to trade with Venice.[26] But on what became an epic journey of over two decades Polo and his family members carried out many functions common to contemporary diplomats: carrying messages and gifts between leaders of different states, going on missions abroad to gather information for a head of state, representing a government to foreign courts at ceremonial functions such as royal weddings. The Polos were granted letters of safe passage by leaders as evidence of accreditation as diplomatic representatives. As he travelled, Marco Polo kept a detailed chronicle of the lands he visited, focusing in particular on the variety of goods that each land produced and traded. The account that Polo kept, published after his return

[23] *Ibid*., pp. 67–68.
[24] *Ibid*., pp. 77–80.
[25] *Ibid*., pp. 139–144.
[26] Marco Polo, *The Travels of Marco Polo*, R.E. Latham, tr., Harmondsworth: Penguin Books, Ltd., 1958, p. xii.

as *The Travels of Marco Polo*, was able to serve both as a valuable directory of products produced for Venetians and other Europeans seeking to trade with the East and as a guide to the governments with which they might have to treat. The journey of the Polos was important both for diplomacy and international trade. They travelled east at a time when there was relatively little interchange between Europe and Asia, and as a result governments and traders in each had little knowledge of or exchange with the other. The Polos were as unfamiliar to the leaders of the lands that they visited in Asia as those lands were to the Polos. Owing to the Polos' evidently agreeable diplomatic manners, rulers ranging from Barka Khan in the Levant to Kubilai Khan in China were moved to seek greater interaction and exchange with the Christian states of Europe. This resulted in the first diplomatic exchange between Europeans and Kubilai Khan. The Polos carried communications and gifts of value for exchange between Kubilai Khan and the newly elected Roman Catholic Pope, Gregory of Piacenza.[27]

In his account of lands visited, Polo describes governments engaging in implementing trade policies and in trade-related diplomatic initiatives that are not unfamiliar to scholars of contemporary diplomacy. In Badakhstan, a Muslim kingdom in central Asia, the government claimed state ownership of domestically mined balass rubies and imposed export prohibitions on their export so that their rarity value could be controlled as a store of national wealth. The king of Badakhstan, of the lineage of Alexander the Great, used the rubies for purposes of diplomacy and international finance.

> The king sends them by his own men to other kings and princes and great lords, to some as tribute, to others as a token of amity; and some he barters for gold and silver.[28]

As in the Amarna period two and a half millennia earlier, in thirteenth century central Asia the exchange of gifts of great monetary value remained a primary ritual of diplomacy to communicate friendship and thus was a foundational component of international trade that long predated the rise of capitalism as we know it two centuries later.

The emergence of markets for raising capital in the Netherlands to finance long distance seagoing trade missions in the fifteenth century, and the securitization of those missions and the profits flowing therefrom, permitted trade to rise in importance alongside the rise of

[27] *Ibid.*, pp. vii–xxxix, 1–14.
[28] *Ibid.*, p. 45.

nation-states in Europe. Long-distance trading voyages were too costly for individuals to undertake without financial backing either from governments or private sources of capital or both. Monarchs and other European nobility saw in trade missions the opportunity to increase their power by acquiring precious metals and other fine luxury goods from across the seas. The subsequent development of popular tastes for exotic goods, both a product and a driver of the development of capitalism, motivated the desire to trade across long distances. The need of traders, sometimes with military backing, to engage with those with whom they traded in distant lands was coupled with curiosity about distant peoples and societies. Meanwhile at home in Europe, rulers of nation-states growing accustomed to governing the spiritual as well as the temporal affairs of their territories and peoples established a system for diplomatic relations that is still recognizable today.[29]

However, the practices of this emerging diplomatic system did not extend to the still vast parts of the world that were not a part of it. The opportunity for trade-as-diplomacy between Europeans and non-Europeans was still great. The different processes by which European states established colonies in the Americas, Africa, Asia, and Oceania can be viewed in many cases as instances of trade-as-diplomacy, even if before long colonial expansion on numerous occasions was undertaken for geopolitical objectives: to prevent a rival from gaining or expanding a foothold in a particular region. By the late seventeenth and early eighteenth centuries, rivalries between the nation states in Europe were being projected across the rest of the world through a competitive drive to develop exclusive trading relationships with distant sources of precious metals and tropical produce, in what became known as an age of mercantilism. From the Caribbean and the Americas to the Indian subcontinent and southeast Asia, European traders backed by their home governments had established trading posts, trade routes, production facilities and agricultural plantations to serve the growing demands of European populations. In the mercantilist version of trade-as-diplomacy, European governments used their control over trade, and primarily their ability to limit or prohibit trade, as an instrument of war in a struggle for dominance over European rivals. Military conflict between England and France was endemic in the eighteenth century, during which a primary strategy of each was to attempt to deny the other access to goods transported from distant colonies and other trading partners by sea. On occasions when

[29] Keith Hamilton and Richard Langhorne, *The Practice of Diplomacy*, 2nd edn., London: Routledge, 2010, pp. 29–85.

treaties that facilitated trade were signed, such diplomacy was conducted in service of broader military objectives. The Methuen Treaty, signed by England and Portugal in 1703, was negotiated by John Methuen, English ambassador to Portugal as part of a strategy to entice Portugal to abandon their French allies and join England's side in the Anglo-French War of the Spanish Succession. The treaty granted Portuguese wines at least as favourable tariff treatment entering England as French wines and allowed English textiles duty-free entry into Portugal. Although the treaty liberalized bilateral trade between the two countries in goods in which each possessed a comparative advantage, the English government used trade concessions explicitly to strengthen their military position relative to France in a classic example of mercantilist diplomacy.

But even if a dominant mentality of limitation of trade in service of diplomatic (military) objectives prevailed in this period, trade-as-diplomacy in its original form also persisted. In one sense the age of trade-as-diplomacy was bound to run its course, once most of the peoples, societies, and polities of the world had come into contact with one another and established how and for what purposes to engage in relations. The triangular trade that developed between Europe, the west coast of Africa, and the Caribbean and North America in the late seventeenth and eighteenth centuries represented a strange final act to trade-as-diplomacy through the peculiar rôle of 'traded-diplomats' played by African slaves in the Americas (in the South of the United States, after all, slavery was known as the 'peculiar institution'). French and British traders, backed by their governments and supported by their respective navies, established secure trading posts on the West African coast, fortified outposts that they used simultaneously as diplomatic missions to the coastal African peoples, such as the Fante on the Gold Coast, and trading posts. The Europeans used these posts as bases for transshipment of traded goods and services to and from the interior of west Africa. With the collaboration of coastal west Africans, Europeans undertook missions into the interior on which they met with representatives of inland societies. On these missions, amongst the last of traditional trade-as-diplomacy encounters, European trader-diplomats exchanged European goods for African prisoners. Europeans transported over 800,000 Africans to the coast and thence across the Atlantic to be sold as slaves in the West Indies and North America by 1750 alone before returning to Europe with their ships laden with New World agricultural produce (sugar, tobacco, cotton, etc.).[30] Yet

[30] Niall Ferguson, *Empire; The Rise and Demise of the British World Order and the Lessons for Global Power,* New York: Basic Books, 2004, pp. 84–139.

the prisoners themselves, whose uncompensated human labour services were traded as if they were goods, were also themselves involuntary instantiations of trade-as-diplomacy. As traded diplomats, as opposed to trader-diplomats, African slaves brought their culture and customs to the Americas. By living amongst the Europeans in the Americas, Africans not only changed their slave masters but shaped the American societies that both groups inhabited and the culture that they came to share.

In order to maintain the viability of the trading forts and secure the ongoing coöperation of the Fante people in undertaking trade missions to the interior, British, Dutch and French traders on the Gold Coast engaged in extensive diplomacy with the Fante rulers who controlled the territory on which their forts were built. The British were well established at Annamaboe, a coastal trading city in contemporary Ghana, by the late seventeenth century. The Fante permitted the British Royal African Company, which had been granted a trading monopoly by Parliament, to construct a fort at Annamaboe, Cape Coast Castle, in the 1680s. Through living and working together in and around Annamaboe, Europeans and Africans came to know one another well. British traders lived amongst the local Fante inhabitants, married, and raised families with them. Relations between the Fante officials and the Britons in charge of the fort were often difficult, with disputes over prices of and payments for traded goods and needed supplies a common occurrence. Unlike in Asia, where British traders established extraterritorial trading zones in which British law was enforced, British and other European traders in Annamaboe participated in and accepted the rulings of local Fante dispute settlement procedures known as palavers. When disagreements could not be resolved, the Fante authorities regularly expelled British governors of Cape Coast Castle from Annamaboe.[31]

French traders, established for decades to the west in contemporary Guinea but believing the Gold Coast more profitable, sought access to Annamaboe and Fante assistance in trading with the interior. The Royal African Company sought to enforce its monopoly on trade at Annamaboe against other European traders, be they English, French, Dutch, or others. France launched a competitive effort to woo the Fante caboceer, or leader, John Corrantee, away from trading with the English. Corrantee was himself a governor, diplomat, and active trader in goods and slaves. The English and French competed for Corrantee's favour, each transporting one of Corrantee's sons to their respective capitals. Corrantee's sons

[31] Randy J. Sparks, *Where the Negroes Are Masters; An African Port in the Era of the Slave Trade*, Cambridge, Mass.: Harvard University Press, 2014, pp. 1–67.

Bassi and William Ansah Sessarakoo were received at court in London and Paris, respectively, as visiting nobility, provided with language and cultural instruction on the ways of the Europeans, and fêted elaborately. Upon returning to Annamaboe, Corrantee's sons reported at length to their father on the ways of Europeans, which assisted him in negotiating more effectively with his British and French interlocutors. Corrantee, by playing the French and British against one another in negotiations, succeeded in convincing the British to end the Royal African Company monopoly in 1750 and open trade to all Britons.[32]

5 Limitations and weaknesses of 'trade-as-diplomacy'

International trade missions that served simultaneously as diplomatic missions, trading posts that also served as stations for consular relations, messages exchanged between sovereigns by traders travelling long distances between continents and capitals played a central rôle in the establishment of inter-'national' relations and the creation of a modern international system of nation-states marked by King Henry VIII's 1536 Act of Supremacy, the 1648 Peace of Westphalia, and events that followed. But as governments of nation-states got to know one another, trade-as-diplomacy as defined by its original objective of getting to know the unknown had outlived its usefulness. Once governments of states had established roughly the extent of their sovereignty with respect to one another and the customs of diplomatic relations with one another that have prevailed to greater or lesser extent up to the present day, they subordinated international trade entirely to objectives of state politics. Trade was not recognized by most leaders of states as having value, economically or politically, for its own sake. Before the Industrial Revolution trade was too small a part of overall economic activity for governments or their citizenry to recognize and rate its benefits. And yet, as capitalism rose before governments realized it, trade had already become important for its own sake. One of the primary rôles of the state had become the management of trade relations with other states.

By the eighteenth century, trade was one amongst many tools used by leaders and their diplomats and was more often used as a hostile instrument. Trade prohibitions and embargoes seemed to governments to be a useful diplomatic instrument with few associated costs. Yet the Napoleonic Wars, effectively a 'world war' lasting nearly two decades in the late eighteenth and early nineteenth centuries, arrayed the allies of what were by

[32] *Ibid.*, pp. 37–67.

then the two major seafaring nations of the world, England and France, against one another. The conflicts of the Napoleonic Wars had the effect of systematically disrupting, and at many times and places suspending, the seaborne trade in goods that had begun to grow appreciably even in an environment of government-imposed trade barriers. This disruption culminated in the British blockade of Continental ports from 1807 to 1813 and the concurrent 'self-blockade' by Continental states against British imports. Napoleon had attempted unsuccessfully to construct an exclusive zone of mercantilist, preferential trade relations in Europe, the Continental System, relying more upon force than diplomacy to do so. This undertaking was based on Napoleon's failure to appreciate that physiocracy, the eighteenth century French school of political economy that placed the greatest store in the value of land, had been overtaken by the economic and financial consequences of the Industrial Revolution by then underway in Britain. Britain's 'Great Transformation', as Polanyi described the Industrial Revolution, had already conferred upon Britain significant comparative advantage in manufacturing and, crucially, had enabled the government to raise the funds required to sustain effective war-fighting capacity.[33] In the event, the abortive Continental System proved a catastrophic strategic error for Napoleon, as French political and military expansionism required to implement it roused opposition across the European continent from Russia to Britain.[34] The War of American Independence or American Revolutionary War, a precursor of sorts to the impending Napoleonic Wars, was as much as anything a war by English colonists in North America against discriminatory trade restrictions imposed by Lord North's government in Westminster against England's own North American colonies. Later, the entry of the by then independent United States into the Napoleonic Wars on the side of France was prompted by English conscription of American sailors on merchant vessels into the Royal Navy in international waters. By the end of the conflict, the shortcomings of mercantilism as an economic philosophy and the growing importance of international trade for the economic well-being

[33] François Crouzet, 'Wars, Blockade, and Economic Change in Europe, 1792–1815', *Economic History*, vol. 24, no. 4, December 1964, pp.567–588, reprinted in Kevin H. O'Rourke, ed., *The International Trading System, Globalization and History, Volume I*, Cheltenham: Edward Elgar, 2005, pp. 151–172; François Crouzet, 'Mercantilism, War and the Rise of British Power', pp. 67–85 in Patrick Karl O'Brien and Armand Clesse, eds, *Two Hegemonies; Britain 1846–1914 and the United States 1941–2001*, Aldershot: Ashgate, 2002.

[34] Paul Kennedy, *The Rise and Fall of the Great Powers; Economic Change and Military Conflict from 1500 to 2000*, New York: Random House, 1987, pp. 124–139.

of nations were becoming apparent both to governments and to their constituents. But a different approach to diplomacy would be required to bring about a different framework of diplomatic relations within which increased international trade could take place. Hence after Napoleon was defeated conclusively at Waterloo, conditions existed for the first major transformation in how and why trade diplomacy was done to begin.

Part Two
Liberalization: The First Transformation

6 Introduction: industrialization, international trade and the emergence of trade diplomacy

The Industrial Revolution of the late eighteenth century and the Napoleonic Wars were catalysts for an unprecedented upheaval in how and why international trade was conducted and for the diplomacy that would make its expansion possible. This first significant transformation in trade diplomacy meant that, for the first time, diplomats would negotiate about trade for its own sake, rather than using trade as an instrument of war. The process by which trade diplomacy increasingly became distinct from other diplomatic issues and became driven by its own policy imperatives could only get underway in earnest once demand for imports and incentives to export goods and services (and for the funds to pay for them) reached certain threshold levels. The late eighteenth and early nineteenth century economic arguments of Adam Smith and David Ricardo for liberalization of international trade and the political arguments of Alexander Hamilton and Friedrich List in favour of protection of the industrial sectors of developing countries all presuppose the necessity of state actors to take trade policy decisions, which itself was a radically new assumption. Scholars and private businesses began to cast governments of states as critical protagonists in much-needed trade-specific diplomacy for the first time: to negotiate trade and tariff treaties, to implement the treaties fairly by collecting duty revenue, to resolve disputes over international trade as and when they arose. The Industrial Revolution had been transforming how manufactured goods were produced, where they were made and consumed, and by and for whom they were produced and sold. As Marx and Lenin argued, the mass production of goods that industrialization

enabled generated surplus output, requiring markets for consumption of manufactures that inevitably would extend across national borders. Industrialization dramatically increased the need for goods to be traded across borders and in so doing created the necessity for diplomacy specific to international trade.

Given that this first transformation in trade diplomacy effectively produced what we think of as 'trade diplomacy' for the first time, it is unsurprising that it also produced the first trade diplomats. Professionals who represent their governments and negotiate with foreign counterparts to make agreements and treaties, and then to oversee their implementation and resolve disputes as they occur, emerged. These individuals in many cases are best known by history for their rôles as trade diplomats, even though in a number of cases they had other diplomatic, academic, and governmental accomplishments. Richard Cobden, Sir Charles Kennedy, Sir Stafford Northcote from the United Kingdom, Michel Chevalier from France, and Cordell Hull from the United States are amongst the best known trade diplomats that the age of liberalization produced. In the international trading system that was a product of this transformation, particular individuals played perhaps a greater and more important part than in eras either prior or subsequent to this time. The parts played by institutions and judicial procedures later became relatively more important relative to that of particular individuals. This heightened rôle of individuals is owed in part to the prominence of ideas in this transformation: ideas of economic liberalism, which changed the relationship between the state and the economy profoundly. Ideas, in order to be transformed into policies, require individual champions to persuade and convince, to negotiate diplomatically and horse-trade politically. Hence it is no coincidence that many of the greatest advances in trade diplomacy, which made the greatest changes to the international trading system in this period, were spearheaded by Cobden and Hull. Both men championed the idea that increased commerce between states makes them less likely to go to war, and both proved to be highly skilled diplomats.

That this transformation in trade diplomacy is most appropriately dubbed 'liberalization' can be attributed to the shift in discourse, both within and between states, resulting from the Industrial Revolution and the end of the Napoleonic Wars in 1815. Policy makers who argued against the removal of all tariff barriers, such as Alexander Hamilton, the first Secretary of the Treasury in the newly independent United States of America, were no longer arguing against international trade in principle or against the use of trade-specific diplomacy to further the

economic and political interests of developing countries like Hamilton's own. Hamilton's early articulation of the 'infant industry argument' favoured maintaining higher tariffs on imports of industrial goods into the United States, so that U.S.-based industries would have an opportunity to develop and, eventually, become exporters themselves of industrial goods. It ultimately was a pro-trade argument.

> The regulations of several countries, with which we have the most extensive intercourse, throw serious obstructions in the way of the principal staples of the United States. In such a position of things, the United States cannot exchange with Europe on equal terms…[1]

The debates that now ensued concerned to what degree trade liberalization was advantageous and thus how, when, and with whom it should be undertaken. Governments came to select trade policies and chose appropriate diplomatic strategies for achieving trade policy objectives, even whilst considering the interaction of such policies and diplomacy with other important policy issues such as security. This transformation also redefined what ensues when trade diplomacy breaks down: 'trade war', as it is understood in a modern sense. That failed trade diplomacy could lead to outright conflict in the trade arena (retaliatory tariff increases, etc.) whilst other aspects of bilateral relations remain amicable enough would not have been understood in the prior age of trade-as-diplomacy, in which trade and political/military/security relations were inseparable.

Although this first transformation of international trade diplomacy rapidly came to affect most of the sovereign states and empires around the globe over the course of the nineteenth century, it can be seen to have originated in Europe and to have been driven significantly by the development, implementation, and inevitable interaction of trade policies of three states: the United Kingdom, France, and the states that became Germany. Great Britain, the first industrializer, was the first hegemonic power of the industrial age. France, Britain's first great political and commercial rival in Europe and overseas, offered an industrializing Britain the greatest opportunity for trade expansion in the first half of the century. Germany, once unified by 1870, subsequently posed the greatest challenge to British economic and trade dominance in Europe and in the developing world. At the end of the Napoleonic

[1] Alexander Hamilton, 'Report on the Subject of Manufactures', 5 December 1791, pp. 35–47 in George T. Crane and Abla Amawi, eds., *The Theoretical Evolution of International Political Economy; A Reader*, Oxford: Oxford University Press, 1997.

Wars Britain was uniquely positioned as a hegemonic power to use diplomacy to shape rapidly evolving patterns of international trade and the institutions, rules and norms under which it operated. In 1800, Britain's economic dominance was unquestioned. The UK produced 40 percent of the world's output of manufactured goods in the heavy industries of the day: Britain produced 85 percent of the world's coal, 50 percent of pig iron and almost 50 percent of world cotton.[2] Following the defeat of France British naval power dominated world sea lanes, and Britain could use her fleets for commercial as well as political purposes in parts of Europe, the Mediterranean, and elsewhere.[3] Outside of Europe, Britain's influence was also now unequalled by any other European power, and her formal colonies did not face immediate military threat. The growth of Britain's unique 'informal' empire of trading and commercial relations in Latin America, Asia, and elsewhere, which did not require direct political or military control, was facilitated by the downfall of French naval power.[4]

Britain's shift after the Napoleonic Wars toward a liberalizing international trade policy was not a radical break from the mercantilism that had dominated the eighteenth century trade policy and diplomacy of all European powers. British officials took decisions to liberalize trade pragmatically, as official perceptions of the national interest changed in response to changing domestic economic and social conditions. The economic policies of the liberal Tory governments in the post-Congress of Vienna period had the objective of providing sufficient food and employment for a rapidly growing population. The government's realization by the early 1820s that domestic grain supplies would be inadequate forced them to contemplate raising imports of grain.[5] The incentive to lower import duties on raw materials was driven at least in part by the need to increase exports of manufactured goods. Greater exports were needed to generate foreign exchange with which to purchase imports of foreign grain.[6] Foreign Secretary George Canning

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[2] Geoffrey Ingham, *Capitalism Divided? The City and Industry in British Social Development*, Basingstoke: Macmillan, 1984, pp. 98–99.
[3] Paul Kennedy, *The Rise and Fall of the Great Powers*, New York: Random House, 1987, pp. 154.
[4] P.J. Cain and A.G. Hopkins, 'Gentlemanly Capitalism and British Expansion Overseas I: The Old Colonial System, 1688–1850', *Economic History Review*, 2nd ser. xxxix, IV, pp. 501–525.
[5] Boyd Hilton, *Corn, Cash, Commerce*, Oxford: Oxford University Press, 1987, p. 303.
[6] *Ibid*., p. 304.

and Board of Trade President Walter Huskisson both shared the fears of exporters that high British import duties would cause Britain's trading partners in Europe to retaliate against increases in British exports.[7]

Changing popular perceptions of Britain's national interest from the 1820s also drove successive governments toward reforming British trade policy and the diplomatic instruments used to implement it. Although industrialization had already changed Britain's demography substantially by the end of the Napoleonic Wars, it took time to bring about corresponding reforms of British politics and commercial policy. The Reform Bill of 1832 played a pivotal part in this process by enfranchising the industrial, urban bourgeoisie and thereby expanding the political base of support for trade liberalization. Even the agricultural gentry, facing new competition from grain imports and increased labour costs at home as farm workers left the fields for urban manufacturing jobs, nonetheless softened their opposition to trade liberalization as they diversified their business interests so as to benefit from industrialization and commercialization.[8]

7 New diplomatic instruments for new trade policy

Implementing a new, at least somewhat liberalizing, trade policy required the evolution of a new trade and commercial diplomacy: new types of treaties, new negotiating strategies, and, eventually, entirely new institutions. This proved a significant challenge even for the leaders of the most powerful economy on the globe. The effectiveness of British trade diplomacy between the Congress of Vienna and the repeal of the Corn Laws in 1846 can be judged to be uneven at best.[9] In 1823, Canning and Huskisson formally abandoned the UK's longstanding mercantilist policy of seeking trade treaties of exclusive advantage in favour of seeking bilateral reciprocity treaties. Treaties of exclusive advantage required that the privileges extended (e.g. tariff reductions) be exchanged only between the signatories to the treaty. Such treaties, the most common of the relatively infrequent trade agreements signed

[7] Peter Mathias, *The First Industrial Nation*, 2nd edn., London and New York: Routledge, 1983, p. 271.
[8] Bernard Semmel, *The Rise of Free Trade Imperialism*, Cambridge: Cambridge University Press, 1970, p. 139.
[9] Timothy J. McKeown, 'Hegemonic Stability Theory and 19th Century Tariff Levels in Europe', *International Organization*, Vol. 37, No. 1, Winter 1983, pp. 73–93.

in the mercantilist eighteenth century, were negotiated primarily for political purposes rather than in search of economic gains. Reciprocity treaties, by contrast, typically involved the exchange of equality of treatment in port duties and shipping, and, most importantly, the exchange of most favoured nation (MFN) status. The exchange of MFN status was a crucial innovation in trade diplomacy, in that a country granting another country MFN status assures the other country that its imports will receive the most favourable duty and other conditions that the granting country offers to any trading partner. Not only does the recipient country receive the lowest tariffs offered by the granting country at the time the treaty is signed, they are also entitled to benefit from any future tariff cuts by the granting country. Hence trade treaties containing MFN were by their nature liberalizing because of the MFN provision's built-in mechanism for spreading trade liberalizing benefits beyond more than just two signatories to a bilateral treaty. Between 1823 and 1827 Canning was able to negotiate and sign reciprocity treaties exchanging MFN status, at least with respect to some traded goods, with several of Britain's most important trading partners: France, Prussia, Austria, Sweden, the Hanseatic League, Denmark, and the United States.[10]

Although reciprocity treaties were an innovation in 1820s trade diplomacy, their utility in putting trade liberalization to work to grow Britain's economy was limited, because they by themselves did not reduce basic tariff rates. They also did not end tariff and other preferences between Britain and her colonies and did not remove Navigation Act prohibitions against the shipment of goods between Britain and other countries in third-country ships.[11] Canning's efforts to negotiate reciprocity treaties with several significant trading partners of the UK, including Spain, Portugal, and Naples, were unsuccessful.[12] The limited success of reciprocity treaties drove the Foreign Office in the 1830s to negotiate for a more comprehensive type of commercial treaty that would establish reciprocity in relation to all import duties (rather than only on selected items) and that would exchange full MFN status with regard to commerce, shipping, and, in some cases, the rights of resident aliens.[13] This diplomatic strategy also met with only a limited response

[10] A.A. Iliasu, 'The Cobden-Chevalier Commercial Treaty of 1860', *Historical Journal*, Vol. xiv, No. I, 1971, pp. 67–98.
[11] Lucy Brown, *The Board of Trade and the Free Trade Movement 1830–1842*, Oxford: Clarendon Press, 1958, pp. 117–118.
[12] Iliasu, 'The Cobden-Chevalier Commercial Treaty of 1860', pp. 69–70.
[13] *Ibid.*

from Britain's trading partners in Europe. Britain sought a more comprehensive trade treaty with France, but an attempt to negotiate such a treaty between 1838 and 1843 failed because neither side was willing to offer concessions on products that the other side regarded as significant. Political disagreement between the two nations over Ottoman prince Muhammad Ali Pasha's dominions in the Levant also impeded reaching agreement.[14] Britain did negotiate several commercial treaties with various German states as part of an ultimately unsuccessful strategy to prevent the absorption of all the independent German states into a Prussian-led *Zollverein* (customs union). Since the early nineteenth century Prussia had been recruiting other German-speaking states into the *Zollverein*, a process of economic integration leading to political integration of Germany, which, interestingly, prefigured the formation of the European Union a century later. The Foreign Office feared that an all-German customs union with a common external tariff would inevitably lead to higher import duties on British goods entering the German states.[15] Britain and the *Zollverein* eventually signed a limited commercial treaty not containing tariff reductions in 1841. This was less than the Foreign Office wanted, but the *Zollverein* was unwilling to make major trade liberalizing concessions to Britain until Westminster repealed their import duties on grain, the Corn Laws.[16]

The Foreign Office found reciprocity treaties to be more useful as an instrument of its trade diplomacy with emerging states in Latin America and with weaker states in the Middle East and Asia.[17] Britain signed reciprocity treaties with many of the newly independent Latin American republics between 1824 and 1827, which effectively formalized trading relationships established during their colonization by Spain and Portugal. British trade diplomacy discouraged early attempts by other European powers to encroach upon Britain's commercial and financial interests in the Latin republics.[18] Britain's 1838 commercial treaty with Ottoman Turkey, the Treaty of Balta Liman, focused on limiting the

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[14] A.L. Dunham, *The Anglo-French Treaty of Commerce of 1860 and the Progress of the Industrial Revolution in France*, Ann Arbor: University of Michigan Press, 1930, pp. 12–13.
[15] W.O. Henderson, *The Zollverein*, London: Frank Cass & Co., 1958, pp. 97–99.
[16] Brown, *The Board of Trade*, pp. 103–115; Henderson, *The Zollverein*, pp. 132–136.
[17] J. Gallagher and R. Robinson, 'The Imperialism of Free Trade', in J. Gallagher, ed., *The Decline, Revival and Fall of the British Empire*, Cambridge: Cambridge University Press, 1982, pp. 1–18.
[18] D.C.M. Platt, *Latin America and British Trade 1806–1914*, London: Adam and Charles Black, 1972, pp. 23–64.

negative effects on Anglo-Turkish trade caused by internal transit taxes on commerce within the sprawling and loosely governed Ottoman Empire. The treaty was a significant diplomatic achievement for both states, in that it liberalized trade significantly between Britain and the Sublime Porte's extensive territories in the Levant and West Asia. It also furthered several British geopolitical objectives in the Levant: checking Russian expansion into the Eastern Mediterranean and toward Britain's Levantine route to India; and preventing European rivals, such as France and Austria, from profiting from a potential collapse of the increasingly fissiparous Ottoman Empire.[19] Britain signed commercial treaties with other states in the region, including newly independent Greece as well as Persia and Afghanistan, further to parry Russian potential expansion.[20]

Britain faced greater challenges in using diplomacy to achieve trade liberalization policy objectives with respect to China, which was not reliant upon Britain either for defence or for trade. To Britain's efforts to negotiate access to a potentially vast Chinese market for British exports and at the same time ensure that other European powers did not establish zones of exclusive influence in China the Chinese government was largely unresponsive. An Anglo-Chinese trade dispute over opium was the ostensible cause of the 1839–1842 Opium War, but Britain's underlying motivation for moving militarily against China was to force the Chinese to accept a proposed commercial treaty intended to establish bilateral trading relations under Western liberal principles. In the Treaty of Nanking (29 August 1842), China agreed to establish diplomatic relations with Britain on an equal footing, open five ports to British trade and allow the establishment of British consulates in each port, pay a war indemnity to victorious Britain, set moderate transit duties on British goods being transshipped, establish a standard import tariff, and cede sovereignty over Hong Kong to Britain for use as a secure trading port. For Britain subsequently to compel China to adhere to the terms of the treaty proved a diplomatic challenge for two decades, however.[21] The

[19] Immanuel Wallerstein, *The Modern World-System III*, San Diego: Academic Press, 1989, pp. 176–177; V.J. Puryear, *International Economics and Diplomacy in the Near East 1835–1853*, Stanford: Stanford University Press, 1935, pp. 1–145; Convention of Commerce – Balta Liman, 16 August, 1838, http://www.urunlu.com/BelgeOku2.aspx?ykod=66, accessed 29 July 2013.

[20] Puryear, *International Economics and Diplomacy in the Near East*, pp. 60–69, 117, 127.

[21] W.C. Costin, *Great Britain and China 1833–1860*, Oxford: Clarendon Press, 1968 (1937), pp. 1–114.

lorcha *Arrow* incident in 1857, a maritime dispute involving the incarceration of British sailors by Chinese forces, became the pretext that British Prime Minister Lord Palmerston used to intervene militarily to force stalled Anglo-Chinese trade negotiations to a satisfactory conclusion. A British fleet under Lord Elgin, with the coöperation of France, Russia, and the United States, waged war on Peking, and in 1858 forced the Chinese government to sign the Treaty of Tientsin and a companion trade treaty at Shanghai, which together liberalized trade significantly and normalized diplomatic relations in the way that Britain had sought.[22]

8 Corn Law repeal: free trade ideology and liberalization diplomacy

The limited successes of Britain's trade diplomacy in the first two decades following the end of the Napoleonic Wars combined with shifts in domestic political coalitions to precipitate a much more radical transformation of British trade policy and diplomacy: the repeal of the Corn Laws (tariffs on imports of grain) in 1846 and the embrace of free trade ideology. Having begun as an economic theory in the late eighteenth century, by the 1830s free trade had become a political movement in the UK, which British diplomats subsequently proselytized to the international community after Corn Law repeal. Until the formation of the Anti-Corn Law League in the 1830s, the growing British manufacturing class still feared foreign competition without protective tariffs. Domestically, the vehicle for changing from within the government's perceptions of the national interest in response to external and domestic economic change became the increasingly influential Board of Trade. Under Walter Huskisson's leadership, the Board of Trade was heavily influenced by the free trade views of classical political economists such as Ricardo. The Board tended to lead public opinion rather than follow it. Outside government, the earliest supporters of trade liberalization and backers of the Board of Trade's free trade stance were London merchants and their allies in the City of London financial sector.[23] But by the 1830s, support for free trade became concentrated in the Manchester School of Economics, a growing social coalition of political economists, philosophic and middle class intellectual radicals, pacifists, and manufacturers.[24] In March 1839,

[22] *Ibid.*, pp. 115–346.
[23] Ingham, *Capitalism Divided?*, pp. 114–115.
[24] William D. Grampp, *The Manchester School of Economics*, Stanford, Calif.: Stanford University Press, 1960, pp. 5–15.

members of the Manchester School formed the national Anti-Corn Law League, a political interest group whose goal was to raise public support and pressure Parliament to repeal the Corn Laws. Leadership of the Anti-Corn Law League was taken up by Richard Cobden, a radical intellectual and peace activist who perceived free trade as an optimal policy instrument for Britain to promote peaceful relations with rival states.[25]

What is significant about Britain's repeal of the Corn Laws, which heralded a wholly new form of trade diplomacy for Britain and (at least for a time) for a number of other countries, is that it was not itself directly a product of trade diplomacy. Repeal was a unilateral foreign policy decision taken by the Tory government of Sir Robert Peel and enacted through legislation in Parliament. Against a backdrop of broader socioeconomic change, domestic political momentum for repeal resulted from several proximate causes. Whilst British trade was growing at an average of 5.6 percent *per annum* over the period 1826–1856, the value of British exports was languishing because prices of manufactured exports had fallen sharply.[26] A recession that began with a poor harvest in 1837 boosted grain imports and prices in Britain, whilst other imports and prices tumbled.[27] Amidst this economic distress, British commercial negotiations with France, Belgium, and Prussia failed to reach agreements to lower tariffs reciprocally, which led more members of the Board of Trade to support Corn Law repeal.[28] The recession-induced government revenue shortfall forced the Whig government of Lord Melbourne to raise some tariffs, provoking a dispute over optimal tariff levels for revenue maximization, which caused the government to fall in 1841.[29] Sources of government revenue were key both to trade liberalization and to mounting social unrest in the early 1840s. Peel, whose government succeeded Melbourne's, first attempted to raise revenue by rationalizing and reducing tariffs on 769 products, principally raw materials. He also imposed a temporary income tax, the

[25] Nicholas Edsall, *Richard Cobden, Independent Radical*, Cambridge, MA: Harvard University Press, 1986, pp. 63–74.
[26] François Crouzet, *The Victorian Economy*, Anthony Forster, tr., London: Methuen & Co., Ltd., 1982, pp. 116, 124.
[27] Alfred H. Imlah, *Economic Elements in the Pax Britannica*, New York: Russell & Russell, 1958, pp. 126, 137.
[28] Brown, *The Board of Trade and the Free Trade Movement*, pp. 104–133; Sir J. Bowring, *Autobiographical Recollections*, London: Henry S. King & Co., 1877, p. 207.
[29] Edsall, *Richard Cobden*, pp. 84–101.

first since the Napoleonic Wars, to cover the short-term budget deficit.[30] Only the subsequent reinstatement of the income tax, by liberating the government from dependence upon duty revenues, made unilateral trade liberalization fiscally possible.[31]

Peel probably decided as early as 1842 to adopt free trade, but initially by increments. Committing Britain to the unilateral policy of free trade sought by orthodox free traders would sacrifice securing gains from trading partners by negotiating further bilateral, reciprocal tariff reductions. So Peel's government first sought to negotiate commercial treaties with France, Portugal, Brazil, and Russia. All of these negotiations, except those with Russia, came to nought, fuelling the opposition of Cobden, the Anti-Corn Law League and other orthodox free traders to negotiated trade liberalization.[32] Peel proceeded with incremental tariff cuts, which he complemented with major bank reform. The Banking Act of 1844, which codified the gold standard in the institutional structure of the Bank of England, facilitated liberal trade by limiting currency instability and state intervention in the economy.[33] Rising Parliamentary support for free trade and the failure of the 1845 Irish potato crop combined to force Peel's hand. After a Tory split over free trade brought Peel's government down in December 1845, Peel formed a new government of free trade Tories with the support of Whig free traders. Peel's new government moved Corn Law repeal through Parliament to passage on 25 June 1846.[34] Over the next few years, successive British governments repealed the remaining vestiges of mercantilist legislation: in 1846 the requirement that British colonies give imports from Britain tariff preferences; the Navigation Acts in 1849; and in 1854 the coasting trade was opened to foreign vessels.

Corn Law repeal in Britain opened the door for this first major transformation in trade diplomacy to proceed in earnest. Once the British government had repealed the Corn Laws, tree trade supporters acted quickly to institutionalize trade liberalization within Britain and to advocate its spread across Europe by diplomatic means. They seized upon the dual logics of unilateral trade liberalization and promotion of

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[30] Sir Llewellyn Woodward, *The Age of Reform 1815–1870*, 2nd edn., Oxford: Clarendon Press, 1962 (1938), pp. 109 *et seq*.
[31] Arthur A. Stein, 'The Hegemon's Dilemma: Great Britain, the United States, and the International Economic Order', *International Organization,* Vol. 38, No. 2, Spring 1984, pp. 355–386.
[32] Iliasu, 'The Cobden-Chevalier Commercial Treaty of 1860', p. 70.
[33] Ingham, *Capitalism Divided?*, pp. 111–112.
[34] Woodward, *The Age of Reform 1815–1870*, pp. 109 *et seq*.

free trade ideology as the diplomatic mechanism that would transform the international trading system. Only by liberalizing trade unilaterally can a state demonstrate to other states that it is acting in its own interest, they argued, as opposed to attempting in negotiations to deceive other states into sacrificing their own interests in favour of those of the liberalizing state.[35] Practising an early form of public diplomacy, British free traders fanned out across Europe to spread the free trade gospel, arguing that what was good for Britain was good for everyone else and for the international trading system as a whole. They pointed to an impressive record of economic and trade growth that accompanied Britain's post-Congress of Vienna decades of trade liberalization, whether causally linked thereto or not. Britain's share of world manufacturing output, which barely exceeded that of France, Germany, and Austria in 1800 (and was actually exceeded by that of Russia) was already nearly double that of each of the other powers by 1830 and more than doubled each by 1860.[36] Britain's foreign trade also grew over 50 percent by value between 1820 and 1846.[37]

Since liberal international trade was new in the nineteenth century, nobody could be certain whether it would succeed or who would benefit within and between particular states. In the 1840s and '50s, whether a country liberalized or not depended upon whether enough domestic political interests became convinced by the arguments to implement the policy. Britain's public diplomacy of free trade presupposed that Britain was powerful enough, both in economic and military resources and in market and ideological power, to influence other states by unilateral legislation and to convince them by persuasion to modify their own policies. Trade liberalization arguments did not all originate in Britain. Yet they were developed, debated, and implemented domestically and then promoted and popularized abroad by members of the Manchester School, Cobdenites, and British Government officials generally.[38] Britain's free trade 'apostles' (as they became known), particularly Cobden, preached trade liberalization in Europe not only for the economic gains it would bring to the European powers but for the

[35] Iliasu, 'The Cobden-Chevalier Commercial Treaty of 1860', p. 71.
[36] Paul Bairoch, 'International Industrialization Levels from 1750 to 1980', *Journal of European Economic History,* Vol. 11, No. 2, 1982, pp. 269–333.
[37] B.R. Mitchell with Phyllis Deane, *Abstract of British Historical Statistics,* Cambridge: Cambridge University Press, 1962.
[38] Charles P. Kindleberger, 'The Rise and Fall of Free Trade in Western Europe, 1820–1875', *Journal of Economic History*, Vol. 35, No. 1, 1975, pp. 20–55.

security advantages it would generate. Cobden, who envisioned tree trade as the moral principle around which international relations could be recast, imagined weaving a web of commercial relations between nations that would create a level of political harmony rendering large military forces and empires obsolete.[39]

Between August 1846 and October 1847 Cobden himself visited France, Spain, Italy, Austria, Saxony, Prussia, Russia, and the Hanseatic cities to propagate tree trade. Less concerned about the form of European governments than their policies even as the 1848 revolutions approached, Cobden expressed approval for enlightened (*viz.* pro-free trade) autocratic governments, praising Prussia for supporting freer trade in the *Zollverein* against the protectionist stances of other *Zollverein* member states and Belgium. The growth of nationalism concerned Cobden greatly, because he saw in simmering nationalist movements a threat both to free trade and peace. The 1848 liberal revolutions across Europe for Cobden were a mixed blessing, because in many cases they were inspired by nationalist movements. Yet the revolutions did boost popular support for the international peace movement, upon which Cobden then tried to capitalize.[40] Cobden's 1846 speaking tour of France, a concerted public diplomacy effort to influence opinion leaders in civil society, energized the long struggle by small bands of French free traders that ultimately was to bear fruit in the 'Cobden-Chevalier' Anglo-French Commercial Treaty of 1860. On that visit, Cobden began a friendship with Michel Chevalier, the free trade future French foreign minister. The free trade political economist Frédéric Bastiat, who himself did much to incline French opinion toward free trade, translated Cobden's speeches and free trade pamphlets into French to facilitate their accessibility to the educated public.[41]

British free traders also found fertile ground for commercial evangelism in protectionist-dominated Prussia. John Prince Smith, a British merchant who lived in Prussia and spoke fluent German, found a welcoming audience for free trade ideas among the Junkers, the Prussian landed aristocracy, who stood to gain from increased grain sales to Britain that Corn Law repeal brought. Prince Smith wrote pamphlets in German in support of free trade, attempting as early as 1843 to convince Prussians of the merits of unilateral free trade over reciprocity as

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[39] Edsall, *Richard Cobden*, pp. 174–188.
[40] *Ibid.*
[41] Dunham, *The Anglo-French Treaty of Commerce of 1860*, pp. 15–16; McKeown, 'Hegemonic Stability Theory and 19th Century Tariff Levels in Europe', p. 83.

a principle for trade negotiations. He also translated into English the writings of Prussian free trade political economist Carl Heinrich Hagen, whose work echoed Ricardo's arguments that free trade benefits all participants through increased specialization of production.[42] Prince Smith himself argued that commercial interests of countries do not inherently conflict, and that those claiming that they do conflict promote hostility and threaten peace and freedom.[43]

9 The limits of free trade public diplomacy

Following Britain's unilateral trade liberalization and public diplomacy efforts on the Continent on behalf of free trade, trade liberalization was on the political agenda in Europe. The ideology took root most deeply in the smaller European powers.[44] The Dutch government repealed their Corn Laws in 1847 and navigation laws by 1851, in addition to signing commercial treaties with Belgium and Prussia in the same period. Belgium moved to free trade by 1860, and Switzerland lowered protective duties by 1855 to minimum levels needed to generate revenue. In Piedmont-Sardinia, the free trade Prime minister Count Cavour reduced protective and prohibitive import duties over the 1850s. Spain, Portugal, Norway, and Sweden also lowered their tariffs over the same period.[45] However, Britain faced a more complicated situation with respect to more powerful trading partners France, the *Zollverein*, Austria, Russia, and the United States. Those states also liberalized, but primarily in response to domestic political debate and not to the degree that British free traders sought. Emperor Napoleon III's government in France, which at mid-century remained Britain's most significant European adversary and her second largest European trading partner, regularized and lowered some duties in the mid-1850s. This allowed British bar iron to enter France for use in railway construction.[46] Britain's free trade public diplomacy was moderately successful in influencing the

[42] Prince Smith's 1843 pamphlet, which he cites in his translation of Hagen, was entitled *'John Prince Smith Über Handelsfeindseligkeit'*. C.H. Hagen, *System of Political Economy*, J. Prince Smith, tr., London: Longmans, Brown Green and Longman, 1844, pp. 85–86.
[43] Edsall, *Richard Cobden*, pp. 228–290.
[44] John A.C. Conybeare, *Trade Wars; the Theory and Practice of International Commercial Rivalry*, New York: Columbia University Press, 1987, p. 26.
[45] Henderson, *The Zollverein*, pp. 168–170; Kindleberger, 'The Rise and Fall of Free Trade in Western Europe'.
[46] Dunham, *The Anglo-French Treaty of Commerce of 1860*, pp. 10–15.

Prussian-dominated *Zollverein* to end grain duties and in persuading highly protectionist Austria to replace prohibitive import duties with a reformed, if still high, tariff.[47]

Russia and the United States, as large continental economies, were less dependent upon trade than Britain's other major trading partners, yet Britain's new trade diplomacy made an impact even upon them. Russia at mid-century was the least industrialized and most protectionist of European states, yet Russian merchants began to agitate for trade liberalization. Count Orlov, president of the State Council, quoted British free traders in trade policy debates. British officials pressed Tsar Nicholas to liberalize Russian trade laws, given the benefits to Russian grain exports of British Corn Law repeal, to which request he acceded by lowering some duties in 1846. Advised by his Polish, free trade economic adviser Tengoborskii, the tsar in 1850 unified and simplified the until then separate Russian and Polish tariffs, in the process liberalizing the Russian tariff to conform to that of Russian-ruled Poland.[48] In the United States, Britain's largest trading partner in the 1850s, British Corn Law repeal opened export markets for grain farmers in the Western United States, prompting them to join with Southern planters to pass the reformist Walker Tariff. The Walker Tariff reduced the number of tariff schedules, repealed duties on tea and coffee, and reduced other duties on raw materials, manufactured goods, and spirits. Further tariff reductions by the administration of US President James Buchanan in 1857, backed by the same political coalition, lowered US tariffs to their lowest levels of the nineteenth century.[49]

A lasting vestige of traditional trade-as-diplomacy persisted even as the liberalizing transformation in trade diplomacy was underway in Europe. Britain's trade diplomacy with developing countries continued to be governed by broader foreign policy interests and subsumed in overall bilateral diplomatic relationships even after Britain's policy shift toward unilateral free trade. Some developing countries, such as Siam, sought particular gains from Britain, including markets for primary products and military protection from rivals. British political economist

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[47] Henderson, *The Zollverein*, pp. 170–174, 188–237.

[48] W.M. Pintner, *Russian Economic Policy Under Nicholas I*, Ithaca, NY: Cornell University Press, 1967, pp. 239–249.

[49] Scott C. James and David A. Lake, 'The second face of hegemony: Britain's repeal of the Corn Laws and the American Walker Tariff of 1846', *International Organization,* Vol. 43, No. 1, Winter 1989, pp. 1–29; Jonathan J. Pincus, *Pressure Groups & Politics in Antebellum Tariffs*, New York: Columbia University Press, 1977, p. 11.

and diplomat Sir John Bowring, whilst Governor of Hong Kong, negotiated a commercial treaty with Siam in 1855 that opened trade between Siam and Europe for the first time. The treaty was regarded as mutually advantageous by both countries.[50] However, Britain 'opened' trade with other states using a similar 'unequal' treaty model to that used with China. Lord Elgin negotiated a trade treaty with Japan similar to the treaties of Tientsin and Shanghai in 1858. The Edo Treaty gave Britain treaty ports and extraterritorial rights in Japan and exchanged MFN status. Many Japanese opposed the Edo Treaty's unequal character and lobbied to have the extraterritoriality provision in particular reversed.[51]

10 Return to negotiated trade liberalization: the Cobden-Chevalier Treaty era

Beginning in the late 1850s, British trade diplomacy underwent a further transformation that, over less than two decades, would change the form of trade diplomacy worldwide irreversibly. Britain all too briefly would embrace negotiating trade treaties that not only exchanged MFN status but also specified bilateral tariff reductions. These tariff cuts, which in turn were transmitted to third countries through the MFN mechanism, made possible a degree of trade liberalization thitherto unimagined. Under Britain's unilateral trade liberalization policy and diplomacy, trade between Britain and her major trading partners grew between five- and sevenfold over the decade 1845–1855.[52] Exports from major British trading partners France, Germany, and the United States to Britain were growing faster than imports from Britain.[53] Yet those larger countries, in each of which lay strong domestic political support for protection, were the least likely to be persuaded by British diplomats to liberalize trade unilaterally.

The conversion of British governing elites to a new policy of negotiated trade liberalization was brought about more by security concerns than by a sentiment that unilateral free trade policy had exhausted its possibilities. Cobden, although he had been discussing French trade liberalization with Chevalier since 1846, decided to support a bilateral commercial treaty to promote peace, because he became alarmed

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[50] Bowring, *Autobiographical Recollections*, introductory essay.
[51] Ian H. Nish, *The Anglo-Japanese Alliance*, London: Athlone Press, 1966, p. 10.
[52] Mitchell, and Deane, *Abstract of British Historical Statistics*.
[53] B.R. Mitchell, *European Historical Statistics, 1750–1975*, 2nd Revised Edn., London: Macmillan, 1981, pp. 313–327.

about French naval reconstruction with metal-plated ships following the Crimean War. Cobden also feared the British public's overreaction to that threat. William Ewart Gladstone, who as Chancellor of the Exchequer was seeking ways to curb government spending, thought a cut in revenue duties ideal for justifying reducing expenditure. Gladstone also envisaged a treaty commitment by France to trade liberalization would serve as an example to convince other countries that had not yet lowered protective tariffs to follow suit. Revenue duties, in contrast to tariffs, do not discriminate against imports *vis-à-vis* sales of domestic products, even though they reduced total sales (domestic and imported) of a product. Palmerston, although concerned about Napoleon III's expansionist interest in Italy, nonetheless favoured coöperating with Napoleon to exclude the potentially greater threat of Austria from the Italian peninsula. Napoleon III regarded a commercial treaty with Britain as a way of securing British acquiescence in a future annexation of Nice and Savoy, which he coveted.[54] Napoleon himself held no strong view on trade liberalization but faced strong domestic protectionist opposition to signing a treaty with Britain. He almost yielded to pressure from his Council of Ministers and the legislature to abandon it.[55]

The 1860 Cobden-Chevalier treaty was an innovative model for driving trade liberalization, in that it combined the exchange of unconditional MFN status with specified bilateral tariff reductions. The treaty called for France to lower maximum import duties to 30 percent *ad valorem* within two years and 25 percent within five years, with duties on key industrial commodities coal and coke to fall by one-half and one-third, respectively, on 1 June 1860, pig and bar iron and steel also to drop by year end. Britain, in return, would cut revenue duties on wine by 1 April to 1 shilling per gallon for wines up to 15 percent alcohol and 2 shillings per gallon on wine between 15 and 40 percent, and would lower duties on spirits to 40 percent *ad valorem*.[56] For Britain, the Cobden-Chevalier treaty and those that followed were different from the earlier generation of commercial treaties, in that Britain granted unilaterally to all other states the concessions granted to France in the Cobden-Chevalier treaty.[57] France, even whilst signing 11 additional new commercial treaties by 1867, did not make those same unilateral

[54] Iliasu, 'The Cobden-Chevalier Commercial Treaty of 1860', pp. 71–81, 91–92.
[55] Edsall, *Richard Cobden, Independent Radical*, pp. 325–354.
[56] Dunham, *The Anglo-French Treaty of Commerce of 1860*, pp. 98–100.
[57] Iliasu, 'The Cobden-Chevalier Commercial Treaty of 1860', p. 71.

concessions to third countries and thus did not liberalize trade to the same degree as Britain.[58] France was obliged to extend treaty concessions granted to Britain to other states with which France had signed MFN treaties, however. Britain and France's bilateral tariff cuts, combined with Britain's unilateral extension of benefits granted to France to third countries and France's extension of tariff cuts to MFN treaty partners, generalized the tariff reductions to most European states.[59]

From the signing of the Cobden-Chevalier Treaty going forward, Britain's diplomatic strategy for promoting free trade was to sign commercial treaties when possible, but to use all means available as required. The Cobden-Chevalier Treaty was regarded as the ideal model because it combined the exchange of unconditional MFN status with tariff provisions that committed both countries to reduce import duties by specific amounts. Sir Louis Mallet, in describing the Cobden-Chevalier Treaty, characterized the principles of this type of treaty as

> the international regulation of international trade, and the simultaneous removal of international restrictions, not for the purpose of exclusive privileges and tariff bargains, but with a view to the equalisation and generalisation of tariffs – and the destruction of the differential system.[60]

Following on from Britain signing the Cobden-Chevalier Treaty with France, Britain signed similar MFN-plus-tariff reductions treaties with Belgium in 1862, Prussia and the *Zollverein* in 1865, and Austria in 1865. The Anglo-Austrian treaty, like the Cobden-Chevalier Treaty, contained a bilaterally negotiated schedule of tariff reductions that each side sought. In the Anglo-Belgian and Anglo-*Zollverein* treaties, by contrast, Belgium and the *Zollverein* merely granted to Britain MFN status and the tariff reductions that they had already negotiated in their respective bilateral treaties with France, in return for the liberal, non-discriminatory access to UK markets that Britain had already granted them unilaterally.[61] This intense period of bilateral trade diplomacy amongst the large European

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[58] Stein, 'The Hegemon's Dilemma: Great Britain, the United States, and the International Economic Order', p. 366.
[59] Dunham, *The Anglo-French Treaty of Commerce of 1860*, pp. 98–100.
[60] Sir Bernard Mallet, *Sir Louis Mallet*, London: James Nisbet & Co., Ltd., 1905, p. 58.
[61] Fuchs, Carl Johannes, *The Trade Policy of Great Britain and her Colonies since 1860*, Constance H.M. Archibald, tr., London: Macmillan & Co., Ltd., 1905, pp. 30–31.



Statue honouring Richard Cobden for his part in the repeal of the Corn Laws, Mornington Crescent, London. As the plinth inscription indicates, French Emperor Napoleon III contributed to the cost of erecting the statue.

Photo: G.A. Pigman.

powers resulted in Britain, France, Prussia, and Italy all signing MFN-based commercial treaties with one another by 1865, and the process spread quickly to the smaller European states.[62]

During the Cobden-Chevalier treaty era in Europe, Britain as the dominant trading power continued to negotiate other types of trade

[62] Kindleberger, 'The Rise and Fall of Free Trade in Western Europe, 1820–1875', p. 40.

treaties as circumstances warranted with weaker European states and less industrialized states elsewhere in the world. MFN-only treaties exchanged MFN status (without negotiating specified tariff reductions) and usually extended to navigation as well as to commerce and tariffs. Britain and Italy signed an MFN-only treaty in 1863. Open-door, or unequal, treaties that Britain signed with weaker and less developed states exchanged MFN status between Britain the other state and often committed the other state to liberalize certain aspects of its international trade without Britain making any specific concessions in return. Often the British negotiators obliged the other country to accept extraterritorial rights for foreign traders to reside in that country, as in 'treaty ports' for Europeans that were carved out on the coastlines of India and China. Britain signed Open Door treaties with China in 1857, Japan in 1858, Nicaragua in 1860, Turkey (including the Ottoman provinces of Serbia, Bulgaria, Romania, and Egypt) in 1861, San Salvador in 1862, and Colombia in 1866.[63] All three types of treaty contributed to a growing interlocking network of treaties stretching across Europe and to many less industrialized states, which had the overall effect of transforming trade relations and liberalizing trade worldwide. Sir Louis Mallet calculated that, after the Cobden-Chevalier Treaty was signed, between 50 and 60 treaties were concluded in Europe that between them reduced overall European tariffs by 50 percent.[64]

In Britain, Cobden's favoured policy of negotiated trade liberalization did not have as secure a position as the treaty successes that followed from the Cobden-Chevalier Treaty might suggest. Support for unilateral free trade as a policy had not vanished. Many British manufacturers, who embraced unilateral free trade in the 1850s as they watched British industrial growth surge under free trade, attributed Britain's political stability during the 1848 revolutions in Europe to her sound trade policy. They saw the 1850s as a victory for 'influence through example rather than persuasion'[65] and regarded Palmerston's use of trade diplomacy for geopolitical ends as bringing harmful instability to the business environment.[66] Britain's difficult and only partially successful diplomatic negotiations with Austria over a commercial treaty, which

[63] D.C.M. Platt, *Finance, Trade and Politics in British Foreign Policy 1815–1914,* Oxford: Clarendon Press, 1968, p. 90.
[64] Mallet, *Sir Louis Mallet*, p. 60.
[65] Iliasu, 'The Cobden-Chevalier Commercial Treaty of 1860', p. 72.
[66] Karl F. Helleiner, *Free Trade and Frustration: Anglo-Austrian Negotiations 1860–1870*, Toronto: University of Toronto Press, 1973, p. 15.

began in 1860 and lasted nearly a decade, ultimately turned many in Westminster back toward unilateral free trade. The negotiations engendered the perception by Gladstone and others that trade diplomacy had reverted to the haggling characteristic of negotiations that had preceded unilateral trade liberalization two decades earlier.[67] The two governments finally agreed to a treaty, signed on 16 December 1865, in which Britain agreed to lower revenue duties on timber and wine, which would benefit Austrian imports, and formally to grant Austria MFN status, in return for Austria's lowering upper tariff limits to 25 percent *ad valorem* from 1867 and 20 percent from 1870.[68] But Austria delayed treaty implementation because their government wished first to conclude a new trade agreement with the *Zollverein*, which itself was being delayed by Franco-Prussian negotiations. In effect, the positive chain reaction of multiplying MFN treaties that had occurred after the Cobden-Chevalier Treaty was shifting into reverse. Now each country did not want to make tariff concessions in a bilateral negotiation before its partner had already reduced its tariffs in negotiations with third countries. Under this negotiating logic, the last country amongst several to sign a bilateral accord with accompanying exchange of MFN status would gain the most from its partner in return for the concessions it was willing to make. Gladstone in 1869 abandoned his only ever conditional support for trade liberalization treaties in contempt of 'that pretended balancing of concessions which was the usual and most grave vice of tariff negotiations.' Britain, according to Gladstone, was strong enough commercially not to need to demean her dignity through such horse trading, which could only be damaging to Britain's free trade credibility.[69]

Yet frustration with the Anglo-Austrian trade negotiations produced new thinking by British advocates of negotiated trade liberalization about how to overcome the seeming impasse in bilateral trade liberalization diplomacy. Sir Louis Mallet, an ardent Cobdenite who became the head of the Board of Trade's Commercial Department, in 1867 proposed to long time free trader and soon again to be Foreign Secretary Lord Clarendon, that Britain and her European trading partners negotiate a multilateral free trade agreement. Mallet recognized the brewing threat to European peace caused by the 1866 Austro-Prussian War and hoped

[67] Helleiner, *Free Trade and Frustration*, pp. 3–7, 132–133.
[68] *Ibid*., pp. 69–81.
[69] Memorandum by Gladstone, 9 October 1871, cited in Gaston, 'Policy Making and Free Trade Diplomacy', pp. 46–47.

in its aftermath to promote a sturdier European peace through closer commercial relations.[70] Yet despite support from fellow free traders Charles Kennedy and Sir Stafford Northcote, Mallet's proposal was not taken up at that time.[71] In 1875, Kennedy, by then head of the Foreign Office's Commercial Department, revived the multilateral tariff union idea to meet the emerging threat of European governments yielding to pressure from domestic industry to raise their tariffs as fixed-duration bilateral commercial treaties expired. Again European governments' interest in persuading Britain to lower revenue duties entered the diplomatic calculus. Austria, Italy, and France all lobbied for reductions in British revenue duties on wine imports, whilst British diplomats in Germany advocated reducing British revenue duties on spirits to head off growing German protectionist sentiment.[72]

Taking a strictly pragmatic line on preserving liberal trade, Kennedy envisioned a treaty arrangement under which Britain would lower revenue duties and European states could raise duties of their own under a mechanism codified in a multilateral treaty. He regarded this as preferable to the already looming spectre of existing treaties, many of which were of fixed duration, lapsing and states then unilaterally raising their own tariffs. Northcote, as Chancellor of the Exchequer, pursued the idea by proposing a European congress to negotiate a multilateral tariff union, an 'apotheosis of Cobdenism' to negotiate a system of generally accepted tariff principles and classifications and a common maximum tariff from which individual states would be permitted to deviate on grounds of need.[73] Whilst recognizing the difficulty of reaching such an accord in practice, Northcote did see a strategic benefit for trade negotiations in such a congress. If proponents of protection were all brought together in one place, their arguments would undermine one another. The benefits of free trade would become apparent to the group, he contended, since many of the same interests in each country who want protection from imports also want to export.[74] Northcote's grasp of this diplomatic logic of multilateral trade liberalization was prescient, even if its full realization still lay 70 years in the future in the 1947 General Agreement on Tariffs and Trade.

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[70] Gaston, 'The Free Trade Diplomacy Debate and the Victorian European Common Market Initiative', p. 65.
[71] Dunham, *The Anglo-French Treaty of Commerce of 1860*, pp. 294–298.
[72] Gaston, 'The Free Trade Diplomacy Debate and the Victorian European Common Market Initiative', pp. 65–69.
[73] *Ibid.*, p. 72.
[74] *Ibid.*, p. 72.

Northcote asked the Foreign Secretary, Lord Derby, to direct British diplomats in Europe to propose such a tariff congress. Lord Tenterden, a senior diplomat in the Foreign Office and staunch proponent of unilateral free trade policy, objected, regarding protectionist opposition in France, Italy and Austria and the political distraction of Russia and Turkey as dooming a tariff congress in advance. Tenterden anticipated domestic UK opposition to Britain formally acquiescing to European tariff rises when the congress met. In Tenterden's view, '(r)eason and the British example then constituted a surrogate diplomacy that would eventually bring the protectionist world to its senses.'[75] Gladstone, now in the parliamentary opposition, maintained his disapproval of haggling commercial negotiations as the preserve of protectionists and not free traders. Derby did not act on Northcote's recommendation. Even Northcote himself as Chancellor was reluctant for immediate budgetary reasons to encourage the idea that revenue duties be bargained away in the short term. The congress idea revived, however, at the end of 1875 when Léon Say became Finance Minister of France. Calling for negotiations with Britain on renewing the Cobden-Chevalier treaty, Say suggested its extension to other countries. Derby, upon the advice of Kennedy and Northcote, responded favourably to the idea. In March 1876 Northcote even briefed Parliament on the elements of the plan. However, by then the political balance in France was tipping back toward protectionism. When the French government failed to pursue the proposal, Derby too let the plan lapse.[76] Although it was unsuccessful in the 1860s and 70s, Mallet's proposal for multilateral commercial negotiations is significant in that it heralded a broader shift in diplomatic thinking about trade negotiation from bilateralism toward multilateralism. This shift, which clearly resonated across some quarters in Europe in the 1870s, in turn would beget the next major transformation in trade diplomacy, the creation of multilateral institutions to facilitate it.

11 Liberalization diplomacy in retreat: depression, protectionism and unilateral free trade

Each major transformation in trade diplomacy and the resulting changes to the international trading system embody their own built-in limitations, which in turn act as catalysts for further transformation. Despite the enormous success of Cobden-Chevalier Treaty-driven trade

[75] *Ibid.*, p. 74.
[76] *Ibid.*, p. 74.

liberalization, the geopolitical ramifications of the Cobden-Chevalier Treaty were more ambiguous and ultimately played a rôle in putting trade liberalization diplomacy into reverse gear. Cobden, whilst hoping that Anglo-French commercial negotiations would be a prelude to bilateral arms reduction negotiations, had been unwilling to accede to French requests to link the commercial treaties to a political agreement on the Italian question, lest France be tempted to abandon the commercial accord and work only for a political pact. Cobden's judgement on this point was as wise as his disappointment with Napoleon was great when, less than three months after the signing of the commercial treaty, Napoleon annexed Nice and Savoy.[77] Despite subsequent Parliamentary criticism, Westminster ratified the treaty nonetheless.[78] Yet rapidly the treaty triggered geopolitical shifts in Europe that allowed for treaty-driven trade liberalization later to be undermined. In particular, the treaty accelerated Prussian dominance over Germany, which paved the way for the emergence of a powerful Germany that would challenge British economic dominance in Europe. Prussian free traders, strengthened by the Cobden-Chevalier Treaty's success, overcame protectionist objections of south German *Zollverein* member states and forced non-member states to join the *Zollverein* under threat of exclusion from the rapidly growing treaty-based free trade area. Prussia negotiated a new *Zollverein* commercial treaty with Austria based on exchange of MFN status instead of tariff preferences and also signed commercial treaties with France, Belgium and Italy by 1865.[79] Trade liberalization diplomacy facilitated German political unification under Prussian leadership by 1870.

After 1870 the outcome of the Franco-Prussian War and the lengthy Agricultural Depression in Europe further conspired to constrain the possibilities for continuation of a diplomacy of trade liberalization using the diplomatic instruments that had evolved thus far: bilateral trade treaties and Britain's public diplomacy of unilateral free trade policy (leadership by example) and promotion of free trade abroad. In 1870 Prussia defeated France and consolidated the German states under Prussian leadership, redistributing power away from other continental powers by creating a strong Germany for the first time and thus affecting expectations of future peace and stability negatively.[80] The

[77] Iliasu, 'The Cobden-Chevalier Commercial Treaty of 1860', pp. 95–96.
[78] Dunham, *The Anglo-French Treaty of Commerce of 1860*, pp. 115–116.
[79] Henderson, *The Zollverein*, pp. 274–303.
[80] Paul Kennedy, *The Rise and Fall of the Great Powers*, New York: Random House, 1987, pp. 187–189.

Agricultural Depression, which caused world commodity prices to fall by about a third between 1873 and 1896 and slowed world economic growth significantly, was caused in part by increased international trade. A reduction in transport costs that allowed a surge of American grain and cotton into British and European markets in the 1870s depressed agricultural prices.[81] The 'second industrial revolution' generated technological advances and economies of scale in producing chemicals, electricity and motors that contributed to declines in prices of manufactured goods as well.[82] As more European states reached similar levels of industrialization, British share of world manufacturing output declined as that of Germany and the United States rose.[83] Intra-industry trade increased relative to traditional inter-industry trade, with nations' specialization of production shifting from whole products to different qualities and finishes of product.[84] As Europe and the United States industrialized, increased competition brought an increase in domestic political support for protectionism. Whilst European governments generally did not return to the early nineteenth century policies of trade prohibitions, tariffs outside Britain rose above the levels of the 1860s.[85] Average duties on manufactures doubled between 1875 and 1895.[86]

In 1870s trade negotiations, carrots tended to be replaced by sticks. The negotiated progressive liberalization of the 1860s had been built upon bilateral negotiations in which the two sides sought to agree upon liberalizing concessions of equivalent value or of value proportionate to the relative power of the two interlocutors. In the trade diplomacy between European states over the 1870s, this pattern gradually gave way to negotiations that took place under threats of retaliation and the signing of agreements based upon reciprocity. One of the primary weaknesses in the bilateral trade liberalizing treaties of all sorts that were signed in the 1860s, and indeed throughout the nineteenth century, was that they were of fixed duration, often ten years. When a treaty came up for renewal, it gave signatories a chance to renegotiate the treaty's terms. This renegotiation often took place under changed

[81] David Landes, *The Unbound Prometheus*, Cambridge: Cambridge University Press, 1969, p. 231; Sidney Pollard, *Peaceful Conquest*, Oxford: Oxford University Press, 1981, p. 254.
[82] Marcello De Cecco, *Money and Empire*, Oxford: Basil Blackwell, 1983, pp. 22–23.
[83] Bairoch, 'International Industrialization Levels from 1750 to 1980'.
[84] Pollard, *Peaceful Conquest*, p. 270.
[85] James Foreman-Peck, *A History of the World Economy*, Brighton: Wheatsheaf Books, Ltd., 1973, pp. 118–119.
[86] Pollard, *Peaceful Conquest*, p. 259.

domestic political circumstances in one or both countries, particularly after 1870. Different types of trade treaties had a differential impact upon the tariff levels of the overall international trading system as well. Whereas an MFN-plus-tariff reductions treaty bound bilateral tariff rates at lowered levels on specified goods for the duration of the treaty, MFN-only treaties did nothing to stop countries from raising their tariffs on imports from all states. Hence MFN clauses became devalued as countries raised minimum tariff rates and in some cases removed upper limits in 'max/min' or 'two column' tariff schedules altogether. A max/min or two column tariff structure is one in which a government fixes unilaterally its lowest tariff, which it then offers to other countries in return for negotiating concessions, e.g. MFN status, and sets a higher band (second column) of tariffs on imports from those countries with which no agreement is reached.[87]

When threats of retaliation in the negotiating process were carried out, it often resulted in tariff 'wars', which usually consisted of a series of tit-for-tat punitive bilateral tariff hikes on imports of each other's goods. In an era marked by international trade liberalization, tariff wars were themselves a new kind of conflict between states. For governments, engaging in a tariff war was a diplomatic instrument far short of engaging in military conflict. Yet it conveyed a measure of seriousness in the context of an age in which it had been recognized for the first time that states shared mutual advantage in more open trade relations. Although generally not of long duration, tariff wars could not help but have a disruptive effect upon trade and broader diplomatic relations. Some of the most notable tariff wars over the period were between France and Italy (1886–1898), France and Switzerland (1892–1895), Germany and Russia (1892–1894) and Germany and Canada (1897–1910).[88]

After 1870, the major non-UK trading powers of the world can be considered in three categories in terms of relative economic power, but the changes in the categories themselves are an indication of the redistribution of power away from Britain that was taking place. The extent of a state's economic development relative to Britain serves as a broad indicator of its diplomatic success in advancing its trade policy goals with respect to Britain. Yet what those goals were in each case depended on numerous other factors, such as relative economic size, openness of the economy, form of government, cultural background, and the nature of the state's political relationship with the UK. In the

[87] *Ibid.*, p. 259.
[88] Conybeare, *Trade Wars*.

first category, the largest industrial states, France, Germany and the United States, had the greatest relative economic power with respect to Britain in terms of world shares of trade amongst industrial states. They were also the UK's largest trading partners. These states possessed the greatest geopolitical power relative to Britain, which strengthened their commercial negotiating power. Each of these countries was able to use leverage in their diplomacy with the UK to advance the trade policies that they had chosen, irrespective of whether those policies clashed with Britain's global trade liberalization objectives. The Netherlands and Denmark, small states in this most industrialized category, like the UK remained committed to free trade even as other European powers moved toward protection. Both participated in the internationalization of the economy through trade by specializing in particular niches: the Netherlands in trade and financial services, Denmark in certain niche agricultural products.

The next category, second tier European industrializers, initially included most other European states, such as Austria-Hungary, Italy, Spain, Portugal, Switzerland, Russia, the Scandinavian and Balkan states. As these countries industrialized further, they successively graduated from a position of negotiating inferiority relative to the first tier powers to a position in which they could at least challenge Britain's free trade policy on the diplomatic stage, even if they could not successfully advance their own trade policy agendas against the more protectionist first tier powers France, Germany and the United States.[89] Second tier industrializing countries that were trading in areas of geopolitical interest to Britain, such as Portugal (southern and western Africa) and Russia (the Black Sea, Central Asia and the Far East) found their power with respect to Britain enhanced. In this category can also be placed Britain's imperial dominions Canada, Australia, New Zealand and South Africa, which, having received economic autonomy from Westminster, adopted trade policy objectives similar to the newly industrializing European powers. Their political relationship with metropolitan Britain altered their negotiating calculus on trade issues considerably (see below). The third category comprises the least industrialized states of the age, with many of which the UK had signed Open Door or unequal treaties, such as Japan, China, Siam, Turkey, Egypt, and much of Latin America. The trade relationships between many of these states and Britain did not change appreciably over the period. However, some, such as Japan,

[89] *Ibid.*, pp. 181–201.

industrialized in the late nineteenth century to the point where they moved into the second category, as their trade diplomacy with the most industrialized powers revealed. Japan is of particular interest because its geopolitical importance to Britain in the Far East gave it greater leverage over Britain in trade negotiations than any other state at its level of industrialization and share of world trade.

Diplomacy driving trade liberalization between the most and least industrialized parts of the globe also changed to reflect the shifts in the distribution of power in the decades leading up to the Great War. Once again the position of the United Kingdom, having led the diplomatic drive toward trade liberalization in Europe, was significant. By the 1870s, Britain was buying more industrial goods from Europe and the United States and selling more industrial goods to less industrialized parts of the world.[90] Britain's political and economic relations with her Empire underwent significant change in this period, partially in response to general changes in world trading patterns, but importantly as a result of the British Empire's own economic development. British trade with the Empire increasingly took the form of imports of raw materials, such as food from Canada and Australasia, and exports of manufactures. Exports from the UK to the Empire grew from 25–30 percent of overall British exports before 1850 to 35 percent between 1909 and 1913.[91]

Over this same period the UK government gave the dominions, heavily settled by Europeans, the political freedom to set their own trade policies, which made them diplomatic actors in their own right (at least with respect to trade). This in turn led to the necessity for intra-imperial trade diplomacy for the first time. As the dominions industrialized, their interests and thus their trade policies diverged from that of Britain, with several dominions opting for various measures of agricultural and industrial protection. Canada and some of the Australian provinces would lead the movement for creating an imperial preferential trading bloc in the 1890s. The view of the Empire held by the British government and public also changed. Cobdenite internationalists favoured early decolonization as an instrument of *laissez-faire* economic policy, arguing that the costs of Empire to British taxpayers were not worth the benefits.[92]

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[90] Eric J. Hobsbawm, *The Age of Empire*, London: Weidenfeld and Nicolson, 1987, p. 48.
[91] Crouzet, *The Victorian Economy*, pp. 356–357.
[92] Patrick K. O'Brien, 'The costs and benefits of British imperialism, 1846–1914', *Past and Present* 120, August 1988, pp. 163–200.

However, a rival view saw the dominions and colonies as political and economic assets that increased Britain's strength in an increasingly competitive world. This view, embraced by Joseph Chamberlain, manifested itself through the imperial federation movement of the 1890s and the highly significant but initially unsuccessful Tariff Reform Campaign of 1903–1906.[93] Its supporters began to score victories when Salisbury's government granted limited tariff preferences to imports from Canada in 1897. This important ideological break with Cobdenite free trade and non-discrimination initiated a slow *volte-face* in British trade policy that concluded with the negotiation of a full system of imperial preferences between Britain and her colonies at the multilateral Ottawa Conference in 1932.

Britain's power over her other colonies and informal regions of UK commercial influence increasingly was circumscribed in the late nineteenth century both by growing indigenous hostility to European rule and by rivalry between the UK and the other Great Powers.[94] In the 1880s and even more so in the 1890s Britain employed imperial policy to block the spread of European-sponsored trade protectionism outside of Europe by acting to prevent additional territories from being colonized by European powers with protectionist policies.[95] For example, Britain's 'Open Door' policy toward China of urging China to adopt free trade without granting Britain commercial advantages relative to other powers came increasingly under challenge from France, Germany and Russia, each of which sought to establish exclusive economic zones within China. British policy began to change from June 1885, when the Franco-Chinese Treaty of Tientsin granted to France certain exclusive rights, in violation of the Open Door principle. Salisbury ordered British diplomats to match the steps taken by Britain's rivals to maintain the UK's share of the China trade.[96] By the 1890s, Salisbury was negotiating with Germany and Russia to check their expansion of commercial activity in China. An Anglo-Russian agreement signed in 1899 actually divided part of China into British and Russian spheres of influence.[97]

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[93] Aaron L. Friedberg, *The Weary Titan: Britain and the Experience of Relative Decline 1895–1905*, Princeton: Princeton University Press, 1988, pp. 21–88.
[94] P.J. Cain and A.G. Hopkins, 'Gentlemanly Capitalism and British Expansion Overseas II: New Imperialism, 1850–1945', *Economic History Review*, 2nd ser. xl, I, 1987, p. 12.
[95] Platt, *Finance, Trade and Politics in British Foreign Policy*, p. 364.
[96] *Ibid*., p. 271.
[97] J.A.S. Grenville, *Lord Salisbury and Foreign Policy,* London: Athlone Press, 1964, p. 129.

After the Boxer Rebellion against foreign influence in China in 1900, Salisbury agreed reluctantly to sign an Anglo-German declaration to maintain the Open Door policy, so as to avoid the partitioning of China by external powers.[98]

12 Case studies: trade liberalization diplomacy constrained

The three bilateral diplomacy case studies that follow illustrate in greater depth how the same forces that drove the transformation of trade diplomacy in the direction of trade liberalization at mid-century subsequently conspired to constrain its progress in the latter third of the century and in the years immediately preceding the outbreak of the Great War. They paint a picture of how the diplomacy of bilateral trade liberalization between leading states with more evenly distributed power capacities was insufficient to maintain and advance the liberalized international trading system that had emerged by 1870. Along with Britain, France and the unified Germany were Europe's largest trading powers. France was Britain's oldest serious diplomatic rival, not only with respect to trade, whereas Germany after unification in 1870 posed a new challenge to European trade through her rapidly expanding productive capacity and the size of her rapidly growing internal market. By contrast, Japan was an economy that was rapidly industrializing soon after its government had been forced by European and US military force to open Japan to trade. Much like the trade diplomacy of emerging powers China and Brazil over a century later, Japan's diplomacy evolved rapidly to engage the Western powers as equals.

Yet despite the differences between the three countries, these diplomatic narratives are remarkably similar. In each case, the same factors influenced negotiations: ongoing industrialization and the resulting transformation of the economy and workforce; political democratization and the increasingly effective political representation of domestic interest groups; and the diplomatic challenge of negotiating with a dominant trading power, Britain, that was committed to free trade ideology. As the case studies describe, the bilateral diplomacy of each of these powers was effective to the extent that it was able to constrain the particular objectives of Britain. Britain's government often did not choose to use the diplomatic leverage they had to lock in bilateral

[98] Grenville, *Lord Salisbury and Foreign Policy*, pp. 291–318.

treaty commitments from major large trading partners that would have discouraged them from raising tariffs when it suited them to do so. The case studies also illustrate the extent to which bilateral diplomacy alone was unable to achieve the sorts of mutual gains from trade that another approach, such as the multilateral and institutional approach that the next transformation would herald, might have done. This pattern of emerging powers becoming more effective at using trade diplomacy to parry or block the objectives of the dominant powers will be seen to repeat itself a century later in the context of rising developing countries in GATT/WTO multilateral trade negotiating rounds.

13 France: Britain's greatest diplomatic rival

French trade diplomacy in the late nineteenth century was a story of how the shift in British diplomatic tactics toward unilateral free trade made it easier for France's somewhat more protectionist policy preferences to prevail. The detail of the narrative that follows captures the cumulative effects of domestic policy shifts and diplomatic initiatives that over two decades undermined the cornerstone relationship of the nineteenth century liberal international trading system. The change in France's government from 1870 indicated an immediate political shift toward protection for agriculture and industry against imports, and it would be a cause of serious concern for many of France's trading partners for decades to come. Although Napoleon III had been ousted and France defeated by Germany in the 1870 Franco-Prussian War, marking Germany's ascendance as continental Europe's leading military power, France remained the nearest major military power to Britain. Hence Anglo-French bilateral trade relations retained their central position in British trade diplomacy after 1870.

In the UK, the Cobdenite view that the best way to preclude Anglo-French military conflict was through commercial intercourse persisted. Britain remained France's largest trading partner in the 1870s, as France conducted over twice as much trade with Britain as with any other power.[99] The British view that liberalizing trade in France was the key to perpetuating European trade liberalization persisted into the 1880s, notwithstanding ever increasing difficulties in Anglo-French trade negotiations. A gradual shift in the delicate balance of French domestic political power between free traders and protectionists in industry

[99] Mitchell, *European Historical Statistics, 1750–1975*, pp. 523–605.

and agriculture was brought on by democratization, the deteriorating global economy, and changing international competitive conditions. German war reparations imposed after the Franco-Prussian War had damaging effects on the French budget. The French public demanded a government based on popular sovereignty, sweeping away Emperor Napoleon III without reaching agreement on the future form of the French state. This uncertainty conspired to weaken by the early 1880s and end by 1892 the tenuous dominance of free traders in the French government, a position that they had occupied in 1860 with the assistance and influence of Britain. This gradual but inexorable change first made itself felt in the course of tariff negotiations to renew the Cobden-Chevalier Treaty, which occupied a place of peculiar importance to Britain and was due to expire in 1872. Through the Cobden-Chevalier Treaty's MFN clause Britain benefited from all of the enumerated tariff reductions that France had negotiated in commercial treaties with other European states, especially the 1863 Franco-*Zollverein* treaty.[100]

After the fall of Napoleon III, Louis Thiers, the new French leader, sought to impose a tax on imported raw materials to pay off the German war indemnity, despite opposition from industry and other leading protectionists.[101] Knowing that the Cobden-Chevalier Treaty still had one year to run, Thiers nonetheless asked Britain to negotiate revisions to the treaty. Although neither Britain, Belgium nor Switzerland wanted any revisions to their commercial treaties with France, Gladstone reluctantly agreed to negotiate because of concerns about losing MFN status should France decide to denounce the Cobden-Chevalier Treaty the following year.[102] In 1871 the French national assembly restored the *surtaxes de pavilion et d'entrepôt*, which affected foreign shipping in France and had been lifted in 1866. The assembly also reimposed harbour dues and asked Britain to accept the changes, along with Thiers's proposed war indemnity import duty on raw materials. However, in the interest of French industry, they made the effective date of the raw materials duty contingent upon conclusion of new commercial treaties, so that compensatory duties could be imposed on imported manufactures competing with domestic products manufactured using raw materials that would be subject to the new duty.[103] To coerce Britain into negotiating,

[100] Michael Stephen Smith, *Tariff Reform in France 1860–1900*, Ithaca, NY: Cornell University Press, 1980, pp. 35–39.
[101] *Ibid.*, p. 37.
[102] Dunham, *The Anglo-French Treaty of Commerce of 1860*, pp. 299–304.
[103] Smith, *Tariff Reform in France 1860–1900*, p. 37–39.

Thiers in August 1871 threatened to denounce the Cobden-Chevalier Treaty outright (which set in motion a process of termination) the following year.[104]

The proposed new French duties, 20 percent *ad valorem* on raw materials and less on imports of manufactures, with duty drawbacks paid for manufactures exported, would not be higher than maximum duties allowed under the Cobden-Chevalier Treaty.[105] Yet although Britain was willing to accept moderate upward revision in the French tariff, Gladstone's government rejected Thiers's proposed raw materials duty as a differential duty that would affect imports from Britain more negatively than imports from elsewhere.[106] As he had threatened, Thiers denounced both the Cobden-Chevalier Treaty and the 1861 Franco-Belgian treaty in March 1872, and on 26 July of that year he raised duties on imports of textiles to France.[107] Faced with a *fait accompli*, Westminster negotiated a new commercial convention with Paris that accepted the French duty revisions and preserved MFN status for Britain in France. The new convention, signed 5 November 1872, also created the first bi-national specialized tariff negotiating body, the Anglo-French Mixed Commission. This innovation in trade diplomacy was charged with negotiating particular tariff revisions and compensatory duties on raw materials. The commission met for the first time in December 1872 and January 1873.[108] Yet Thiers's trade policy had on the one hand angered French industry, much of which sought protection on manufactures imports but not on raw materials, and on the other the generally free trade interests of commerce, finance, and transport. The French national assembly refused to ratify Thiers's new treaties with Britain and Belgium and decided to maintain the previous conventional (treaty) tariffs with both countries until new negotiations could take place. Thiers's government fell in May 1873, and the assembly subsequently repealed the *surtaxes de pavilion et d'entrepôt* that Thiers had reimposed. In July 1873, the assembly made agreements with Britain and Belgium that extended France's commercial treaties with both countries until 1877, when the other bilateral commercial treaties were due to expire, and a new general tariff could be promulgated.[109] Britain and France

[104] Dunham, *The Anglo-French Treaty of Commerce of 1860*, p. 310.
[105] *Ibid*., p. 308.
[106] Fuchs, *Trade Policy of Great Britain and her Colonies since 1860*, p. 39.
[107] *Ibid*., p. 40.
[108] *Ibid*., pp. 41–42.
[109] Smith, *Tariff Reform in France 1860–1900*, p. 38–39.

subsequently signed a supplementary convention on 24 January 1874 that permitted each country to introduce a compensatory duty on imports of any goods on which domestic excise taxes were imposed.[110]

In Marshal Patrice de MacMahon's government, which succeeded that of Thiers, manufacturers who opposed duties on raw materials joined forces with trading, banking, transport interests, and other economic liberals who favoured a continuation of the treaty system of low tariffs, against other manufacturers who favoured protection.[111] MacMahon depended on Paris commercial and financial elites, of whom Léon Say was a member, to restore France to financial health after a debilitating war, so it was inevitable that their internationalist outlook should prevail in the government.[112] Joining MacMahon's government were many Second Empire officials who had supported liberal trade under Napoleon III, such as the Duc Decazes, who served as foreign minister from 1873 to 1877, and Say, who served as finance minister from 1875 to 1879, amongst other senior posts. Two of MacMahon's premiers between 1873 and 1877, Jules Simon and the Duc de Broglie, were free traders.[113]

French political economists, who, like their British counterparts, tended to support free trade, organized to assist the government in repelling the protectionist challenge. In 1873, They launched the weekly *L'economiste français*, patterned after Britain's already decades-old pro-free trade weekly *The Economist*, to defend the commercial treaty system.[114] Free traders within MacMahon's government sought to liberalize further the general tariff, which was the schedule of duties that applied to countries that had not signed a commercial treaty with France, when France's commercial treaties expired in 1877. They favoured negotiating new treaties with France's existing trade treaty partners that would lower tariffs bilaterally to or below the levels set in the treaties that were about to expire. They were canny as to the pitfalls that such a process faced, and so they proceeded gradually so as not to provoke a groundswell of protectionist opposition.[115] The government's efforts initially were assisted by the French economy's rapid recovery

[110] Fuchs, *Trade Policy of Great Bwritain and her Colonies since 1860*, p. 44.
[111] Eugene Owen Golob, *The Méline Tariff: French Agriculture and Nationalist Economic Policy*, New York: AMS Press, 1968 (1944), p. 51.
[112] Smith, *Tariff Reform in France 1860–1900*, p. 43.
[113] *Ibid.*, pp. 40–42.
[114] *Ibid.*
[115] *Ibid.*, pp. 44–45.

from the Franco-Prussian War, which helped to restrain protectionist sentiments. France's free trade officials displayed their willingness to negotiate over outstanding commercial issues, conferring between 1873 and 1876 with Britain and other powers over sugar export bounties and with Britain over a multilateral tariff union that, had it been successful, might have led to an early institutionalization of liberal international trade. However, both sets of negotiations foundered on the volatile domestic political balance even in this period between free trade and protectionist interests.

MacMahon's government adopted a careful consultative process toward preparation of the new general tariff in order to preserve the liberal trade coalition. In 1875 the Commerce Minister, Comte de Meaux, found that the majority of France's chambers of commerce favoured making the old conventional (i.e. treaty-set) tariffs into a new general tariff and extending existing commercial treaties by a common ten-year period. They did, however, favour conversion of *ad valorem* duties to specific duties, which in a period of falling prices (agricultural prices had been falling in Europe since 1873) would increase the effective rate of protection.[116] But in contrast to their otherwise general endorsement of the liberal commercial treaty system, the chambers of commerce opposed the continuation of the MFN treaty provisions. Their belief was that MFN, by internationalizing all commercial treaty advantages to whichever trading partners had MFN status with France, limited France's ability to make tariff revisions unilaterally when necessary.[117] This, of course, was exactly the reason why commercial treaty proponents in Britain favoured MFN as the cornerstone of the treaty system. Interestingly, British unilateral free traders also opposed MFN as part of their objections to the restrictions that treaties place on a country's ability to adjust its own trade policy in its own interest when required. Unilateral free traders shared with unilateral protectionists a reluctance to cede through treaties any power to adjust tariffs when circumstances demanded it, *e.g.* in a recession. By contrast, pro-negotiation free traders and protectionists alike saw an advantage, whether ideological or pragmatic, in using treaties to lock in particular tariff regimes for fixed time periods.

After studying the French tariff system at Meaux's request in 1876, the *Conseil Supérieur du Commerce*, the French government's tariff commission, recommended to the *Chambre des Deputés*, the lower house of the

[116] *Ibid.*
[117] Dunham, *The Anglo-French Treaty of Commerce of 1860*, p. 331.

national assembly, a series of reforms that in most cases would set as the new general tariff the old conventional tariff. Thiers had diluted the previously strongly free trade *Conseil* with some protectionists, to whom the *Conseil* made a few concessions, but they also proposed setting some general duties, such as those on imports of steel rails, even lower than the rate negotiated in France's expiring tariff treaties.[118] Before the *Chambre* acted on the government's tariff bill, MacMahon's government in March 1877 opened tariff negotiations with Britain and Italy. Lord Lyons, the British ambassador at Paris, urged the Foreign Office, which was taking a cautious approach, to negotiate whilst moderates Meaux and Say were in office. The Foreign Office was shaken into action by Austria's and Italy's denunciations of their commercial treaties with Britain, so the importance of Anglo-French commercial relations for the European trading system was once again emphasized.[119]

In the initial phase of the Anglo-French negotiations, the principal issues of contention were the French insistence on specific over *ad valorem* tariffs, France's demand that Britain reduce her revenue duties on French wines, and a French wish that Britain guarantee not to restore previously abolished duties or raise existing duties during the term of the treaty. Britain requested reductions in French duties on iron, coal, steel, machinery, metal manufactures, and textiles.[120] Both the treaty negotiations and the *Chambre's* consideration of the general tariff bill were delayed by other political issues and the *Seize Mai* constitutional crisis in the spring of 1877. Thereafter protectionists realized how liberalizing the government's tariff bill would be and mobilized. Moreover, the effects of the Agricultural Depression, which had been postponed in France because of the postwar economic recovery, were beginning to be felt in the form of falling prices, profits, and wages. Many French citizens, like other Europeans, perceived this to be in part the result of a surge of British exports to Europe caused by declining demand for British goods elsewhere and by cheaper, better transport into European markets. The consequent price falls stimulated French interest in new protection.[121]

Anglo-French negotiations became threatened in part because the secretive negotiating style of Premier Duc de Broglie's government, which had replaced the more open approach of the previous Premier

[118] Smith, *Tariff Reform in France 1860-1900*, pp. 44–46.
[119] Dunham, *The Anglo-French Treaty of Commerce of 1860*, pp. 333–335.
[120] *Ibid.*, pp. 335–339.
[121] Smith, *Tariff Reform in France 1860–1900*, pp. 47–52.

Jules Simon, alienated leading French industrialists. They reacted negatively when Broglie signed a commercial treaty with Italy that would have allowed Italy to raise duties on French textiles. In June 1878, the *Chambre* rejected the Franco-Italian treaty, which touched off a Franco-Italian tariff war. Following rumours that an impending Anglo-French treaty would cut duties on imports of British cotton goods by 20 percent and iron by 50 percent, lobbying by industry forced Broglie to suspend the talks with Britain in September 1877.[122] Elections the following month returned a *Chambre* with a more protectionist majority. The leadership of the *Chambre's* Tariff Commission, which was considering the government's proposed legislation, was assumed by the protectionist Jules Ferry, who would go on to serve as Premier twice during the 1880s.[123] Protectionists also lobbied the public more aggressively from 1877, as the protectionist *Association de l'industrie française* (AIF) that year began publication of the periodical *L'industrie française* to counter what the AIF perceived to be the dominance of pro-British trade theory in France since 1860.[124]

Chastened by the political current, Teisserenc de Bort, a liberal who had replaced Meaux as Commerce Minister, introduced in January 1878 a revised general tariff bill that would raise tariffs 24 percent above the proposed general tariff of the previous year and would convert France from *ad valorem* to specific tariffs. In March 1878, protectionists and free traders agreed to begin a one-year *enquête* (investigation) on trade in which the two factions agreed on specific duties but divided over protection, equal tariff treatment for agriculture and industry, and the advisability of new commercial treaties.[125] Realizing that they probably did not have enough strength to force the government to abandon the commercial treaty system, protectionists attempted to push general tariff levels as high as possible above the government's proposal. In December 1879 the *Chambre's* Tariff Commission issued its own tariff proposal to the full *Chambre*. The government, to avoid a floor fight in the *Chambre*, offered protectionists as a compromise their requested major increases in cotton duties in return for acceptance of most of the government's proposed tariff rates on other goods, but the offer was rejected.[126]

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[122] *Ibid.*, pp. 50–53.
[123] *Ibid.*, pp. 54–55.
[124] *Ibid.*, p. 60.
[125] *Ibid.*, pp. 153–154.
[126] *Ibid.*, pp. 156–160.

The French general tariff debate was complicated by the diplomatic timetable for denunciation and renewal of the commercial treaties. As already planned, and as a device to force the legislature to promulgate the new general tariff promptly, the government denounced the commercial treaties on 31 December 1878, thereby setting their expiry under the treaties' terms at 1 January 1880. When it became apparent that the new tariff would not be ready, the government moved a bill to prorogue (extend temporarily) the Anglo-French treaty for six months, which protectionists unsuccessfully attempted to block in their own application of pressure to complete the tariff. The treaty was subsequently prorogued further until the French general tariff was finally promulgated and negotiations completed.[127] The British government for its part was not averse to postponement of the negotiations until the general tariff was complete. As the recession deepened there too, the strengthening UK domestic political movement advocating 'Fair Trade' demanded reciprocity in trade negotiations and lobbied Westminster not to sign a disadvantageous treaty with Paris.

The *Chambre* began debating the government's general tariff bill in January 1880, and by June most of the government's liberal tariff bill passed, thanks to parliamentary procedural manoeuvres supported by the pro-free trade president of the *Chambre* (and future Premier), Léon Gambetta.[128] As protectionists prepared to counterattack in the upper chamber, the *Sénat*, the government hastily dispatched Say as temporary ambassador to London to negotiate secretly a treaty with Britain based on the new *Chambre*-approved tariff. According to one account, Say became frustrated that Gladstone refused to bargain away UK revenue duties on wine and so resigned his post.[129] Another claims that whilst in London, Say incautiously dropped hints about the liberality of the new treaty under negotiation. Negative reaction in the *Sénat* then forced the French government to withdraw Say and suspend negotiations with Britain until the new tariff had passed in that house also. The general tariff finally promulgated on 8 May 1881 was basically the government's proposal of a 24 percent increase over the old conventional tariff for manufactured goods. To the increasingly protectionist agriculturalists the government conceded livestock duties and an important commitment not to lower agricultural duties by treaty, but for the most

[127] *Ibid*.
[128] *Ibid*., pp. 170–180.
[129] Stephen Gwynn and Gertrude Tuckwell, *The Life of the Rt. Hon. Sir Charles Dilke*, vol. I, London: John Murray, 1917, pp 350–351.

part the 1881 general tariff was seen as a victory, if temporary, for liberal trade in France.[130]

After promulgating the new general tariff, negotiating a treaty with Britain was the first priority for the free traders, such as Commerce Minister (and future Premier) Pierre Tirard, who still dominated the French government despite the accession of Ferry to the premiership.

> Tirard and his associates gave priority to a treaty with Great Britain because it remained France's chief trading partner in 1881 and was particularly vital to members of the free trade party as a source of imports and a market for exports. Moreover, the treaty with England was the oldest of the commercial conventions and was rightly considered to be the crucial link in the chain of commercial alliances.[131]

French and British goals were far apart, however. Knowing that a treaty would have to pass the legislature, Tirard did not wish to offer Britain too much. The *Conseil Supérieur* had also directed that duties not be lowered below Cobden-Chevalier treaty levels. Britain, by contrast, was seeking duty reductions of up to 50 percent on some goods, such as wool yarn and cloth. Tirard sought wine duty reductions from Britain and was willing to yield to Britain on metals and machinery duties but not on textiles. While some French free traders criticized Tirard for being too cautious on account of a possible protectionist backlash, some British free traders were arguing that unless Britain could obtain duty reductions below Cobden-Chevalier levels, Britain's interest would be best served by an MFN-only treaty. In that way Britain would benefit as a 'free rider' from French duty reductions concluded in French treaties with other states without Britain needing to concede anything new to France.[132]

In part because of Say's strong criticism of Gladstone's inflexibility over reductions in British revenue duties on wine in mid-1880, Gladstone agreed to include in his budget proposal a wine duty cut that could be negotiated with France reciprocally.[133] Despite Gladstone's concession, Sir Charles Dilke, Gladstone's Under-Secretary of State for Foreign Affairs, was pessimistic about prospects for a treaty because British unilateral free traders were not going to accept a treaty that

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[130] Smith, *Tariff Reform in France 1860–1900*, pp. 178–181.
[131] *Ibid.*, p. 184.
[132] *Ibid.*, pp. 185–188.
[133] Gwynn and Tuckwell, *Life of the Rt. Hon. Sir Charles Dilke*, p. 351.

did not liberalize trade beyond Cobden-Chevalier duty levels, while increasingly protectionist French public opinion was unlikely to permit the French government again to accept such a treaty. Dilke believed that before the general tariff was promulgated, British negotiating pressure on France could make the general tariff more liberal. After its promulgation he saw the real possibility for a treaty with the Ferry government in Paris. By July 1881, however, the treaty that was emerging would have damaged British cotton and wool exports to France without obtaining compensating advantages for Britain. Dilke, sure that such a treaty would not be ratified by Parliament, secured Joseph Chamberlain's support for delaying treaty negotiations until the advent of a French government headed by Gambetta, which was anticipated in the autumn.[134]

In a significant departure from Gladstone's customary preference for unilateral free trade as a policy, Dilke, again backed by Chamberlain, secured Gladstone's permission to threaten France with retaliation in a final attempt to secure a treaty favourable to British interests.[135] On 5 August 1881 Dilke threatened the French ambassador that if a commercial agreement were not reached, Britain would lower wine duties on strong wines, which would benefit wine imports to Britain from Portugal, Spain, and Italy, and raise duties on light wines, to the detriment of imports from France. In Dilke's own words:

> I have always been a reciprocitarian to this extent, and was always backed in using such arguments by Mr. Chamberlain, who held the same view in a still stronger form. Mr. Gladstone and Lord Granville always prevented any public reference to such matters, but they allowed me to put them in despatches, although not to lay them before Parliament.[136]

Dilke's threat was not carried out, as an apparent delay in the expected arrival of the Gambetta government beyond the window of treaty renewal made Dilke think better of negotiating a tariff treaty at all. In a private meeting later in August 1881, Dilke suggested to his friend Gambetta that Britain would benefit the most and France concede the least if the Anglo-French treaty were dropped, and if Gambetta's future government instead negotiated a tariff treaty with a smaller power and

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[134] *Ibid.*, pp. 394–395.
[135] *Ibid.*
[136] Quote from Dilke's diary in Gwynn and Tuckwell, *Life of the Rt. Hon. Sir Charles Dilke*, p. 395.

then granted Britain MFN status through legislation. This would grant to Britain the tariff reductions that Britain was seeking from France without Britain making any concessions in return. Gambetta agreed, as signing a tariff treaty with Britain was becoming a red flag for French protectionists, and France's commercial treaties with Belgium and Switzerland were also up for renewal.[137]

When negotiations resumed between Britain and Gambetta's new (and short-lived) government, Gladstone wanted to offer Gambetta that Britain would hold duties on light wine at their low rate in return for MFN status from France. Dilke, preferring the stick to the carrot at this stage, wanted to renew his earlier threat to cut duties on strong wines, but this did not occur. By the end of 1881 Anglo-French negotiations were at an impasse. To conclude an early MFN agreement with the government of Charles de Freycinet, which followed Gambetta's in January 1882, Gladstone again wanted to make a pledge to hold wine duties low, but Dilke convinced Gladstone that Britain could retain MFN treatment in France without making any concessions at all.[138] Dilke also still believed that Britain could obtain the tariff reductions they sought from France through French tariff treaties with other states. He was proven correct, as the French legislature granted Britain MFN status for ten years in March 1882.

> That we obtained most-favoured-nation treatment without giving way upon our wine duties and sacrificing revenue was a triumph, as we got all the reductions (which on yarns were very large) which we had obtained in the course of the negotiations. These had, after being won by us, been given to the Swiss and Belgians – who were 'behind' us, and signed treaties. The result was that there was an increase, not a falling off, in our trade with France.[139]

Not all analysts have viewed the conclusion of the Anglo-French negotiations as so much of a success for British interests as Dilke did. According to Smith, negotiations reached a stalemate because Britain did not perceive any political or economic importance in signing a new treaty with France, so British negotiators took an all-or-nothing stance.[140] Yet

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[137] Gwynn and Tuckwell, *Life of the Rt. Hon. Sir Charles Dilke*, pp. 396–398.
[138] *Ibid*., pp. 399–400.
[139] Quote from Dilke's diary in Gwynn and Tuckwell, *Life of the Rt. Hon. Sir Charles Dilke*, p. 400.
[140] Smith, *Tariff Reform in France 1860–1900*, pp. 185–188.

clearly Dilke and Gladstone viewed the negotiating outcome as a win, in that they gave away nothing and received most of the tariff reductions through MFN that they had sought through direct concessions. France between October 1881 and February 1882 signed seven ten-year commercial treaties with other powers, including an agreement with Belgium in which France lowered duties on a wide range of goods that France also imported from Britain and Germany.[141] Yet Dilke appears to have undervalued the importance for trade liberalization of locking in tariff reductions by France directly through a treaty. Loopholes in the new 1882 French general tariff, such as the exclusion of agricultural goods from tariff binding in treaties, allowed the French legislature to raise some tariffs during the 1880s as protectionists again gained political strength. Subsequent French tariff wars and denunciations of treaties with other states led to tariffs on some British goods rising as well. Italy denounced the Franco-Italian commercial treaty, which had cut tariffs on a number of goods bilaterally in addition to exchanging MFN status, in 1886, setting off a tariff war that damaged the free trade cause politically in France.[142] Had Dilke exploited Gladstone's willingness to lower wine duties to secure a treaty, Anglo-French tariffs might have continued their leading rôle in holding tariffs down throughout Europe, and supporters of free trade in France would have been strengthened at a time of particular need. In the event, the opportunity was lost, and the 1880s was to be a decade of protectionist ascendancy in France.[143]

The continuing impact of imported wheat and the outbreak of phylloxera and silkworm disease in France in the 1880s further depressed agricultural production and prices, completing the conversion of agricultural interests to protectionism. Thenceforth large agricultural producers and large industrial firms shared a greater interest in cooperating politically for protection against imports. Since over half of French national output was generated by agriculture, French consumer buying power was curtailed, and French industry bore the brunt of that reduction.[144] The leading associations of agricultural and industrial producers, the *Société des Agriculteurs de France* (SAF) and the *Association pour la Défense du Travail National*, became key lobbyists for new protection. Both organizations sought to convince workers, who benefited

[141] *Ibid*., pp. 188–192.
[142] *Ibid*., p. 197.
[143] Dunham, *The Anglo-French Treaty of Commerce of 1860*, p. 350.
[144] Herman Lebovics, *The Alliance of Iron and Wheat in the French Third Republic, 1860–1914*, Baton Rouge: LSU Press, 1988, pp. 52, 55.

from cheap food imports and cheap manufactured goods, to oppose free trade.[145] The French government, concerned to contain growing worker radicalization as the economy deteriorated, liberalized the law governing formation of associations in 1884. This allowed workers and farmers to organize effectively for lobbying purposes for the first time, which they rapidly did. Jules Méline, who had secured duties on livestock imports for agricultural interests in the 1881 tariff fight in the *Chambre*, obtained tariff increases from the legislature on sugar and sugar beets in 1884, cattle in 1885, and wheat in 1887. Industrialists, on whose products tariffs were fixed by treaties until 1892, were powerless for the moment to share in the fruits of new agricultural production.[146] The growing protectionist coalition did succeed in bringing French Algeria and Indochina within the French tariff perimeter in 1884 and 1887, respectively, which led to increased sales of French industrial goods to French colonies.[147]

Agriculture and industry by the late 1880s both awaited the next expiry of commercial treaties, which since their advent in the 1860s were generally signed for a ten-year period, in 1892 to obtain greater protection for each. By this time prices were rising again, but so was social unrest. Conservatives were concerned about the development of labour as a modern political force that could threaten the stability of the republic. In 1880s France it seemed easy politically to blame economic dislocation on foreign competition, as it has done in most countries right up to the present day. In the 1889 French elections, which followed the near coup attempt of nationalist General Georges Boulanger, many protectionists were elected in a republican sweep, although the election did not turn on the issue of trade.[148] However, the support of the SAF was behind the election of many candidates. The SAF adopted an electoral platform calling for no further commercial treaties, equal *ad valorem* protection for agriculture and industry, and moderate upward revision of the general tariff.[149] Méline sought to use the emerging consensus of agriculture and industry on higher levels of tariff protection to entrench and stabilize the conservative republic against the rise of socialism, pacifying industrial workers by offering them job security. As the *Chambre* debated a new tariff bill, Méline linked Socialist violence

[145] Lebovics, *Alliance of Iron and Wheat*, pp. 55–64.
[146] *Ibid*., pp. 71, 85–86.
[147] Smith, *Tariff Reform in France 1860–1900*, pp. 200–201.
[148] Lebovics, *Alliance of Iron and Wheat*, pp. 87–88.
[149] Golob, *The Méline Tariff*, p. 157.

on May Day 1891 to free trade, which Socialists, following Marx himself, embraced enthusiastically.[150]

The Méline Tariff, which took effect in 1892 as France's commercial treaties expired, was a max-min tariff, a type of tariff structure with two bands, the lower of which was accorded to states with MFN status or commercial treaties and the higher of which, like a general tariff, was imposed on the imports of other states. By some accounts the Méline Tariff raised tariff revenues 80 percent over 1889 revenues.[151] Although considerably more protectionist than the tariff it replaced, the Méline Tariff was a compromise between trade moderates and protectionists, who had sought much higher duties on cotton yarn and other industrial raw materials.[152] The max-min tariff was also intended to enable France to extend to other states MFN status and access to the minimum tariff through domestic legislation in return for reciprocal treatment, as France had done with Britain since 1882. Protectionists failed to get included in the tariff bill a measure expressly prohibiting the negotiation of treaty tariffs below the set minimum tariff. This loophole allowed the government to negotiate new tariff reductions and MFN treaties, which they did with Russia in 1893, Switzerland in 1895 and 1905, and Italy in 1898. MFN provisions in other commercial treaties made the newly negotiated tariffs in effect the new conventional tariff, so the seemingly inflexible max-min structure in fact was mitigated, and protectionists did not achieve the level of protection that they had sought.[153] From the perspective of trade policy and diplomacy, Méline viewed the new tariff as a defensive measure against German-led protectionism in Europe and generally high tariffs in the United States.[154] Even he was willing to compromise as the situation demanded, however. After championing the max-min tariff structure, Méline still endorsed the tariff cuts below the minimum tariff that the government negotiated with Switzerland in 1893.[155]

Thus by the 1890s, French trade diplomacy with Britain and the other European powers operated in the context of French trade policies that were far more liberal than they had been at the end of the Napoleonic Wars. But they were less liberal than they had been in the 1870s and

[150] Lebovics, *Alliance of Iron and Wheat*, pp. 91–93.
[151] Golob, *The Méline Tariff*, p. 202.
[152] Smith, *Tariff Reform in France 1860–1900*, p. 205.
[153] *Ibid.*, pp. 209–210.
[154] Golob, *The Méline Tariff*, pp. 181–182.
[155] Smith, *Tariff Reform in France 1860–1900*, p. 212.

were subject to perpetual domestic political contestation. French trade diplomacy at that point offered little prospect of leading France and Europe toward more liberal trade, more extensive trade, or the international political stability that such might provide.

14 Germany: rising power in Europe

Germany's late nineteenth century emergence as a unified state was a narrative of trade policies not yet fully formed at the newly federal level. Yet German trade diplomacy had already been successful to the extent that the formation of the *Zollverein*, which removed tariff barriers between German states, had driven subsequent political unification in 1870. German trade policies might have been guided in a substantially different and more liberal direction, had German trade diplomacy with Britain succeeded in achieving certain moderate negotiating objectives. Yet this was not to be, owing largely to British ideologically driven intransigence. German unification changed the European distribution of power with respect to trade diplomacy, much as it did on security and other issues, but Germany's negotiating leverage was already prefigured by the *Zollverein*. The Cobden-Chevalier-spawned treaty negotiations of the 1860s liberalized trade substantially between the polities that comprised the *Zollverein* and the rest of Europe. The tariff cuts of the 1862 Franco-Prussian tariff treaty were extended to Britain through the 1865 Anglo-Prussia-*Zollverein* MFN treaty, which led to a significant expansion of trade that was augmented further by bilateral tariff cuts in the 1868 Austria-*Zollverein* tariff treaty. Between 1860 and 1880, Germany's largest export market was the UK and British Empire. During the same period Germany competed with France and India to be Britain's second largest export market after the United States.[156] Prussian farmers were exporting grain, mostly to Britain, and the Junker agricultural landowning class supported free trade for the most part.[157] Prince Otto von Bismarck, who became Chancellor of a united Germany after 1870, accepted for a time the free trade economic policy of the new Germany's Liberals as a means of appeasing them after rejecting their proposed political system for the newly unified state.[158]

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[156] Paul Kennedy, *The Rise of the Anglo-German Antagonism 1860–1914*, London: George Allen & Unwin, 1980, pp. 45–46.
[157] Alexander Gerschenkron, *Bread and Democracy in Germany*, New York: Howard Fertig, 1966 (1943), p. 42.
[158] Percy W.L. Ashley, *Modern Tariff History Germany – United States – France,* 3rd edn., New York: Howard Fertig, 1920 (1870), p. 41.

After 1870, German free traders, including Prussian agricultural interests, advocated a commercial treaty for the newly unified Germany with Britain to maintain liberal trade in advance of the expiry of the treaty with Austria in 1877, as Austria had been consistently more subject to protectionist sentiment. In return for agreeing to sign a commercial treaty, Germany asked for a reduction in Britain's 5d compensatory duty on imports of spirits, which German agriculture and industry regarded as protective. Bismarck's main interest at the time was not tariff reciprocity but leverage with which to reform the German tariff in the face of domestic opposition. Bismarck sent his pro-free trade Undersecretary of Commerce, Michaelis, to London in the summer of 1871 to inform his British counterparts that Bismarck wished to begin commercial treaty negotiations if Britain were so inclined. Sir Louis Mallet regretfully informed Michaelis that Chancellor of the Exchequer Viscount Robert Lowe was opposed to signing new commercial treaties and to negotiating away revenue duties, so the project had no hope of fruition.[159] The loss of this opportunity for Britain to commit Germany to free trade for a ten to twenty-year period was felt not only by Mallet and others who supported negotiating trade liberalization treaties but by German free trade opinion leaders such as Julius Faucher and John Prince Smith.[160]

Germany's trade relations with Britain in the 1870s, like Anglo-French relations, were affected to a significant degree by the British government's willingness to use revenue duties as negotiating counters in tariff bargaining. Revenue duties, as noted above, ought not to discriminate against imports *vis-à-vis* sales of domestic products, but their absolute level did affect total sales (domestic and imported) of goods. However, revenue duties on imports of spirits to Britain in fact were set higher than those on domestic spirits in order to compensate for other UK government regulations that allegedly discriminated against domestic producers. Free trade supporters in Germany and Britain alike urged the British government at least to equalize duties on domestic and foreign spirits in order to facilitate negotiation of a commercial treaty.[161] Bismarck's government through much of the decade remained sympathetic to liberal trade. Amongst the major accomplishments of Delbrück, Bismarck's free trade president of the Imperial Chancellery, were lowering duties on iron in 1873 and removing them altogether in

[159] Mallet, *Sir Louis Mallet*, p. 90.
[160] *Ibid.*, p. 93.
[161] Gaston, 'Policy Making and Free Trade Diplomacy', pp. 87–88.

1877.[162] Opposition to the proposed Anglo-French commercial treaty in 1872 triggered a protectionist backlash in Germany. To counterbalance the backlash and to silence Prussian industrialists, Delbrück urged Lord Russell, Britain's ambassador to Berlin, to persuade Earl Granville, the Foreign Secretary, to equalize spirits duties in order to restart a sequence of Anglo-German trade concessions that could lead to a treaty. After Granville made a general rejection of commercial treaties, in January 1873, four months later Bismarck made another overture to Russell on spirits duties, but without effect on Whitehall. Delbrück in November of that year cited his reduction of iron duties as a gesture of goodwill to the Foreign Office, but to no avail.[163] Lord Russell was anxious for political as well as economic reasons to cooperate with the free trade wing of the German government to secure a commercial treaty, but his treaty proposals of both 1874 and 1880 were also rejected by his home government.[164]

The global Agricultural Depression, which began to be felt in Germany from 1875, stimulated German protectionism. British diplomats in Germany, such as Russell and J.A. Crowe, the UK consul at Danzig, urged the Foreign Office to act to head off the new upsurge in protectionist sentiments. As occurred in France, in Germany Britain was accused of dumping (selling below cost of production) manufactured goods following the 1873 crash in prices, which was said to fan protectionism further.[165] Another German representation to Britain on spirits duties was rebuffed in 1876, this time by the UK's Inland Revenue Department.[166] Finally in 1877, the two governments negotiated an extension to the 1865 Anglo-*Zollverein* MFN treaty as its expiry approached, although the treaty's benefits to Britain began to decline as Germany's tariff treaties expired and were renegotiated, usually to accommodate higher German tariffs.[167] In 1878 Crowe pressed upon Lord Salisbury, the Foreign Secretary, the importance of negotiating a more extensive commercial treaty, urging him to threaten retaliation if Germany would not agree to negotiate. Crowe carried his proactive approach to negotiations even farther by suggesting to Russell in Berlin that Britain play Germany and France off against one another to secure

[162] Ashley, *Modern Tariff History Germany – United States – France*, p. 41.
[163] Gaston, 'Policy Making and Free Trade Diplomacy', pp. 190–193.
[164] *Ibid*., pp. 87–88.
[165] Ashley, *Modern Tariff History Germany – United States – France*, p. 42.
[166] Gaston, 'Policy Making and Free Trade Diplomacy', pp. 194–195.
[167] Fuchs, *Trade Policy of Great Britain and her Colonies since 1860*, p. 48.

tariff concessions from both. Another Crowe suggestion was for Britain to raise revenue duties on bottled wines in advance of negotiations so as to be able to bargain them away. Such tactics were finding no quarter in Salisbury's Foreign Office or in Lord Beaconsfield's (Disraeli's) government more broadly, however.[168]

By being unwilling to negotiate with Germany over revenue duty levels, British diplomats allowed German domestic politics to drive Germany's trade policy in a direction that affected Anglo-German trade negatively. Bismarck, having supported free trade for pragmatic and nationalistic rather than ideological reasons in the 1850s and 60s, undertook his 1879 tariff reform again principally for domestic political purposes. He needed to reform Germany's tax structure in the late 1870s to generate more income for the Imperial (i.e. federal) Government and increase revenue raising power over the thitherto largely autonomous *Länder* (constituent states). Bismarck's plan was to reduce direct taxation, which was generally administered by the *Länder*, and increase indirect taxation, primarily tariffs, thereby not raising aggregate taxation but shifting the tax burden from landowners' rates to the mass public (in the form of tariff-induced price increases).[169] According to Hobson, the 1879 Bismarck Tariff did not result from pressure by economic interest groups, such as protectionist agriculturalists or industry, which would not feel the full brunt of the Depression until the 1880s, but rather from the fiscal policy requirements of Bismarck's own political objectives.[170] Pollard, by contrast, argues that Junkers and industrialists coalesced behind protection rapidly between 1876 and 1879, convincing small farmers to join with them notwithstanding that small farmers would be ill-served by protection.[171] The tariff, which increased duties on imports of manufactures but more so on agricultural imports, was moderately protective but did not discriminate against Britain because of the Anglo-German MFN treaty.[172] However, the higher tariff rates adversely affected major British exports to Germany, such as worsteds and woollen cloth.[173]

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[168] Gaston, 'Policy Making and Free Trade Diplomacy', pp. 197–199.
[169] John Hobson, 'The Tariff, Taxation, Class and Economy: Protectionism in Germany 1870–1914', London School of Economics Department of Sociology, unpublished paper, February 1990, pp. 6–18.
[170] Hobson, 'The Tariff, Taxation, Class and Economy', pp. 21–22.
[171] Pollard, *Peaceful Conquest*, p. 258.
[172] Fuchs, *Trade Policy of Great Britain and her Colonies since 1860*, p. 48.
[173] Gaston, 'Policy Making and Free Trade Diplomacy', p. 198.

In 1880 Gladstone, forming a new government in the UK, again suspended his opposition to commercial treaty negotiations, at least in part because of the effects of the Depression on the British economy. Whilst not agreeing to raise wine duties in advance of negotiations (as Crowe had advised), he agreed to a Foreign Office proposal that Britain cut the duty on spirits if Germany would reduce their export tax on alcohol. But yet again the Treasury objected to such a duty reduction, so the plan was derailed. According to Gaston, this failure forced elements of German agriculture to give up hope of export growth through free trade and join with industry in pressing for protection from imports.[174] Through the 1880s, Bismarck adhered to a trade policy of higher tariffs with reciprocal concessions granted to trading partners through negotiations, maintaining the domestic balance between the tariff needs of industry and agriculture that permitted the perpetuation of their often unstable political coalition. Bismarck's policy approach did not affect Anglo-German trade diplomacy to a great extent, as Britain had nothing that they were willing to offer, and Germany saw nothing to gain from negotiations with Britain.

> German commercial diplomacy was obviously far more engaged in measures against other protectionist states than against free-trading Britain, which tolerated all (Germany's) wares and remained her best customer; and even the British found more to complain about the tariffs of *third* powers, which were usually far higher than those of Germany.[175]

Germany's 'carrot and stick' trade diplomacy from the 1880s proved effective at opening Continental markets to German goods. Bismarck's government was willing to engage in trade wars with other European states in the course of tariff negotiations, which tended to procure for Germany lowered tariff barriers to exports of German goods and resultant increases in export sales.[176]

German exports boomed under the Bismarck Tariff of 1879. Whilst British exports to Germany declined after 1880, by 1885 German goods were beginning to outsell British goods in numerous third markets, such as the Netherlands and Sweden. These phenomena, combined with the continuing effects of the Agricultural Depression in Britain,

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[174] *Ibid.*, pp. 200–201.
[175] Kennedy, *The Rise of the Anglo-German Antagonism*, p. 57.
[176] *Ibid.*, pp. 56–57.

led to both self-examination and public criticism of certain commercial practices, such as shipping subsidies.[177] Certain British actions provoked speculation in Germany about indirect protectionism. Some Germans (and some Britons, too) were concerned that Britain was reintroducing protection for cattle breeders indirectly when the British government imposed strict limits or prohibitions on imports of live cattle in the 1880s for health reasons.[178]

The main stage of the Anglo-German politico-economic rivalry, however, tended to shift in the 1880s to colonial regions, whether one regards the search for new markets as the cause or the result of the competition for new colonies. The multilateral Berlin colonial conference of 1884–1885 was a major trade diplomacy initiative of the German government intended to resolve jurisdiction over and tariff policy of the Congo. Germany skilfully used the conference to legitimize German colonial aspirations in Africa, to the concern of many Britons and other Europeans. Chambers of commerce feared the consequences of protectionism spreading in colonial markets at a time when increasing European and American protectionism was heightening the importance of those markets to Britain.[179] Bismarck, for his part, sought in the 1880s to illustrate to the German people through his colonial policy that Gladstonian Liberalism, in all its manifestations, was ruining Britain as a Great Power.[180] Needing ever more revenue in the 1880s, Bismarck pleased his agricultural constituents by raising grain duties from 10 marks/ton to 30 marks/ton in 1885 and to 50 marks/ton in 1887.[181] As the economic and political courses of Germany and Britain diverged further, Bismarck made a final diplomatic appeal to Salisbury for a political alliance in 1889, but his appeal was rebuffed.[182]

The 1890s brought another shift in the direction of Germany's trade diplomacy that again illustrated the impact of fears of the consequences of bilateral, fixed-term tariff treaties. High German agricultural tariffs and resulting higher food prices, exacerbated by a crop failure in 1891, began to undercut German industrial growth and led to the emergence of an anti-protectionist, pro-export sentiment in German industry.[183]

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[177] R.J.S. Hoffman, *Great Britain and the German Trade Rivalry 1875–1914*, New York: Garland Publishing, Inc., 1983 (1933), p. 77.
[178] Fuchs, *Trade Policy of Great Britain and her Colonies since 1860*, pp. 104–105.
[179] Kennedy, *The Rise of the Anglo-German Antagonism*, p. 183.
[180] *Ibid*., pp. 157–158.
[181] Hobson, 'The Tariff, Taxation, Class and Economy', pp. 21–22.
[182] Kennedy, *The Rise of the Anglo-German Antagonism*, pp. 190–192.
[183] Hobson, 'The Tariff, Taxation, Class and Economy', pp. 21–22.

The 'solidarity bloc' of protectionist agricultural and industrial interests collapsed in the 1890 German elections because of industry's fears of European protectionism increasing upon the expiry of most existing bilateral commercial treaties in 1892. Bismarck's successor as Chancellor, Count Leo von Caprivi, launched a major diplomatic initiative that produced a new generation of bilateral commercial treaties with Germany's European trading partners, which were designed to boost German industrial exports. German negotiators asked other governments to lower tariffs on German industrial goods in return for lower German tariffs on agricultural imports.[184] Between 1891 and 1894 Germany signed 10 and 12-year commercial treaties that reduced tariffs bilaterally with Austria-Hungary, Italy, Belgium, Switzerland, Spain, Romania, Serbia, and (following a tariff war) Russia.[185]

Although Germany did not sign a new treaty with Britain, Britain benefited from the other treaties through the still-running Anglo-German MFN treaty to the extent that by 1895 British as well as German exports had risen appreciably. Caprivi's government did not wish for the new system of treaties to benefit Britain, despite Anglo-German MFN, since Britain was unwilling to negotiate a new treaty with Germany directly. Berlin tried unsuccessfully to institutionalize the new treaty system as a Central European customs union akin to Napoleon's mercantilist 'continental system', which would have distributed German manufactures and excluded British goods.[186] Russia tested Germany's new system by introducing a new high tariff in 1893, touching off a tariff war with Germany. A series of retaliatory tariff rises brought each country's tariffs on the other's goods to prohibitive levels by August 1893.[187] Serious negotiations then ensued, resulting by February 1894 in a 10-year Russo-German commercial treaty that lowered tariffs on some industrial goods substantially, including 50 percent reductions on the duty on hops and 65 percent on the duties on coal and coke. Russia wanted some tariffs even lower, but Berlin was unwilling to reduce tariffs so far that Britain would benefit unduly through MFN.[188]

Caprivi's pro-industry, pro-export, pro-trade, pro-commercial treaties policy provoked a strong reaction from German agriculture, and the

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[184] Gerschenkron, *Bread and Democracy in Germany*, pp. 47–50.
[185] Pollard, *Peaceful Conquest*, p. 259.
[186] Hoffman, *Great Britain and the German Trade Rivalry*, p. 104.
[187] Conybeare, *Trade Wars*, pp. 191–194.
[188] Ernest Edwin Williams, *Made in Germany*, London: William Heinemann, 1896, pp. 13–14.

volatile political balance of the Wilhelmine state predictably turned against him. Despite victories by agriculturalists in the 1893 elections, Caprivi succeeded in overcoming Junker opposition to passage in the *Reichstag* of his remaining new commercial treaties. The Russo-German treaty of 1894, the most difficult to be approved, subsequently led to unexpected levels of German industrial export growth to Russia. But agricultural protectionists in Caprivi's own cabinet joined with Prussian civil servants to unseat Caprivi in 1894. His successor Hohenlohe chose to pursue a version of Caprivi's policies that was less antagonistic to agriculture.[189]

Germany's trade relations with Britain deteriorated further amidst intensifying concern about Germany's overtaking of Britain in numerous economic sectors in the 1890s.[190] When the British press in 1894 criticized imports of goods manufactured in German prisons, public opinion forced Salisbury to seek an international agreement to prohibit exports of such goods. An agreement was not reached, leading Salisbury to agree to a British unilateral prohibition on prison-made imports in 1897.[191] A key turning point was reached the same year when Britain, forced to make a choice between Germany and the Empire, chose the Empire. Canada decided to grant British imports tariff preferences. When Germany objected that such preferences violated the Anglo-German commercial treaty of 1865 (on grounds that the treaty governed German trade with British possessions), Salisbury denounced the treaty and the similarly-worded Anglo-Belgian commercial treaty of 1862.[192] Germany feared loss of access to the British market, and German nationalists viewed as particularly hostile the closure of British colonial markets to German industrial exports. Realizing that Salisbury would not offer Germany a new MFN treaty that covered Britain's colonies, the German *Bundesrat* (upper house) granted Britain MFN status, renewable on an annual basis, after Britain's denunciation of the treaty, in an attempt to head off a British turn toward protection at home.[193] The conflict led to a trade war between Germany and Canada lasting until 1910, during which Germany imposed a surtax on imports of Canadian goods.

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[189] Gerschenkron, *Bread and Democracy in Germany*, pp. 51–56.
[190] Kennedy, *The Rise of the Anglo-German Antagonism*, p. 229.
[191] Hoffman, *Great Britain and the German Trade Rivalry*, p. 230.
[192] Kennedy, *The Rise of the Anglo-German Antagonism*, p. 298.
[193] *Ibid.*, p. 232.

As the Caprivi and Méline generation of European bilateral tariffs expired between 1902 and 1906, tariffs rose across Europe again, and the dependence of German prosperity upon entrance of its exports into the barrier-free British market increased. In 1902 Germans feared possible increases in Britain's revenue duties on wine and new duties on sugar beets.[194] German Chancellor Bülow offered added protection to obtain political backing from agriculture and the Junkers that he needed in order to build up Germany's military might in anticipation of potential war in Europe.[195] In the Anglo-Boer War, in which Germany sympathized with the Boer republics, British sentiment against German tariff levels grew to a point where proposed German tariff rises triggered industrial unrest in Britain. Additional German tariff rises proposed for 1902 contributed significantly to the first serious political sally against free trade in Britain, Joseph Chamberlain's Tariff Reform Campaign.[196] The German Tariff Act of 1902 raised duties on livestock, beef, and butter and doubled most grain tariffs to a new minimum for countries with which Germany had commercial treaties and set even higher maximum tariffs on imports from other states.[197] Britain, through MFN, still received treaty tariffs from Germany and, not exporting agricultural goods to Germany, was relatively unaffected by rises in German agricultural duties. Further fuelling tension in 1902, German steelmakers were found to be dumping steel in Britain.[198] Germans were alarmed by the Tariff Reform Campaign in the UK, which confirmed fears of mounting British protectionist sentiment. These fears led German agricultural nationalists to press for even higher tariffs, as well as for pan-German nationalists to call for formation of a German-dominated European economic union backed by a larger German navy. Bülow, however, depended on the political support of industry as well as agriculture. He recognized industry's position that additional German protection would not only harm German industrial exports but would fuel the flames of Chamberlain's Tariff Reform Campaign and the germanophobic British imperial federation movement.[199] In the first decade of the twentieth century, the consequences of the weaknesses in the international trading system framed by bilateral trade liberalization treaties were already

[194] *Ibid.*, p. 297.
[195] *Ibid.*, p. 228.
[196] *Ibid.*, p. 297.
[197] Gerschenkron, *Bread and Democracy in Germany*, pp. 62–63.
[198] Kennedy, *The Rise of the Anglo-German Antagonism*, p. 301.
[199] *Ibid.*, p. 264.

becoming evident, as deteriorating Anglo-German trade relations and other economic and military aspects of the bilateral relationship began to contribute negatively to one another.

Germany's ongoing tariff war with Canada occasioned one of the most serious heightenings of diplomatic tension between Germany and Britain in the years preceding the outbreak of the Great War. British imperialists viewed the conflict as an attempt by Germany to thwart their aspirations to create an economic and political imperial federation as the predominantly European-settled dominions (Canada, New Zealand, Australia, etc.) achieved greater political sovereignty. In April 1903, when the tariff war broke out, German officials threatened that Germany would treat other British colonies that granted tariff preferences to Britain the way Germany had treated Canada and might end MFN status for Britain as well. Lord Lansdowne, the Foreign Secretary, responded that if Germany took such steps Britain would be forced to retaliate. Bülow, whilst not in a position to liberalize German tariff policy, chose not to escalate the tariff war with Canada. German industrialists published statistics intended to indicate that Germany's new 1902 tariff would not harm British exports to Germany.[200] The improving British economy from 1903 and the defeat of Chamberlain's tariff reformers by the Liberals in 1906 defused the immediate Anglo-German trade tension. Berlin remained anxious about access to the British market and unsuccessfully sought an agreement with Britain in 1909 that would guarantee market access for Germany.[201] In 1910 Germany and Canada informally resolved their tariff dispute, ending the German surtax on imports from Canada and granting some Canadian goods entry under Germany's conventional (minimum) tariffs.[202]

The German case shows how Germany, a Great Power after unification, was able to use diplomacy skilfully to achieve her trade policy objectives. The range of objectives for which Germany negotiated, extending from relatively liberal tariff levels to significant protection, even in the late nineteenth century, was substantially more liberal than states' objectives in the era preceding the first transformation of trade diplomacy. Like France, Germany used trade diplomacy on some occasions in pursuit of trade advantages, on others in pursuit of broader geopolitical objectives. But Germany's willingness to negotiate further trade liberalization, when Berlin was willing to do so, was constrained

[200] *Ibid.*, pp. 262–264.
[201] Hoffman, *Great Britain and the German Trade Rivalry*, p. 101.
[202] Ashley, *Modern Tariff History Germany – United States – France*, p. 115.

by Britain's late nineteenth century ambivalence about negotiated trade liberalization. Anglo-German trade diplomacy in the last decades of the nineteenth century is a litany of missed opportunities for mutually beneficial liberalization, owing to the ongoing popularity of unilateral free trade ideology in Britain.

15 Japan: emerging market diplomacy

The case of Japan is illustrative of how emerging powers come to use their increased diplomatic leverage in negotiating to achieve trade policy objectives. Prior to the 1850s, Japan had been in the third tier of non-industrialized states and had engaged in little foreign trade. Thereafter, Japan rapidly became a fully fledged diplomatic interlocutor of the Western powers, coming to engage in the sort of trade diplomacy by now familiar in the West since the liberalizing transformation had commenced. The 'opening' of Japan to foreign trade by US Navy Commodore Matthew C. Perry in 1854 can be understood as a case of trade-as-diplomacy in the extreme. After the subsequent signing of Japan's first trade treaties, the 1854 US-Japan treaty and the UK-Japan Edo Treaty of 1858, industrialization and expansion of trade both proceeded apace. Japan's military power increased as well, to the point that they could exert influence over neighbouring states. By the 1880s, the geographic placement of the Japanese islands made Japan of strategic importance to European rivals Britain, Germany, Russia, and France in their aspirations for dominance in the western Pacific and in China. At a time when rising tariffs were limiting British access to European markets, British manufacturers were seeking new markets in less developed regions of the world such as Japan, with some diplomatic support from the Foreign Office. The Japanese government, once having consented to open Japan's economy to international trade, sought to expand exports to Europe and acceptance into the community of modern nations, with both of which Tokyo perceived Britain as being particularly favourably positioned to assist.

A decade after the opening to the West in the 1850s, major Japanese political reforms known as the Meiji Restoration transferred power from the Tokugawa shoguns to the Mikado (Emperor) and heralded Japan's adoption of modern economic development policies and diplomacy. Subsequent to the Meiji Restoration, the Imperial government was keen to modernize Japan's diplomatic relations and undo the perceived cultural and commercial damage to Japan by the existing unequal commercial treaties between Japan and the European powers.

The 1858 Anglo-Japanese Edo Treaty opened Japan to trade at several treaty ports, set low, non-discriminatory tariffs on imports to Japan, and granted rights of extraterritoriality to British traders living in Japan. Extraterritoriality meant British traders were subject only to British law and consular jurisdiction. The other European powers had made similar pacts with Tokyo. Geopolitically, Japan mistrusted Britain because of the projection of British naval power in the western Pacific, but commercially the relationship was much more fruitful. Japan began to borrow heavily from Britain in the 1870s for railway construction and other capital projects.[203] Once trade commenced, Britain exported much more to Japan than they imported, but the trade balance evened considerably when Japanese exports to Hong Kong and India were counted.[204]

From the early 1880s the Japanese government lobbied the Western powers to permit Japanese tariffs to rise in order to meet revenue needs. In another early example of multilateral trade diplomacy emerging as a norm, if not yet one that bore much fruit, the European states and Japan held a series of multilateral diplomatic conferences in the 1880s to address Western powers-Japan trade relations. At a multilateral conference in 1882, talks began on a standardized form of new bilateral commercial treaty that European states and Japan would sign. Britain sought to open Japan further to trade and sought to discourage Tokyo from renouncing the Edo Treaty. Geopolitically, Britain desired Japanese aid in preventing the expansion of Russian influence in the Korean peninsula.[205] Leading the multilateral commercial negotiations, Britain offered Japan tariff autonomy as well as higher tariffs in return for a full opening of Japan to foreign trade. Japan, by contrast, made ending extraterritoriality a high priority for any revised treaties. At another multilateral treaty conference that began in May 1886, 15 states discussed a proposed treaty on legal jurisdiction over foreign traders in Japan, which was based on an Anglo-German draft. Against expectations, the conferees nearly completed negotiations on a 12-year multilateral commercial treaty and a 17-year jurisdictional treaty by July 1887.[206] The Western powers proposed to resolve the problem of the incompatibility of the Western and Japanese legal systems in exercising jurisdiction over foreign nationals in Japan by placing foreign

[203] Nish, *The Anglo-Japanese Alliance*, p. 7.
[204] *Ibid.*, p. 9.
[205] *Ibid.*, p. 10.
[206] Memorandum on Treaty Revision by J.H. Gubbins (confidential), parts I and II, enclosed in P.L. Trench to Salisbury, 17 January 1888, FO 46/448.

judges on Japanese courts to administer justice to foreign nationals. But the Japanese government broke off the talks, wishing to complete the rewriting of Japan's civil and commercial legal codes before signing a jurisdictional treaty. According to J.H. Gubbins, a Japan expert and secretary at the UK embassy to Japan, however, the real reason for the break was that Japanese government officials were embarrassed to admit to their Western counterparts that they were opposed to foreign judges sitting on Japanese courts.[207]

Gubbins saw two basic causes of the failure of this first phase of treaty negotiations. First, the Japanese government had attempted to use foreign relations to deflect public opinion from domestic problems, hardly a practice unique to Japan. Yet their plan failed, because public opinion was divided on issues such as extraterritoriality and further opening of the country to foreign traders. Second, the special nature of Sino-Japanese commercial relations, delineated by an unequal treaty that fixed Japanese tariffs at their existing low rates, prevented China from negotiating with Japan alongside the Western powers. Japan wanted to maintain the same sort of unequal trading relationship with China that the Western states had with Japan, but China now held the power to thwart new MFN treaties between Japan and the West by demanding the same privileges that Japan was granting to the West. Most worrying to the Japanese was the prospect of mass Chinese immigration to Japan. But if Tokyo did not negotiate their treaty with Peking, they could not raise tariffs on Western imports without violating MFN provisions in their treaties with the Western powers. Japan was boxed in, for at that time Sino-Japanese political relations were poor enough that a Japanese denunciation of the Sino-Japanese commercial treaty might provoke the Chinese to take up arms against Japan. Commercially, the Japanese government had little to offer the West in return for Western concessions, Gubbins concluded, as there was little commercial value in opening the Japanese interior to foreign traders. Japan stood to benefit more from new treaties with the Western powers. Assessing the coöperation of the other states in negotiations with the Japanese, Gubbins observed that Italy was rallying Austria-Hungary and the small states to support the Anglo-German leadership. Russia was neutral, the United States oscillated between coöperation and neutrality, and France was openly obstructionist. Despite Germany's coöperation with Britain in leading

[207] Memorandum respecting Treaty Revision in Japan, by Mr. Wylde, 23 September 1893, FO 46/433.

the talks, Gubbins saw German influence as threatening to British dominance in the region.[208]

A revised Japanese treaty proposal reached London at the end of 1888. Tokyo hoped that the Western powers would agree to the proposal and sign treaties individually with Japan in advance of the Mikado's promulgation of Japan's new constitution, which was scheduled for February 1889.[209] But Japan wanted the new treaties to take effect simultaneously and did not intend to bring any new treaties into effect until negotiations with all the Western powers had been completed.[210] Japanese officials had grasped the potential losses from being forced to grant concessions negotiated with one other state to all others with which they signed MFN agreements, so the MFN clause in Japan's new proposal was conditional, not unconditional. Japan needed to press all the Western powers to sign new MFN treaties. Hence negotiators said Japan would not grant to states not having signed new treaties the same benefits granted in the new treaties, even though non-signing states had traditionally been granted MFN benefits by Japan in their earlier treaties.[211]

That each treaty ultimately would be bilateral, notwithstanding efforts by the West to coordinate their diplomacy, ensured that the Western powers would jockey for position with one another. The Foreign Office informed Tokyo that Britain would negotiate a new treaty, but only on the basis of the unconditional MFN provision in the existing 1858 treaty. Britain was willing to compromise with Japan by limiting unconditionality of MFN to trade only, however.[212] Whitehall consulted with the other Western governments, particularly Germany, to ensure that other states did not make greater concessions to Japan than Britain was prepared to make. Salisbury was concerned when Germany and the United States reached agreement with Japan on treaties that he regarded as conceding too much to Tokyo.[213] Germany accepted Japan's treaty proposal almost in its entirety and signed a

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[208] Memorandum on Treaty Revision by J.H. Gubbins (confidential), parts I and II, enclosed in P.L. Trench to Salisbury, 17 January 1888, FO 46/448.
[209] Johan G. to Sir J. Pauncefote, 22 January 1889 and French to Salisbury, 28 January 1889, FO 46/448.
[210] French to Foreign Office, 14 January 1889, FO 46/448.
[211] French to Foreign Office, 16/17 January 1889, and French to Salisbury, 2 March 1889, FO 46/448.
[212] Foreign Office draft telegram to Mr. French, cypher, 28 February 1889; French to Foreign Office, 16/17 January 1889, FO 46/388.
[213] Salisbury to Hugh Fraser, telegrams, 18 June and 27 May 1889; French to Foreign Office, 14 January 1889, *ibid.*

treaty on 13 June 1889 without informing Britain in advance, much to the annoyance of the Foreign Office, with which Germany was to have been coöperating.[214] Mexico signed a new commercial treaty with Japan granting Mexicans the right to travel in the interior and broader residence rights. When the Mexican treaty was ratified in June 1889, Salisbury tested Japan's stance on granting new MFN benefits by claiming the new Mexican treaty benefits for Britons under MFN.[215]

In a mid-1889 counter treaty draft, Salisbury indicated willingness to accept Japan's tariff revision proposals if leading British merchants in Tokyo did not find them unacceptable.[216] As they had accepted in principle already, the British government were also willing to concede to Japan on extraterritoriality. However, the principal Foreign Office concern was that the transition to Japanese jurisdiction over British subjects take place smoothly and fairly so that in future Britons in Japan would not be appealing to Whitehall for diplomatic intervention on their behalf.[217] Perhaps most important to Britain still was maintenance of unconditional MFN status, a principle Germany and the United States had been willing to sacrifice in the treaties they had negotiated with Tokyo.[218] The German and American defection from unconditional MFN was unsurprising, in that Germany's trade policy in the 1880s had been based entirely upon reciprocity, and the United States had long argued against Britain for the principle of conditionality in MFN status. Both Japan and Britain acknowledged the central position that negotiation of a UK-Japan treaty had for the whole process of treaty renegotiation between Japan and the other Western powers because of Britain's power and liberal trade policy.[219] The Japanese government was concerned by Britain's slow response to their treaty proposal. Hugh Fraser, the UK's ambassador to Japan, wrote to Salisbury from Tokyo that he believed that Japan would yield to Britain on the MFN issue because a British treaty was sufficiently important to Tokyo.[220]

Bilateral Japan-UK negotiations resumed in late summer 1889. British merchants in Japan objected to the jurisdiction proposals in the

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[214] Fraser to Salisbury, 13 June 1889, *ibid.*
[215] Fraser to Salisbury, 3 June 1889; Salisbury to Fraser, telegram, 27 July 1889, *ibid.*
[216] Salisbury to Fraser, 23 August 1889, *ibid.*
[217] Salisbury to Fraser, 23 August 1889; telegram 19 September 1889, *ibid.*
[218] Salisbury minute on Sir T.H. Sanderson note with telegram to Fraser, 7 October 1889, *ibid.*
[219] French to Foreign Office, 16/17 January 1889, *ibid.*
[220] Fraser to Salisbury, 25 May 1889, *ibid.*

Japanese draft treaty, but they were anxious for a new treaty to be agreed upon to avoid ill will from the Japanese businesspeople with whom they traded.[221] The two sides were nearing agreement in October when there was an assassination attempt on Japan's Foreign Minister, Count Ikeuma. Tokyo suspended talks amidst an outpouring of Japanese public criticism of the proposed treaty, under which Britons would be permitted to buy Japanese land outright (instead of the existing leasing arrangement) following the abolition of consular jurisdiction.[222] The Tokyo government realized that they had a problem with public support for treaty provisions granting continued privileges to foreigners in light of the new system of representative government being introduced in Japan.[223] The Tokyo government, under new Foreign Minister Viscount Aoki, revised its own treaty proposals to delay and make more reciprocal the future rights of foreigners to own land in Japan. They also suspended the operation of the new commercial treaties already signed.[224] Meanwhile, support was building in Britain for the proposed UK-Japan treaty. A *Times* article urging Salisbury to give up consular jurisdiction for a new treaty argued that the Japanese people saw Britain as still the key to commercial relations with all the Western powers, despite British errors that disadvantaged the UK with respect to the United States, Germany, and Russia.[225]

The treaty issue then remained dormant for nearly three years. In this period officials in Japan's government could not agree either on their own negotiating objectives or on what the newly empowered parliament would accept.[226] As had occurred earlier in Europe as aristocratic rule had given way to more representative government (*e.g.* France, Italy, Germany, Austria), the Japanese legislature's tone on trade policy became protectionist. Japan's lower house called in February 1893 for an end to all extraterritoriality in Japan, tariff autonomy, reservation of the coasting trade for Japanese vessels, and an end to foreign interference in domestic political administration.[227] The fact that Tokyo now wanted to conduct individual negotiations with each Western power rather than

[221] Fraser to Salisbury, 31 August 1889, *ibid.*
[222] Salisbury to Fraser, telegram, 27 November 1889, *ibid.*
[223] Sanderson to Board of Trade, memorandum, 1 May 1890, *ibid.*
[224] Foreign Office Memorandum as to the Position and Prospects of the Negotiations with Japan for Treaty Revision (Confidential), February 1890, FO 46/404.
[225] *Times (London)*, 21 May 1890 (included in FO 46/404).
[226] de Bunsen to Rosebery, 17 February 1893, *ibid.*
[227] M. de Bunsen to Rosebery, 17 February 1893, *ibid.*

negotiating a standard treaty jointly that each state would then sign with Japan bilaterally indicated to Britain the effect of the new domestic pressure on the Tokyo government.[228] France and the United States both pressed Japan to grant them preferential tariff treatment. The Japanese government was inclined to grant such preferences because of Japan's need to promote exports of tea and silk, which France and the USA purchased in large quantities, and reduce exports of manufactures from Britain and Germany.[229]

A clear analysis by British diplomat Sir Cecil Spring-Rice assessed the dynamics of the negotiations between Japan and the Western powers. Britain and Germany, Spring-Rice found, had the largest trade surpluses with Japan at the time, ¥19 million and ¥6 million, respectively, whereas Japan ran trade surpluses with the United States (¥31.5 million) and France (¥14 million). Japan feared the ability of the USA and France, both of which advocated conditional MFN in opposition to Britain's policy of unconditional MFN, to ruin the Japanese tea and silk export trade by closing their markets if Japan did not grant them tariff preferences. The United States, which purchased almost all of Japan's tea exports, admitted tea duty free, a benefit that Japan could ill afford to lose. Japan, to meet the expected demand of the USA and France that Japan end all export taxes on tea and silk (which comprised 34 percent of Japan's customs revenue), would need to recover the lost revenue by raising duties higher on imports from other countries, especially those that imported few goods from Japan. Japan would also need to change their tariff structure to promote industrialization by admitting raw materials duty free whilst raising duties on manufactures. Ending Japanese export taxes on tea and silk, effectively a tariff preference granted to France and the USA, was important enough to those countries for them to accept a loss of extraterritorial jurisdiction in return. Britain would not suffer if Japan adopted conditional MFN, because Britain imposed no duties on Japanese imports, whereas Germany would suffer, owing to their relatively high tariffs. Hence Germany would be likely to align with Britain against France and the United States on MFN in this case, because Germany exported mostly manufactured goods to Japan as Britain did and would not want to see duties on manufactures increased.[230] Spring-Rice's analysis captures concisely the weaknesses in

[228] de Bunsen to Rosebery, 8 March 1893, *ibid.*
[229] de Bunsen to Rosebery, 20 June 1893, *ibid.*
[230] Memorandum by Mr. Spring-Rice (Confidential), enclosed in de Bunsen to Rosebery, 20 June 1893, *ibid.*

a system of trade diplomacy based on negotiating bilateral liberalization treaties, in which governments have incentives to seek advantages over rivals. Once bilateral negotiations came to be conducted simultaneously and in the open, all could see that the outcome of the negotiations could easily end up not meeting the objectives of any of the governments, who all claimed to be seeking more, and more liberal, trade. Britain's approach to trade liberalization based on unconditional MFN was clearly in their interest, just as the French and American approach based on conditional MFN, reciprocity and preferences was in theirs. But as the negotiations that followed made clear, the two approaches could not both prevail.

Viscount Aoki, Japan's minister to the UK, met with Hugh Fraser, Britain's ambassador to Japan, in London in September 1893 to resume bilateral negotiations. Aoki proposed reciprocal freedom of commerce, including land ownership and residential rights. Trade regulations would be set by Japan, and the conventional tariff would be replaced by a general tariff from which particular reductions could be negotiated reciprocally.[231] Although the new Japanese tariff would take effect upon signature of the treaty, the treaty itself, with its consequent end to consular jurisdiction, would not take effect before five years from signature, and at one year's notice by the Japanese government. Aoki offered to sign with Fraser a secret side agreement to the effect that Tokyo would not give notice to activate the treaty until Japan's new legal codes were in place. Fraser replied that Britons residing in Japan would not accept being kept in the dark in such a way.[232] Fraser's view of the Japanese proposal was that Tokyo was asking for everything whilst offering nothing in return. He recommended that Britain await completion of the new Japanese legal codes before negotiating any farther.[233] Meanwhile in Japan, a popular opposition to Japanese and foreigners residing at close proximity arose on the grounds that the economic competition that would ensue when foreigners were granted freedom of residence would be harmful to the Japanese. This new movement was not supported by either the generally protectionist Radical Party or the new foreign minister, Mutsu Munemitsu.[234]

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[231] Minute by Fraser to Viscount Aoki's Overture respecting Treaty Revision in Japan, 18 September 1893, *ibid*.
[232] Fraser to Aoki, 10 October 1893, FO 46/431.
[233] Minute by Fraser to Viscount Aoki's Overture respecting Treaty Revision in Japan, 18 September 1893, FO 46/429.
[234] de Bunsen to Rosebery, 23 November 1893, and *Naichi Zakkyo Kokyukwai* pamphlet, summarized by Mr. Hampden and enclosed within, FO 46/431.

By the end of 1893 xenophobic sentiments were running so high in the Diet (Parliament) that anti-foreign legislation was debated. All the major parties opposed the government's liberal policy toward foreigners, differing only by degree. Foreign Minister Mutsu did not intend to allow any anti-foreign legislation to pass, so he prevailed upon the Mikado to prorogue the Diet for 10 days so that the government could address the crisis. Aoki then sweetened the Japanese treaty proposal for Fraser, offering, in addition to full freedom to travel and reside for foreigners, unconditional MFN and a conventional tariff for listed goods that would be lower than the new general tariff. He also promised further measures to cushion the effect of ending consular jurisdiction.[235] To control xenophobic agitation, the government dissolved Parliament, scheduled new elections for April 1894, and dissolved the Great Japan Society (*Dai Nippon Kyokwai*), a lobby group opposed to mixed Japanese and foreign residence. Through these measures Mutsu convinced the Foreign Office of Tokyo's commitment to modernization.[236]

Japan's government revised its negotiating strategy then in a way that foreshadowed the development of the principal supplier principle, a cornerstone of the USA's Reciprocal Trade Agreements Act of 1934 (see below) and the post-World War II GATT/WTO multilateral negotiating rounds (see Part Three below). Japan's new thinking, as articulated by Aoki, was that since the principles of solidarity between the Western powers in negotiations had been cast aside, and since treaties signed would not be of a standard form, Japan should sign treaties only with those states that traded extensively with Japan and that covered heavily traded goods. Of the ¥54.9 million in imports from Western powers in 1892, Japan imported ¥51.7 million of them from Britain, Germany, France, and the United States. Hence Japan proposed to treat with only those four states and to extend tariff concessions to additional states through unconditional MFN. Aoki submitted a new draft treaty embodying Japan's new commercial policy to Whitehall on 27 December 1893. The proposal included full rights of travel and commerce for foreigners in Japan, national treatment in trade, including unconditional MFN status covering import, export and transit duties, shipping and shipping-related intellectual property protection. The coasting trade would be reciprocally excepted from coverage, as would Britain's possessions in Australasia, Canada, South Africa, and India (except by their voluntary

[235] Memorandum by Fraser, Japanese proposals for Treaty Revision through Viscount Aoki, 27 December 1893, *ibid.*
[236] de Bunsen to Rosebery, 31 December 1893, *ibid.*

accession). The new treaty would be activated at one year's notice by the Japanese government any time starting five years from the treaty's signature, at which time British consular jurisdiction would end. The treaty could be denounced at one year's notice beginning six years from its effective date. Japan's new tariff would be between five and ten percent for enumerated goods, excepting silk and related fabrics, which would enter at 15 percent.[237]

The principal differences between Japan's new treaty proposal and Salisbury's counter treaty draft proposal of 1890 were that Japan withdrew foreigners' right to own property and the right of British ships to carry cargo between Japanese ports (the coasting trade). The tariff protocol, on the other hand, was substantially different, scrapping the 1890 plan for a joint foreign-Japanese tariff commission to meet triennially to adjust particular tariffs according to trade price fluctuations in favour of unilateral Japanese tariff adjustment biennially to reflect exchange rate variations.[238] The Foreign Office had some major objections to Tokyo's proposal. The treaty would bind Britain but not Japan with respect to its commencement date. Japan could choose never to activate the treaty or make new demands before activating it. The proposed treaty also did not protect Britain sufficiently with respect to the end of consular jurisdiction and tariff increases, by including unconditional MFN for consular jurisdiction, for example.

From the Tokyo embassy J.H. Gubbins argued to the Foreign Office against these criticisms that Japan's only freedom would be to delay activation of the treaty, which, by prolonging foreign consular jurisdiction, would benefit Britain. Japan also would retain a strong interest in activating the treaty promptly so as to begin being treated as an equal member of the international community. Fears of a lack of protection for Britain, Gubbins observed, were unfounded because existing MFN treaties already safeguarded existing tariff levels and consular jurisdiction, and Japan had accepted the principle that no changes in tariffs or jurisdiction would be applied to one Western power before the others. Moreover, it would not be in Japan's interest to conclude a treaty with Britain and not the others. In that event not only could the other Western powers claim the benefits of the Japan-UK treaty from Japan under their existing MFN treaties, but Britain could still claim benefits of old Japanese treaties with other Western powers under MFN as well. Gubbins was also aware of the importance of the new treaty proposal to the political survival of

[237] Draft Treaty, 27 December 1893, *ibid.*
[238] Minutes by Gubbins re changes from previous treaty drafts, 1894, FO 46/433.

the Japanese government, which he regarded as making the best offer that Britain could hope for in light of growing popular protectionism in Japan.[239] Another British diplomat, Sir Henry Bergne, concurred that the treaty's MFN and national treatment provisions were the best offers that Britain would get. Bergne argued that in return for Britain's sacrifices Japan should surrender tariff autonomy for a more lengthy treaty period, 20 years rather than seven, unless British negotiators wished to include a quinquennial review of tariff levels for Britain as well.[240]

Although the Foreign Office did not want to negotiate whilst anti-foreign agitation was underway in Tokyo, de Bunsen convinced Rosebery that to await its end might postpone treaty revision indefinitely.[241] Fraser observed that the Japanese government had shown their desire to treat with Britain first by delaying other treaties, such as one they were negotiating with Portugal. Moreover, he argued to his Whitehall counterparts, resumption of treaty negotiations should put the Tokyo government in a better position to rebuff anti-foreign agitation.[242] Mutsu was very anxious that negotiations continue, complaining that the British press were exaggerating Japanese xenophobia. He indicated that the tide was beginning to turn amongst the parliamentarians, as constituents who benefited from trade began to lobby their MPs against xenophobic attitudes. 'His excellency (Mutsu) repeated his conviction that no treaty negotiation could be satisfactory from which England stood aloof.'[243] Mutsu did, however, hint that as a last resort if treaty negotiations failed Japan could repudiate the existing treaties. That suggestion brought a strong Foreign Office rebuke from Lord Kimberley, who became foreign secretary in March 1894, that the comity of western nations that Japan sought to join did not repudiate treaties only because they no longer liked their terms.[244] Fraser, however, took Mutsu's threat seriously, suspecting that Mutsu, the author of the latest treaty draft, which was less favourable to Britain than earlier drafts, was seeking an excuse to repudiate the existing treaties and impose a conditional MFN-based treaty on Britain similar to the Japan-Mexico treaty of 1889.[245] Mutsu and the Prime Minister, Count

[239] Memorandum by Gubbins, 21 May 1894, FO 46/431.
[240] Minute to draft treaty by Sir H.G. Bergne, 6 January 1894, FO 46/433.
[241] de Bunsen to Rosebery, 12 January 1894, FO 46/435.
[242] Fraser to Rosebery, 27 February 1894, *ibid*.
[243] de Bunsen to Rosebery, 14 February 1894.
[244] Bertie and Kimberley minutes, Fraser to Rosebery, 27 February 1894, *ibid*.
[245] Fraser to Rosebery, 27 February 1894, *ibid*.

Ito Hirobumi, were later apologetic about the perceived threat of treaty renunciation.[246] Ito also told Fraser that the anti-foreign ructions in Parliament were a form of political pressure on the government for treaty revision and not genuine hostility to foreigners.[247] Ito's assessment was borne out in the legislative elections in late March 1894, in which the government fared well and in which there were few xenophobic manifestations.[248]

In the final bilateral treaty negotiations that ensued, Japan conceded many, but not all, of Britain's demands. Tokyo agreed to concessions permitting foreign ships in the coasting trade and on foreign residence in Japan. Japan agreed to add raw sugar to the conventional tariff at 10 percent, whilst in return Britain agreed that if in future Japan began domestic sugar refining they could tax imports of British refined sugar at MFN tariff rates. Tokyo agreed to Britain's demand that Japan adhere to the International Conventions for the Protection of Intellectual Property and Copyright. The two sides compromised on the treaty's length, agreeing on 12 years from the date of its activation by Japan, denounceable at one year's notice after 11 years.[249] The two governments signed the new treaty on 16 July 1894 and a supplementary tariff convention on 16 July 1895, following work by a bi-national tariff commission.[250] Even as the treaty negotiations were nearing completion, Anglo-Japanese relations became further complicated by the outbreak of war between Japan and China in the Korean peninsula. Japan feared that Britain would back China because of greater UK trade interests on the Chinese mainland. Kimberley's mediation efforts failed to prevent the war from breaking out, but when it did, Mutsu pledged that Japan would not blockade Shanghai or interfere with British trade there. Britain assured Japan of UK neutrality in the conflict and eventually cooperated with East Asian rival Russia in brokering a peace settlement.[251]

Britain's coöperation with and de facto leadership of the Western powers in the multilateral negotiations with Japan, although it did not result in a multilateral treaty or even in agreement on a standardized

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[246] Fraser to Kimberley, 18 April 1894, *ibid*.
[247] Fraser to Rosebery, 6 March 1894, *ibid*.
[248] Fraser to Kimberley, 29 March 1894, *ibid*.
[249] Memorandum showing progress of negotiations up to date, and suggestions for interview of 27 June 1894 (both undated); Draft Treaty, 12 July 1894, FO 46/448.
[250] Sanderson to Sir E. Satow, 31 August 1894, *ibid*.
[251] Nish, *Anglo-Japanese Alliance*, pp. 24–26.

form of bilateral treaty, steered the Japanese to agree to a Japan-UK treaty that suited Britain more than some of Britain's Western rivals. Britain's wish for unconditional MFN prevailed over the French and American preference for conditional MFN. In one sense, the treaty commitments to end extraterritoriality in Japan ushered in a decline in British predominance there, since amongst foreign traders Britain's presence had been the most influential. But Anglo-Japanese political relations improved from 1895, and the activation of the commercial treaties and ending of extraterritoriality in July 1899 went smoothly, despite complaints from British traders of high Japanese municipal taxes. The conclusion of a deeper bilateral political and security relationship, the Anglo-Japanese Alliance of 1902, was the culmination of a process of warming relations that resulted from several interlocking factors, not least of which was Japan's failure to enlist German support for ending the Russian occupation of Manchuria following the Boxer Rising in 1900. But no less significant as causes were Japan's economic and military modernization, Britain's relative loss of geopolitical dominance in the region, and the diplomatic restructuring of Japan-UK relations on the basis of Japan's emergence as a fully equal diplomatic actor, which the 1894 trade treaty had heralded.

16 A return to trade liberalization diplomacy under US leadership

The foregoing case studies illustrate how bilateral trade diplomacy evolved in the late nineteenth century between Great Powers and between great and emerging powers. The mounting weaknesses of the bilateral treaty system were increasingly exposed. The outbreak of war in 1914 set in motion a process wherein most existing trade agreements were suspended or abandoned. The years following the signing of the Treaty of Versailles, which brought the Great War to a close, were inauspicious for an effective revival of bilateral, treaty-based trade liberalization diplomacy. Multilateral and institutional approaches to international trade and monetary diplomacy in the mould of the League of Nations were imagined, as Part Three discusses. But there was little political will behind the trade diplomacy of the 1920s in the unstable post-Versailles political environment occasioned by dismembered empires, punitive reparations payments obligations imposed upon Germany by the victorious allies, weak newly-created sovereign states, and new political borders and barriers to traditional trade flows. It would take a global economic collapse of unprecedented severity and potentially

destabilizing political changes in Germany and Japan to which it contributed to provoke a substantive shift in trade diplomacy. Over the quinquennium following the global stock market crash of October 1929, international trade volume declined by 25 percent. The first approach to return to trade diplomacy in earnest that was attempted was a return to the bilateral liberalization of the old system, but on this occasion it was led by the only state with the economic power to bring its counterparts to the negotiating table, the United States. The passage of the Reciprocal Trade Agreements Act (RTAA) of 1934 in Congress marked a decisive shift for the United States in the direction of the liberal trade policy and trade liberalizing diplomacy that Washington would adopt during and after World War II.[252]

US President Franklin Delano Roosevelt's Secretary of State, Cordell Hull, a strongly ideological free trader, moved Roosevelt's administration beyond its initial focus on solving domestic economic problems to take up a mantle of international leadership.[253] Hull, like Cobden in the previous century, saw trade liberalization as a vehicle for promoting world peace.[254] Enactment of the Smoot-Hawley Tariff of 1930 only four years earlier was already regarded as the nadir of interwar economic disharmony. US prioritizing of unilateral domestic trade policy objectives over trade diplomacy had provoked enactment of retaliatory trade barriers by other governments that resulted in the crumbling of unconditional MFN as a general trading principle and also precipitated the end of liberal trade as UK policy at the 1932 Ottawa Conference, when representatives of the British Commonwealth adopted a comprehensive system of tariff and trade preferences. Bilateral treaties authorized under RTAA furthered Hull's goals of rebuilding liberal trade and expanding US exports. Between 1934 and the end of World War II the United States negotiated and signed 32 reciprocity treaties with other countries, the benefits of which were shared with third countries through unconditional MFN treatment.[255] Average US tariffs on dutiable imports fell from the historically high Smoot-Hawley level of 55.2 percent to 37.3

[252] David P. Calleo, *Beyond American Hegemony*, New York: Basic Books, 1987, pp. 32–33.
[253] Charles P. Kindleberger, *The World in Depression, 1929–1939*, Berkeley: University of California Press, 1973, p. 233.
[254] Gilbert R. Winham, *International Trade and the Tokyo Round Negotiations*, Princeton: Princeton University Press, 1986, p. 41.
[255] Winham, *International Trade and the Tokyo Round Negotiations*, pp. 38–39.



The former U.S. Custom House in lower Manhattan, New York, built 1907

Photo: G.A. Pigman.

percent.[256] US exports doubled between 1933 and 1939. However, the US return to bilateral trade liberalization under the Roosevelt government was not sufficient to prevent the economic and political conflicts that the neomercantilist policies and resulting diplomatic stalemates of the 1920s had unleashed. It was the successive breakdowns in this quintessentially nineteenth century, bilateral approach to trade diplo-

[256] David A. Lake, *Power, Protection and Free Trade*, Ithaca, NY: Cornell University Press, 1988, pp. 207–209.

macy that accelerated the coming of the second major transformation in trade diplomacy, that of institutionalization.

17 Limitations and weaknesses of bilateral treaty-based liberalization diplomacy

The liberalizing transformation of trade diplomacy that began in the early nineteenth century did not get overtaken by events, nor was it superseded by a better or even merely newer way of conducting trade relations. The core objectives of trade diplomacy that this transformation ushered in remain core objectives of trade diplomacy today: liberalizing bilateral trade to promote economic growth, maintaining liberal trade relations against domestic protectionist pressures, seeking to use diplomacy to combine trade policy objectives with other foreign policy aims, such as promoting peace and security. The methods and instruments of trade diplomacy that this transformation heralded remain commonplace enough, even if they are no longer the dominant instruments utilized: bilateral MFN treaties, some containing specific tariff reductions whilst others do not, and the public diplomacy of unilateral trade liberalization and proselytizing marketing of such policies to trading partners. That the instruments of bilateral trade diplomacy developed during this period came to be adapted for and integrated into the multilateral trade diplomacy that the coming institutional transformation produced is indicative of what they achieved. The liberalizing transformation established the norm that international trade relations would be governed by agreements, a norm that has persisted through subsequent transformations in trade diplomacy.

However, by the beginning of the Great War the international trading system transformed by bilateral liberalization treaties had revealed serious weaknesses and limitations that became more serious as more states participated in the international trading system and began catching up with European levels of competitiveness and market share. First, bilateral treaties were generally signed for fixed periods. When they expired, domestic battles over trade policy had to be re-fought, often amidst changed economic conditions, before diplomats could begin to negotiate their renewal. Negotiating leverage in treaty talks was affected adversely by the shifting balance of power amongst European and, increasingly, non-European states. Moreover, the more treaties containing MFN provisions were signed, the more third parties were affected by each bilateral treaty and the terms of its renewal (or non-renewal). The 'multiplier' effect in which MFN spreads newly signed

bilateral tariff reductions amongst a wide range of countries went into reverse when treaties expired and as a result tariffs and other trade barriers rose. Hence the results of bilateral trade negotiations increasingly created multilateral effects that were unplanned, unanticipated and undesirable. The emergence of bilateral trade wars in the last decade of the nineteenth century is testament to that.

The failure of the system in this regard was not one of bilateralism alone. Multilateralism by itself was not yet accepted as a substitute, as the unsuccessful multilateral talks aimed at regulating export subsidies on sugar in the late nineteenth century showed. A solution, multilateral trade negotiations, but with an institutionalized mechanism for managing tariffs, was imagined. First attempts to negotiate it were made in the 1870s, but there was no domestic political will to move to that place in either France or Britain. The Brussels Sugar Convention of 1902, with its Permanent Sugar Commission, would be the first to demonstrate a model for institutionalizing multilateral trade agreements and enforcing compliance therewith. But it would take two world wars punctuated by a global depression before this next transformation in trade diplomacy could pass the point of no return.

Part Three
Institutionalization: The Second Transformation

18 Introduction: the gradual emergence of institutions for trade diplomacy

The second major transformation in trade diplomacy was the process through which venues for trade diplomacy have been transformed into institutions at which or within which trade diplomacy is conducted. Formats and structures of institutions and venues affect trade diplomacy and its prospects for success by conditioning who can communicate with whom and under what rules, as well as what sorts of agreements can be reached and how they are enforced. From the explosion of trade diplomacy in the nineteenth century up until the Second World War, bilateral trade agreements between nation-states remained the most common form of trade pact. Yet since the early twentieth century such treaties have been augmented and in some cases supplanted by regional agreements, such as the treaties of the European Union, NAFTA, MERCOSUR, and SACU; by plurilateral pacts, such as the Yaoundé/Lomé/Cotonou Conventions (between the EU and ACP states); by diplomatic coöperation between groups of large emerging economies in different regions, such as BRICS; and by multilateral trade agreements, such as the GATT/WTO. Institutions create permanent venues for diplomatic representation and communication about trade issues, such as the WTO Secretariat and General Council. The GATT, and the WTO, into which the GATT was subsumed in 1995, has evolved a distinctive degree of institutional power for global governance of international trade, owing in part to its ability to facilitate diplomacy between member states. Regional and plurilateral institutions offer different types of formats both for facilitating trade diplomacy between their member states and between their members and outside actors.

The European Union, for example, has transformed trade diplomacy amongst its member states from more traditional bilateral or multilateral diplomacy between sovereign actors into a legislative collective trade policy making process at the supranational level (see below).

Institutionalization of trade diplomacy has affected how and why governments engage in trade diplomacy in a variety of ways. Institutions and venues for international trade diplomacy, as they have come into existence and evolved into more powerful actors, have played an important part in shaping and reforming domestic trade policy making processes in their member countries. Those processes in turn have shaped the policies (and how trade diplomats are instructed to implement them) that develop and reform the rules, institutions and venues through which trade issues are debated and disputes resolved. This is an ongoing, reciprocal process that illustrates particularly well Lee and Hudson's argument that in contemporary diplomacy the boundary between domestic and international politics has broken down.[1] These new institutions and venues critically have developed a measurable degree of diplomatic 'actor-ness' in their own right, in the sense that they have acquired distinctive identities, interests, agendas, and priorities as non-state actors in the international system. Governments of member states now engage in diplomacy with the World Trade Organization itself in addition to engaging in trade diplomacy with one another at the WTO. The European Union has diplomatic relations with non-member states, such as the United States and China, in addition to serving as a venue for a particular form of trade diplomacy amongst its members. This section surveys the origins of this transformation in trade diplomacy, how and why the transformation has occurred, and the effects that it has had on trade diplomacy up to the present day.

19 Origins of the institutionalization of trade diplomacy

The intellectual seeds of true multilateralism in trade relations were sown as early as the 1860s, even as the previous transformation in trade diplomacy was in full swing. Out of the frenzy of bilateral trade liberalization negotiations across Europe that followed the signing of

[1] Donna Lee and David Hudson, 'The old and new significance of political economy in diplomacy', *Review of International Studies,* Vol. 30, June 2004, pp. 343–360; Brian Hocking, 'Introduction: Trade politics: environments, agendas and process', pp. 1–19 in Brian Hocking and Steven McGuire, eds., *Trade Politics,* 1st edn., London: Routledge, 1999.

the Anglo-French Cobden-Chevalier Commercial Treaty of 1860, two diplomatic initiatives proposing to negotiate the first significant multilateral agreements to advance and safeguard liberal trade emerged. One sought to establish a multilateral tariff union in Europe, whilst the other aspired to end export bounties (subsidies) on sugar. The first, Northcote's multilateral tariff union proposal, was unsuccessful (see Part Two above). The second did produce a multilateral trade agreement to regulate sugar export bounties in 1864, but it was bedevilled by problems of compliance. The breakdown of the 1864 agreement in turn led to decades-long stop-start multilateral diplomatic engagement amongst most of the major industrial economies and some developing countries. The ultimate solution to the compliance problem was the first international institution created to administer a multilateral agreement negotiated to govern trade relations, albeit in a single commodity, the Permanent Sugar Commission, which was established by the Brussels Sugar Convention of 1902.[2] The notion of creating an institution to facilitate multilateral diplomacy concerning international trade issues was a late nineteenth century innovation by diplomats in recognition of the substantial added layer of complexity that the effects of multiple bilateral trade agreements upon one another created. Beyond recognizing that multilateral trade agreements were the most effective way of overcoming the problems that overlapping bilateral agreements created, e.g. one state granting another state MFN benefits without receiving any concessions in return, institutions made observing and enforcing multilateral agreements viable. Institutions encompassed rulebooks for multilateral trade amongst their members, procedures for resolving disputes when they arose, and, importantly, organizations to administer the rules and dispute resolution procedures. Multilateral agreements also gave organizations the capacity to amend the rules that they administered and to admit new signatories or members.

The earliest multilateral agreements established institutions that facilitated the least contested and most practical or procedural elements of international trade. For example, the multilateral International Telegraph Convention in 1865 established the International Telegraph Union (ITU), an organization to administer the creation and maintenance of international telecommunications standards. The ITU, which later became the International Telecommunications Union, a

[2] Geoffrey Allen Pigman, 'Hegemony and Trade Liberalization Policy: Britain and the Brussels Sugar Convention of 1902', *Review of International Studies*, Vol. 23, April 1997, pp. 185–210.

specialized agency of the United Nations with 193 nation-state members and over 700 private organizations, still facilitates international commerce: cross-border telegraph services, telephony, and more contemporary telecommunications services such as radio transmission and the internet.[3] A similar organization, the Universal Postal Union (UPU), was created by 22 countries at the Treaty of Bern in 1874 to standardize and regulate international delivery of mail.[4] With 192 members as of 2014, the UPU today is also a specialized agency of the UN. Multilateral concern about safeguarding the authenticity of trademarks in the face of the emerging practice of stamping products with false marks of country origin led to eleven states signing in 1883 the first multilateral intellectual property agreement, the Paris Convention for the Protection of Industrial Property. The treaty created a union amongst its members for purposes of protecting intellectual property, including patents, trademarks, and marks of origin.[5] To Britain's disappointment, neither the United States nor Germany joined the convention at that time. In the face of British agitation against German use of false British trademarks, signatories to the convention strengthened it in 1886 to ban altogether the use of false marks of origin.[6] In 1893 under the Berne Convention for the Protection of Literary and Artistic Works, a related convention, an organization to administer the two intellectual property conventions was established, the *Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle (BIRPI)*. That institution in turn became the World Intellectual Property Organization (WIPO) in 1970, which has 186 member countries at time of writing.

Whereas the ITU, UPU, and BIRPI/WIPO were the products of agreements negotiated to facilitate specialized and relatively narrow, even if structurally important, aspects of international commerce, the Brussels Sugar Convention stands out as the first multilateral agreement to institutionalize trade relations concerning a major traded good, sugar. Sugar was a particularly significant commodity in the second half of the nineteenth century for several reasons. Global demand for sugar

[3] International Telecommunications Union, About ITU, http://www.itu.int/en/about/Pages/default.aspx, accessed 14 January 2014.
[4] Universal Postal Union, History, About history, http://www.upu.int/en/the-upu/history/about-history.html, accessed 14 January 2014.
[5] Paris Convention for the Protection of Industrial Property, World Intellectual Property Organization, treaties, http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html, accessed 22 January 2014.
[6] R.J.S. Hoffman, *Great Britain and the German Trade Rivalry 1875–1914*. New York: Garland Publishing, Inc., 1983 (1933), p. 46.

and for foods containing sugar increased dramatically over the course of the nineteenth century, as industrialization proceeded apace. As workers relocated to urban areas to work in factories, food had to be transported longer distances from their point of production to point of consumption. Sugar was both an agricultural product and an industrial input, as rapidly growing manufacturers of commercially produced cakes, biscuits, jams, spirits, other beverages and foodstuffs used progressively greater volumes of sugar. Europe's emerging middle classes spent increasing discretionary income on sugared products, and the expanding industrial working classes relied upon sugared food and drink as a source of nutrition. Whereas sugar in the temperate climes of Europe had traditionally been produced from sugar beets for local consumption, international competition in the sugar market had been transformed by the introduction to European markets of cane sugar from Europe's tropical colonies, primarily in the Caribbean region.[7]

By the 1850s many European governments, including those of France, Germany, Austria, and Russia had come under political pressure to pay production subsidies and export bounties (subsidies on goods exported) to their domestic sugar beet farmers to assist them in competing against imports of lower-cost cane sugar from the tropics. This posed a peculiar dilemma for British trade policy and diplomacy that was to dog UK governments for decades. The trade policy debate between supporters of seeking free trade unilaterally, i.e. by domestic legislation that leads by example, and those who favoured negotiating trade liberalization treaties, was largely sidelined by a different configuration of cross-cutting political and diplomatic alliances. Consumers and sugar-using industries (confectioners, biscuit makers, etc) favoured importing the cheapest sugar available on the global market, whether subsidized by another government or not. By contrast, business and political interests whose fortunes were linked to Britain's sugar-producing colonies in the West Indies urged the British government to do whatever it took to prevent subsidized European sugar from competing in the UK market with West Indian sugar, even if that ultimately meant subsidizing West Indian sugar production themselves. Both factions sought, equally disingenuously, to lay claim to the mantle of defending free trade.

Multilateral sugar negotiations began in the 1860s, when British trade policy favoured negotiated trade liberalization and the Anglo-French 'Cobden-Chevalier' Commercial Treaty of 1860 had been used by both governments as a vehicle for improving political relations.

[7] Sidney W. Mintz, *Sweetness and Power*, New York: Viking Penguin, 1985.

In 1862, France's finance minister became concerned that the French government, by paying high export bounties through duty drawbacks to exporters of refined sugar from France, in order to compete with other European sugar producing countries, was keeping domestic sugar prices high and draining the French treasury needlessly. A drawback is a government's reimbursement of a duty paid by an importer of raw materials when the same goods are reëxported after processing. When the drawback exceeds the initial duty paid, it becomes a form of export bounty or subsidy. Britain was particularly anxious to end European sugar export bounties because of the threat they posed to British colonial sugar exports to metropolitan Britain under free trade. A ten-year convention between France, Belgium, Holland, and Britain to regulate duty drawbacks on sugar exports, signed in 1864, codified a regime under which raw sugar imports into the signatory countries would be charged a duty, which sugar refiners could then recover in the form of a drawback, intended to equal only the original duty paid, for whatever refined sugar they subsequently exported.[8] This type of sugar regime permitted countries to protect their newly developing domestic beet sugar production without weakening or inhibiting the export potential of their domestic sugar refining industry. Problems arose because refiners, particularly in France, found a way to collect an export bounty in spite of this policy by exploiting the dutiable quality assessment process for raw sugar imported and refined sugar to be reëxported.[9]

Britain's ultimately unsuccessful efforts to make France adhere to the terms of the 1864 Sugar Convention and then to renew the pact carried on for over a decade.[10] Throughout most of the 1880s UK governments of both parties continued to side with consumers and sugar-using industries seeking cheap (even if bounty-subsidized) sugar over colonial sugar planters, even as the economic condition of the West Indies continued to deteriorate. A new international conference in 1887 brought a long-sought expansion of sugar talks to include many of the world's major

[8] W.H. Smith to Lord Tenterden, 31 July 1874, *Parliamentary Papers*, Vol. 34 (1874) LXVIII, Correspondence relative to the Sugar Convention of 1864 and to the Question of Establishing Refining in Bond in Sugar Refineries in France, Holland and Belgium (hereinafter *'P.P.* 1874'), pp. 917 *et seq*.

[9] Sir Louis Mallet, August 1, 1872, Minutes of the International Sugar Conferences on Drawbacks of Refined Sugars established by the Convention of November 8, 1864, *Parliamentary Papers,* Vol. 27 (1873) LXV, Minutes of the International Sugar Conferences on Drawbacks of Refined Sugars established by the Convention of November 8, 1864, London, August 1872 (hereinafter '*P.P.* 1873'), pp. 597 *et seq*.

[10] *P.P.* 1873, 1874.

sugar-trading countries, adding nine countries to the original four. Salisbury's government agreed to join six other participating countries (but excluding such major sugar consumers as the United States, France, Austria-Hungary, and Belgium) in signing an agreement on 30 August 1888 that called for signatories to prohibit imports of sugar on which export bounties had been paid.[11] As a method of enforcing an international trade agreement, the imposition of mandatory sanctions by other signatories would represent a major advance over more traditional diplomatic culture, which expected (but did not force) countries to adhere to the terms of their international treaty obligations. Salisbury's willingness to sign the treaty, which mandated retaliation against countries that did not comply with the treaty's rules, is an early indication of the sympathy of his wing of the Unionist Party for an approach to maintaining liberal trade that embraced sanctions against countries that engaged in non-liberal trade practices.[12] The Cobden Club, an ideologically-based group of UK supporters of unilateral free trade, led unilateral free traders in Britain in opposing passage of the new convention, vigorously arguing in Parliament and through the press that its mandatory import prohibitions would violate Britain's MFN treaties and that unless all major sugar consuming countries signed the treaty it would not have its desired effect of ending bounties.[13] Salisbury's government was ultimately forced by opposition in Parliament to withdraw the convention's implementing bill in 1889.[14]

As the problem of sugar bounties worsened, owing to the continued growth of beet sugar production in the temperate regions of Europe and the expansion of sources for cane sugar in the tropics, additional multilateral conferences were held in 1898 and again in 1901. At the 1901 Brussels conference, the UK foreign secretary, Lansdowne, told the delegates that Britain would accept a mandatory penal clause in a sugar convention if absolutely necessary because of the 'urgent importance'

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[11] Mallet, *op. cit.*, p. 5.

[12] In 1887 Salisbury had publicly expressed a willingness to adopt retaliatory duties but was forced to repudiate his 'Fair Trade' sympathies by strong opposition from unilateral free traders within his own party. *See* Sydney H. Zebel, 'Fair Trade: an English Reaction to the Breakdown of the Cobden Treaty System', *Journal of Modern History*, Vol. 12, No. 2, 1940, p. 180.

[13] Sir T.H. Farrer, 'The Sugar Convention and Bill' (pamphlet), London: Cassell & Co., Ltd., 1889, along with reprints of letters by same to newspapers.

[14] *Hansard's Parliamentary Debates*, Third Series, 52 & 53 Victoriae, 1889, Vol. cccxxxv, Third Volume of the Session (437); *ibid*., Vol. cccxxxvi (438); *ibid*., Vol. cccxxxvii (439).

to West Indian sugar planters and British sugar refiners that bounties be stopped. He also urged that cartels be abolished or regulated by limiting the allowed margin of difference between customs and excise duties on sugar.[15] An excise duty on domestically produced sugar significantly lower than the customs duty on imported sugar encouraged formation of domestic cartels in Continental states to undersell sugar imports. Lansdowne's concern with cartels and marginal differences in taxation draws attention to the fact that under the rubric of 'bounties', the sugar convention debated most types of barriers to liberal trade in sugar that diplomats addressing agricultural trade issues a century later would still be facing: direct bounties on exports, direct subsidies on production, total or partial exemptions from duties on manufactured products using sugar, indirect advantages accrued from inflating or deflating estimates of quantities produced, gains from excessive duty drawbacks, and advantages gained from large differences between import and excise duties.[16] British delegates faced unanimous support at the conference for a mandatory penal clause to be imposed upon sugar bounty payers, whether signatories to the convention or not.

The multilateral agreement that delegates finally signed at Brussels contained many of the elements that would become standard in the GATT and WTO and other later twentieth century trade institutions. The treaty prohibited payment of all export bounties on sugar and required all sugar to be refined in bonded (government-supervised) facilities. It lowered the maximum permissible surtax, or difference between excise and import duties, to six French francs per 100 kg. of sugar. A multilateral Permanent Sugar Commission was to be created to supervise and enforce implementation of the convention, which would run for five years. An escape clause permitted countries temporary relief against import surges (with approval of the Permanent Sugar Commission) of one French franc per 100 kg. of sugar and required signatories to impose mandatory countervailing duties (CVDs) or import prohibitions against any countries that the Permanent Sugar Commission found to be paying bounties.[17] The sugar convention was signed by nine countries, Germany, Austria-Hungary, Belgium, Spain,

[15] Lansdowne to British Delegates at Sugar Conference, 12 December 1901, *Parliamentary Papers* 1902.
[16] British delegates at Sugar Conference to Lansdowne, 21 December 1901, *ibid.*
[17] Delegates to Lansdowne, 27 February 1902; despatch from the British Delegates inclosing copy of the Convention signed on 5 March 1902, *Parliamentary Papers* 1902.

France, Italy, Holland, Sweden-Norway, and Britain, on 5 March 1902, to take effect on 1 September 1903. Despite lobbying aggressively again as in 1889, the Cobden Club this time failed to block passage of the Convention in the UK Parliament.

The Brussels Sugar Convention functioned as it was intended, not only by enforcing rules but by facilitating ongoing diplomacy between signatories aimed at meeting the agreement's objectives. The Permanent Sugar Commission, the first ever multilateral institution commissioned to monitor international trade and enforce compliance with an international trade agreement, began its work. The Commission found in June 1903 that Spain and Russia were imposing excessive surtaxes, Denmark and Romania imposed excessive surtaxes and paid export bounties and that Japan imposed slightly high surtaxes on some types of sugar. The Commission fixed CVDs for imposition on each country, electing to impose temporarily the CVDs already imposed by the United States on other sugar bounty-paying countries (under the extant American system) until the Commission was able to make its own assessment.[18] Additions and deletions to the countervailing duties (CVD) list followed at subsequent Commission meetings. The British government elected to impose outright import prohibitions against sugar from bounty-paying countries. The direct consequences to Britain of this choice were difficult to identify, as most British non-colonial sugar imports between 1898 and 1902 had come from Germany, Austria, the Netherlands, and Belgium, all signatories to the convention.[19] But the Russian Government, keen to export and thus very concerned about the CVDs imposed against Russian sugar, proposed to come to terms with the sugar convention under which their current export levels would be frozen in return for exemption from CVDs. The plan met with considerable resistance, particularly from Britain, but it foreshadowed the terms of Russia's eventual accession to the convention itself.[20]

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[18] Findings of the Permanent Commission established under Article VII of the Sugar Convention of 5 March 1902, and Report of the British Delegate, M. de Favereau to Sir B. Boothby, 27 June 1903, encl. in Boothby to Lansdowne, 28 June 1903; de Favereau to Phipps, 4 July 1903, encl. in Phipps to Lansdowne, 5 July 1903, *Parliamentary Papers* 1903.

[19] Sir H. Bergne to Lansdowne, 13 July 1903, *ibid*.

[20] Lamsdorff to M. Leghait, 28 July 1903, encl. in Lalaing to Lansdowne, August 21, 1903, *P.P.* Vol. 47 (1904) XCV, Further Findings of the Permanent Commission established under Article VII of the Sugar Convention of 5 March 1902, pp. 653 *et seq*.

The institution operated successfully up until the outbreak of the Great War in 1914, notwithstanding the disproportionate importance of the United Kingdom, as the largest economy and largest consumer of sugar, to its functioning. British domestic politics remained sharply divided between the interests of colonial sugar planters and those of consumers and sugar-using industries. Britain complicated the functioning of the convention and of the work of the Permanent Sugar Commission in 1907, the first opportunity that the convention allowed governments to withdraw, when a Liberal government sought an exemption for the UK from the obligation to impose penalties against countries paying export bounties on sugar as a condition of Britain's remaining in the convention. Fearing the impact of Britain's withdrawal, the Permanent Sugar Commission in July 1907 agreed to amend the sugar convention to release Britain from enforcing the penal clause.[21] Russia, a major sugar producer and exporter, joined the convention the same year. Yet following a repeat of the same cycle of negotiations over the following five years, UK Foreign Secretary Lord Grey gave formal notice of Britain's decision to withdraw on 12 August 1912.[22] The French *chargé d'affaires* in London, de Fleuriau, told Grey that Britain's withdrawal would lead to calls in France for higher import duties on sugared products. However, France was still shielded by the sugar convention from rival states paying export bounties on sugar, and the convention had now been running for long enough that Britain's withdrawal would not destroy it, as it might have done five years earlier. The convention's rulebook for trade in sugar, with its built in penalties to promote compliance, had reshaped international norms for the sugar trade. De Fleuriau must have tantalized Grey with his final remark regarding the unexploited potential of the multilateral negotiated trade liberalization process:

> M. de Fleuriau said that those originally favourable to the convention had hoped that it would have been the first of a series of such arrangements for the reduction of excessive customs duties.[23]

De Fleuriau's comments indicated that European trade diplomats as early as the turn of the twentieth century were favourably disposed toward a multilateral, institutional approach to liberalizing trade, even

[21] Bertie to Grey, 27 July 1907, *P.P.* 1908.
[22] Grey to Macleay, 2 August 1912, *ibid.*
[23] Grey to Bertie, 10 August 1912, *ibid.*

if not all of the governments and constituencies that they represented at the negotiating table were similarly supportive. Hence the transformation of trade diplomacy in the direction of institutionalization can be understood to have begun in earnest by the first decade of the twentieth century. International trade, and the diplomacy that increasingly surrounded it, faced the massive interruption occasioned by the outbreak of the Great War, and it would be another third of a century before the project of institutionalizing trade diplomacy would again reach the level that it had attained in 1913.

20 Negotiating the institutionalization of international trade relations during and after World War II

Amidst economic depression and abdication of British leadership of the global economy, earlier attempts to reorganize the international trading system had failed, in part because the United States had not yet been willing to fill the leadership gap left by Britain. A multilateral treaty proposed in 1927 to establish an international regime to regulate quantitative trade restrictions and prohibitions, the World Economic Conference and Conference on Import and Export Prohibitions and Restrictions, narrowly failed. Not enough countries ratified the treaty, in part because of their opposition to plans by the US administration of President Herbert Hoover to raise tariffs on agricultural imports.[24] Following the stock market crash in 1929 and the onset of a global depression, world trade declined over four years to 35 percent of its 1929 value.[25] Yet the newly elected administration of US President Franklin Delano Roosevelt neglected the diplomatic opportunity presented by the 1933 London Economic Conference, which failed to approve new multilateral economic coöperation measures, owing to the initial desire of the Roosevelt administration to reduce US dependence on swings in currency values.[26]

Beginning during World War II intensive negotiations took place, principally between the United States and the United Kingdom, over the future shape of the postwar international economy. The administration of President Roosevelt, steered by his pro-free trade Secretary

[24] Gilbert R. Winham, *International Trade and the Tokyo Round Negotiations*, Princeton: Princeton University Press, 1986, pp. 34–37.
[25] David A. Lake, *Power, Protection and Free Trade*, Ithaca, NY: Cornell University Press, 1988, pp. 185–186.
[26] Winham, *International Trade and the Tokyo Round Negotiations*, pp. 35–37.

of State Cordell Hull (who retired in 1944), Treasury Secretary Henry Morgenthau, and Undersecretary of State Will Clayton, among others, by this point embraced a liberal global economic order of multilateral trade liberalization and freely convertible currencies, instead of a system of managed trade and monetary relations between organized blocs, which was favoured by many in Britain.[27] The war would leave the United States as the only substantially undamaged major economy and military power. At the end of the war, over half of world manufacturing and one third of total world production was taking place in the United States, and in 1947 one third of world exports originated from the USA.[28] But notwithstanding the USA's dominant position in a postwar global economy, the United States itself needed the trade expansion that a liberal economic order would bring in order to maintain US employment levels in a peacetime economy, promote private enterprise (particularly in international trade) and safeguard international security against a return to war.[29] In order for the United States to be in a position to lead a postwar international economic system, the Americans would first have to reach agreement with the other major powers in the future postwar global economy on the rules of the system and on mechanisms for enforcing the rules. As Arthur Stein has argued, leaders need willing followers. 'Trade liberalization among major states is…the product of tariff bargains. The hegemon must get others to agree to lower their tariffs as well. Without agreements, there can be no regime.'[30] So for the US governments of Roosevelt and Truman, adopting free trade unilaterally, as Gladstone had advocated so often for Britain, was not an option, if it had even been the Americans' policy of choice. Effective diplomacy to craft a system that would persuade the United Kingdom, France, and before long Germany and Japan, to follow US leadership was required.

It was evident to Roosevelt's team that the most important follower to secure for a future US-led international monetary and trading system

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[27] Benjamin M. Rowland, 'Preparing the American Ascendancy: the Transfer of Power from Britain to the United States, 1933–1944', pp. 193–224 in Benjamin M. Rowland, ed., *Balance of Power or Hegemony: The Interwar Monetary System*, New York: NYU Press, 1976.

[28] W.M. Scammell, *The International Economy Since 1945,* 2nd edn, New York: St. Martin's Press, 1983, pp. 19–22.

[29] Richard N. Gardner, *Sterling-Dollar Diplomacy in Current Perspective*, 2nd edn, New York: Columbia University Press, 1980, pp. 101–102.

[30] Arthur A. Stein, 'The Hegemon's Dilemma: Great Britain, the United States, and the International Economic Order', *International Organization,* Vol. 38, No. 2, Spring 1984, pp. 358, 366–367.

was the United Kingdom. US officials envisioned the UK as a 'junior partner' in the new postwar system, given Britain's history as a former leader of a liberal international trading system and an ongoing centre of global finance.[31] Out of the US-UK wartime diplomacy would emerge most of the core principles and bargains that would define the postwar international trading system and, critically, the new institution that would administer it. The American negotiators sought to found the postwar trade regime on the basic liberal principles of unconditional MFN treatment and non-discrimination, the latter over the objections of Britain and eventually France, both of which sought to preserve trade preferences with their current and former colonies and dominions.[32] In Britain, senior government officials made the lowering of tariff and other barriers to trade their top priority in recognition of the damage that the breakdown in liberal trade between the wars had done to the UK economy. Wartime Chancellor of the Exchequer Sir Kingsley Wood was keenly aware of the need to grow British exports in the postwar period to stimulate economic recovery and restore Britain's depleted foreign exchange reserves.[33]

The first major diplomatic venue where the UK and USA began to negotiate the shape of the postwar international trade and monetary system was the bilateral Atlantic Conference, which took place in August 1941, even before the United States had formally entered the war. US President Roosevelt and UK Prime Minister Winston Churchill met at Placentia Bay, Newfoundland, accompanied by senior advisers. The joint declaration upon which the two leaders agreed, known as the Atlantic Charter, laid the foundation for the future economic coöperation between the two powers. The issue of Britain's desire to preserve preferences for imports from Empire/Commonwealth countries vs. the US insistence upon non-discrimination proved to be the main sticking point between the two sides. Keen to reach an agreement at the conference that could be announced publicly without delay, Roosevelt conceded to Churchill on wording that permitted maintenance of existing Commonwealth preferences, over the objections of Under Secretary of State Sumner Welles.[34] After the Japanese bombing of Pearl Harbor in December 1941, which prompted US declarations of war against Japan

[31] Stein, 'The Hegemon's Dilemma', p. 377.
[32] Rowland, 'Preparing the American Ascendancy', pp. 212–214; Gardner, *Sterling-Dollar Diplomacy*, pp. 16–20.
[33] Gardner, *Sterling-Dollar Diplomacy*, pp. 27–28.
[34] *Ibid.*, pp. 42–47.

and Germany, the American and British governments made the rather general terms of their Atlantic Charter declaration more formal. In the Mutual Aid Agreement, which the two sides signed on 23 February 1942, Britain made a formal commitment to cooperate with the United States in re-establishing a postwar multilateral international trading system in return for US aid in purchasing war supplies under the Lend-Lease arrangement.

Once again, the issue of non-discrimination bedevilled the quest for agreement on Article Seven of the Mutual Aid Agreement, which codified Britain's coöperation on trade in consideration for US Lend-Lease aid. In the many months of negotiations over the terms of Lend-Lease, which had begun even before the Atlantic Conference took place, US negotiators sought to include language prohibiting trade preferences. In the event, the two sides agreed on language in Article Seven ambiguous enough for the US government to promote it loudly to its domestic constituencies as a significant British concession on Commonwealth preferences and for the British government to downplay Article Seven's significance and deny that they had conceded to the Americans on non-discrimination. Roosevelt once again smoothed tensions with a message of reassurance to Churchill in the immediate aftermath of the calamitous fall of Singapore to Japanese forces that the United States did not aspire to take over British imperial territories. Dean Acheson, then Assistant Secretary of State, offered perhaps the most perceptive assessment of Article Seven, telling Congress that the article committed the two governments to negotiate how best to increase global production and consumption and to reduce trade barriers and end discrimination, without protecting any prëexisting arrangements.[35]

The Atlantic Charter and Mutual Aid Agreement paved the way for negotiations bilateral and subsequently multilateral on the form and function of the postwar global economy to begin in earnest. From the start, the diplomacy that produced the reconfigured international trading system and the institution that would administer it was overshadowed to a degree by the simultaneous negotiations aimed at establishing an international monetary system and means of financing postwar economic reconstruction and development (and the institutions to administer them). In parallel with monetary and financial planning, officials in the United States and United Kingdom each drew up plans for an international trade agreement that would reduce tariffs, limit direct controls (quantitative restrictions) on trade flows, and create

[35] *Ibid.*, pp. 54–68.

an international institution to implement the agreement and resolve disputes that arose. For US Secretary of State Hull, the establishment of an international trade organization would mark the realization of his dream of thirty years to codify an encompassing rulebook for global trade.[36] The two sides conferred in Washington in September 1943 in a seminar-format meeting intended to set an agenda for issues to be considered and for future consultation. Discussions focused on three main issues, all of which would subsequently become highly contentious between the two governments. On the first issue, the relationship between trade liberalization and the promotion of full employment, the two sides were broadly in agreement. Beneath this initial accord lay a much deeper philosophical and economic cleavage between the Americans, who favoured minimal government intrusion into the operation of open markets, and the British, who embraced a much greater degree of government planning in the quest to achieve full employment.[37] On the second issue, quantitative restrictions on trade flows, the two sides agreed on the complete abolition of quantitative restrictions except in the event of balance of payments emergencies. The third issue, reduction of tariffs and elimination of discrimination, predictably was the locus of greater disagreement. British negotiators indicated their willingness to end imperial tariff preferences only in return for much more drastic reductions in overall US tariffs, a cut of significantly more than 50 percent from prewar levels. Both sides agreed in principle that such a tradeoff, if it could be agreed, would be a viable means for each side to achieve their respective objectives.[38] US and Canadian officials conferred bilaterally on the same issues in early 1944.[39]

The allied governments took forward their plans for international monetary and financial coöperation at the multilateral Bretton Woods economic conference, which was held at a resort hotel in northern New Hampshire in the United States in July 1944. Over seven hundred delegates representing 44 countries allied in the war effort against the Axis powers attended. Bretton Woods was a signal achievement in economic diplomacy, as it laid the foundations for a postwar global economy that was to be governed for the first time primarily through multilateral

[36] *Ibid.*, p. 102.
[37] Gerard Curzon, *Multilateral Commercial Diplomacy; The General Agreement on Tariffs and Trade and its Impact on National Commercial Policies and Techniques*, London: Michael Joseph, 1965, p. 31.
[38] Gardner, *Sterling-Dollar Diplomacy*, pp. 100–109.
[39] Clair Wilcox, *A Charter for World Trade*, New York: Macmillan, 1949, p. 38.

institutions. Negotiators were able to reach agreement not only on the need for rules to govern the international economy that would act as brakes on the destructive trade and monetary rivalries that had emerged between the two World Wars but also crucially on the need for multilateral institutions to administer the rules. The diplomats at Bretton Woods recognized three separate but interlocking sets of economic objectives: coöperation in managing and regulating exchange rates, liberalizing and maintaining liberal international trade, and assisting war-torn countries to rebuild their economies and underdeveloped regions of the world (nations and colonies) to pursue development. Hence a structure of three international organizations was envisaged: an International Monetary Fund (IMF), an International Bank for Reconstruction and Development (IBRD or World Bank), and an International Trade Organization (ITO). At the Bretton Woods conference, establishment of the IMF and the IBRD were agreed, but negotiating a multilateral agreement on trade would be postponed until the following year.

The approaching end to war in 1945 brought an acceleration of multilateral diplomacy, with the United Nations Conference on International Organization meeting at San Francisco to finalize plans for a global security architecture and an organization, the United Nations Organization (UN), to administer it. US and UK delegates negotiated on trade in Washington in September 1945, which led to the publication in November 1945 of a US-authored document, the 'Proposals for Consideration by an International Conference on Trade and Employment', a document that Britain agreed to support but not to co-author. The document, containing separate sections on promoting full employment and liberal trade, reflected the seriousness of both parts of the agenda to the two governments. Nonetheless the proposals on employment were general and vague, owing to the difficulty that both governments experienced in envisioning how to address employment promotion through an international agreement.[40] Between October 1945 and December 1946, Belgium, Greece, Poland, France, Turkey, Czechoslovakia, and the Netherlands endorsed the US proposals.[41] The document inevitably revisited the major cleavages between the USA and UK. The proposals addressed the issue of under what conditions governments would be permitted to employ otherwise banned quantitative restrictions on trade flows in balance of payments crises, with Washington, as the major creditor nation in the international system,

[40] Gardner, *Sterling-Dollar Diplomacy*, pp. 145–148.
[41] Wilcox, *A Charter for World Trade*, p. 39.

favouring more stringent restrictions and Westminster, with massive UK war debt to address, favouring a looser policy. Both governments agreed on the need to permit quantitative restrictions on agricultural imports to protect domestic price supports, which reflected the growth in government support for domestic agriculture in both countries during World War II.[42] This exception for agriculture would prove to be the beginning of the long and thorny history of agricultural trade liberalization under the GATT and WTO, the most intractable sectoral issue in trade diplomacy since World War II.

Negotiators returned to another thorny issue, that of tariff preferences. As an enticement to convince the United Kingdom to end Commonwealth tariff preferences, officials in the Truman White House backed away from their predecessors' 1943 endorsement of across-the-board formula tariff cuts. Truman officials instead endorsed a different approach, in which countries would convene at large multilateral trade liberalization conferences but would negotiate tariff reductions bilaterally and simultaneously. These tariff reductions agreed by pairs of countries would then be extended to the rest of the participants through MFN. This new US approach meant that of necessity tariff reductions would be both more selective and more reciprocal than they would have been under an across-the-board formula. In a bilateral negotiation between any given pair of countries, each side would have to decide which of their tariffs they would offer to cut and in which of the other country's tariffs they would request cuts. Hence this approach later became known as the 'offer-request' system. Notwithstanding continued strong US support for ending of tariff preferences, the proposal's commitment to ending preferences remained general, as Whitehall remained unwilling to make concrete commitments to ending preferences in advance of significant steps toward reductions in tariffs and non-tariff barriers to trade. Predictably, the proposal met with substantial criticism across British political opinion. The government managed to calm public opposition by pointing out that Westminster was free to set whatever conditions they wished for full termination of preferences, including demanding of Washington a 100 percent reduction in tariffs. To complicate matters farther, US negotiators also included in the proposal an 'escape clause' already codified in the US Reciprocal Trade Agreements Act of 1934 (RTAA) that would permit states to take temporary measures to prevent tariff reductions (but not, importantly, reductions in tariff preferences) from doing substantial harm to

[42] Gardner, *Sterling-Dollar Diplomacy*, pp. 148–150.

domestic producers. US officials saw the escape clause as a way to make tariff reduction more palatable politically to domestic manufacturing constituencies that could be harmed by sudden reductions in import duties. This provision in the 1945 proposal, which was a political price for passage of RTAA extracted by the US Congress from the Roosevelt administration, was the origin of the inclusion of an escape clause provision in most subsequent multilateral and regional trade agreements.[43]

The next phase of negotiations on trade, the drafting of the charter for a multilateral institution to manage international trade relations, was fully multilateral in a way that diplomacy up to that point had not been. In February 1946, at US urging, the Economic and Social Council of the newly constituted United Nations commissioned a 'Preparatory Committee' of nineteen member countries to draft a charter for a future International Trade Organization.[44] In addition to the USA, UK, and other major wartime allies, less developed countries were well represented on the committee with the participation of Brazil, Cuba, India and South Africa. The Soviet Union was invited to participate but declined to do so. By so opting out of the multilateral diplomacy that would craft the rules of the postwar multilateral trading system, the Soviet government in effect chose not to participate in that system, a decision that committed the Soviets to creating their own, much smaller rival trading system for themselves and their satellite states. In advance of the committee's convening, the United States published a draft of a proposed ITO charter. The committee convened in London in September 1946, with the USA and UK once again taking the joint lead. Clair Wilcox, who chaired the London Conference, grouped the participants into four categories according to their interests with respect to the postwar trading system. The first group, which encompassed the USA, Canada, Belgium, the Netherlands, and the Scandinavian states, supported multilateralism and non-discrimination. The second group, Britain and France, were most concerned about economic reconstruction from the war. The third group, developing countries and territories, were focused primarily on economic development. The fourth group, East European countries, were concentrated on adopting planned economies in the political shadow of the Soviet Union.[45] Although the United States and Britain wielded power and influence disproportionate to the other participants at the conference, their particular objectives

[43] *Ibid.*, pp. 150–159.
[44] Curzon, *Multilateral Commercial Diplomacy*, p. 30.
[45] Wilcox, *A Charter for World Trade*, pp. 26–27.

were enough at odds to make negotiations over numerous issues acrimonious. Ironically, the hitherto most controversial issue dividing the two sides, the issue of tariff preferences for colonial possessions, proved to be least contentious at the London Conference. The delegates rapidly reached agreement on enshrining unconditional MFN in the charter. Yet in practice they excepted existing tariff preferences by adopting the very generally worded commitment codified in the 1945 US proposal that committed participants to negotiate to reduce tariffs and eliminate preferences.

However, the relationship between trade and employment once again became a point of controversy. The US-UK divide on trade and employment manifested itself in debate over several trade-specific issues, including the usage of quantitative restrictions on trade flows.[46] The American delegates argued generally that adoption of specific full employment economic policies was not practicable to articulate as a commitment in an international agreement. British negotiators, joined by their even more fervently committed Australian and New Zealand colleagues, countered that committing to full employment was the most effective way to promote expansion of world trade and peace. Ultimately, following Britain's wish, the Draft Charter embodied a commitment of members to adopt full employment policies and to implement them in such a way as not to cause a reduction in employment in other nations with which they traded. In deference to the Americans' preferences, the types of policies and benchmarks of achievement were not prescribed.[47] Conference delegates proposed a resolution to refer to the ratifying conference for the ITO under which national policies to promote full employment would be coordinated through the UN Economic and Social Council and other intergovernmental organizations. The Australian delegation pressed aggressively for another proposal mooted by the UK under which an escape clause would be incorporated into the proposed charter allowing countries to suspend obligations in the event of serious unemployment caused by another future global depression. The Australians in particular feared the possible impact on international trade of another economic crash in the United States. British negotiators were not themselves committed to an escape clause, taking the view that safeguards elsewhere in the charter would render such an escape clause unnecessary. Delegates at the conference ended up agreeing that the objective of the escape clause would

[46] Curzon, *Multilateral Commercial Diplomacy*, p. 31.
[47] Gardner, *Sterling-Dollar Diplomacy*, pp. 269–275.

be met by permitting countries to utilize quantitative restrictions on trade in the event of balance of payments crises.[48]

The UK-US debate of 1945 over how limited the conditions under which countries could impose quantitative restrictions on trade for balance of payments reasons was also replayed at the 1946 London Conference. US delegates argued that countries only be empowered to utilize quantitative restrictions on their own during a short postwar transition period as the full convertibility of currencies was restored, after which further use of quantitative restrictions would have to be approved and regulated by the ITO. British negotiators opposed limiting national discretion regarding quantitative restrictions to a short transition period, arguing that governments should be able to decide to use them provided they were used in concordance with ITO principles. Moreover, Britain favoured permitting quantitative restrictions to be imposed on a 'discriminatory' basis, i.e. against countries with which a country was running a severe balance of payments deficit. In the event, delegates at the London Conference navigated a middle course between the two positions, agreeing to relatively broad conditions under which quantitative restrictions could be used and sanctioned their use on a discriminatory basis, but granting to the ITO significant supervisory powers over their use.[49] Ultimately, according to Gardner, the draft charter for the ITO agreed at London did not go far enough to allocate to the new institution sufficient powers to curb national trade policies that in the past had contributed to economic crisis and depression. This weakness, Gardner contends, led to the draft charter not being taken seriously either in Westminster or Washington and therein undermining the ITO well before its envisaged launch.[50]

The London Conference also saw the beginning of serious debate over the issue that would become the most significant political and diplomatic cleavage within the GATT and, later, the WTO: the relationship between international trade and economic development. Less developed countries from the start took the position that if rules to govern the international trading system were to be codified and their implementation supervised by an international organization, the rules needed to recognize the particular economic needs of developing countries and structure international trade in such a way as to promote development. In particular, this could mean incorporating derogations

[48] Wilcox, *A Charter for World Trade*, pp. 41–42.
[49] Gardner, *Sterling-Dollar Diplomacy*, pp. 280–283.
[50] *Ibid.*, pp. 285–286.

from major trade principles such as non-discrimination and the employment of transitional measures to promote development, which might include quantitative restrictions and tariff preferences. This bundle of pro-development trade policies and accommodations later became known as 'Special and Differential Treatment' (S&DT) for developing countries. At London, Australia, India, Brazil, China, Lebanon, and Chile led the other developing countries attending the conference in criticizing the US-UK ITO charter proposals for being insufficiently responsive to the needs of developing states. The group of developing countries succeeded in convincing delegates to insert a section into the draft charter establishing economic development as one of the ITO's primary objectives and mandating a responsibility for industrialized and developing countries alike to promote development through trade.[51]

The following year, 1947, challenged the diplomatic process of negotiating a new institution and rulebook for international trade. A run on sterling and a currency shortage in the UK following Britain's ill-timed restoration of currency convertibility in accordance with the Anglo-American Financial Agreement resulted in suspension of much of the functions of the IMF and World Bank envisaged at Bretton Woods. The resulting US proposal of the Marshall Plan as a more aggressive short-term foreign assistance strategy to restart Europe's economic growth and the rise in US-Soviet geopolitical tensions in the Greek and Turkish crises conspired to make 1947 a very inauspicious year to negotiate and launch a new multilateral institution, least of all in an issue area as contentious as international trade. Against this backdrop negotiations resumed. At the end of the 1946 London Conference, US negotiators had secured the agreement of the other delegations to reconvene in a negotiating session intended to agree upon an initial round of immediate tariff cuts and, importantly, to include in the agreement the provisional application of those international trade rules in the proposed ITO charter that had already been agreed upon.[52]

When the delegates met again, this time in April 1947 at Geneva, their primary task was to agree upon tariff reductions bilaterally across over 170 pairings between the 23 countries participating according to the 'offer-request' approach (see above). Of the 123 substantive bilateral negotiations that took place, the United States participated in 22 sessions. US negotiators had been empowered by Congress in its three-year renewal of RTAA to offer up to 50 percent tariff cuts

[51] *Ibid.*, p. 365; Wilcox, *A Charter for World Trade*, pp. 30–32, 42.
[52] Curzon, *Multilateral Commercial Diplomacy*, p. 32.

to trading partners in return for concessions of comparable value from them. However, in return the Americans demanded of the UK, Canada, Australia, New Zealand, India, and other Commonwealth members fulfilment of the British promise in the 1945 proposal to end Commonwealth tariff preferences. Whereas most non-UK members of the Commonwealth were willing to exchange preferences for broader non-discriminatory multilateral tariff reductions, public opinion in both the UK and USA had hardened around their respective positions on the preference issue. With a Republican majority elected in the US Congress and concern over financial concessions to Britain over currency convertibility and reconstruction lending, pressure was on the administration of President Truman to hold fast on ending tariff preferences. In the UK, experiencing severely straitened financial circumstances, both parties rallied round closer economic integration with the Commonwealth. Foreign Secretary Ernest Bevin proposed expansion of the preference system into an imperial customs union as a means of reviving Britain's economic fortunes.[53]

In a climate of stalemate at Geneva over this crucial issue, a bilateral negotiation on the sidelines of the conference had to take place. US Under Secretary of State Will Clayton sought a formula that would allow each government to finesse the lack of resolution of the issue to the greatest degree possible. In September 1947 the State Department proposed delaying the ending of preferences for three years, after which they would be phased out in steps over a period of up to ten years. Whitehall rejected the proposal, arguing that they could not take decisions in ignorance of economic conditions three years hence, but noting that they would be willing to consider the issue of preferences again in as soon as three years' time in light of prevailing economic circumstances. Britain offered modest concessions on tariff preferences their imports received in the dominions (Canada, Australia, New Zealand, South Africa), and the dominions accepted larger reductions in preferences their goods received in the UK. Clayton was compelled to accept this deal as the best that Washington would get, as the State Department at the end of the day was unwilling to see the Geneva conference collapse altogether. When the 23 participating countries signed the General Agreement on Tariffs and Trade in November 1947, the United States made tariff concessions on imports worth US $1.767 billion from trading partners in return for concessions on US exports

[53] Gardner, *Sterling-Dollar Diplomacy*, pp. 349–358; Wilcox, *A Charter for World Trade*, pp. 46–47.

worth $1.192 billion (1939 dollars). Many US tariffs were cut by the entire 50 percent authorized, and Commonwealth preferences were reduced slightly.[54] Considered both in bilateral terms and multilaterally, the United States conceded considerably more than the other participants, but in 1947 only the United States was in an economic position to make disproportionate concessions in the interest of growing the global, and its own, economy.

After the signing of the GATT, negotiators continued to work to finalize the charter for the ITO, both in Geneva and then when they reconvened in Havana over the winter of 1947–48. The Havana Conference was attended by delegations representing 56 nations, with additional countries sending observers. Two major and familiar issues of contention occupied the delegates: the US-UK disagreement over to what extent quantitative trade restrictions should be used on a discriminatory basis in balance of payments emergencies and the disagreement between major industrialized countries and developing countries over provisions designed to use trade to promote economic development. On discrimination in quantitative restrictions, in light of the UK's worsening financial condition, British negotiators sought more forgiving conditions, including a longer transition period before the ITO could decide to end discrimination. The Americans, regarding non-discrimination as critical to promoting expansion of international trade, sought to maintain the formulation agreed at London. Delegates representing other countries for the most part sided with Britain, agreeing to greater discrimination, provided that it resulted in an increase in trade overall. They agreed to a three-month delay, to 1 March 1952, in the date from which the ITO could request that discrimination be ended.[55]

American and British delegates found themselves on the same side in opposing strenuous efforts by 30 developing countries to include for themselves in the charter more specific exceptions from obligations of non-discrimination and multilateralism than those already agreed at London and incorporated into the GATT. Developing countries sought to be able to regulate inward investment, including the right to expropriate foreign-owned investment assets at politically negotiated (rather than market) prices. Developing countries also sought approval to enter into regional trading arrangements in which new trade preferences could be imposed. In addition, the developing country delegates sought permission to impose a wide range of development-related quantitative

[54] Gardner, *Sterling-Dollar Diplomacy*, pp. 358–361.
[55] *Ibid.*, pp. 361–364.

restrictions on imports, including the power to restrict imports of luxury goods and goods competing with infant industries. The latter objective provoked a strong rebuke from Clair Wilcox, the vice-chairman of the US delegation, who asked the assemblage to contemplate the implications for multilateral trade if even the United States embarked on the road leading to imposing quantitative restrictions. Whilst some of the most extreme of developing countries' demands were rejected, overall they secured inclusion of many of the development-related derogations from liberal trade that they sought.[56]

The question of how member countries of the ITO would take decisions that would be binding on the membership arose. At the end of World War II this issue was very significant, as for the first time sovereign governments were negotiating to empower international organizations such at the United Nations, World Bank, IMF, and ITO to take decisions that would potentially constrain their sovereignty in particular issue areas. Unlike the IMF and World Bank, in which votes were apportioned to countries according to share capital invested, conferees at Havana agreed that the diplomacy of the ITO would be conducted on the basis of one country, one vote, with a two-thirds majority obligatory on certain issues.[57]

Delegates of 53 countries at Havana signed the ITO Charter on 23 March 1948. UK and US delegates alike put a positive face on the significant compromises that each side had had to make to reach an agreement. Enthusiasm amongst developing country delegates was higher still, as they perceived that they had achieved many of their objectives at the negotiating table. But it was to come at substantial cost in terms of the prospects for ratification of the agreement by the major powers. By that point, the final charter faced substantial domestic public and political opposition in both the United States and United Kingdom. In the United States, the main opposition to the charter came from the business community, which viewed the final text as containing so many derogations from the original US objective of promoting non-discriminatory multilateral trade that it might do more harm than good. In Britain, public opinion regarded the charter as an imposition of US policy preferences that was taking insufficient heed of the need for a more lengthy adjustment period for economies still recovering from war and was forcing the UK to abandon a system of Commonwealth preferences that they saw as very much in their interest to preserve.

[56] *Ibid*., pp. 364–368.
[57] Wilcox, *A Charter for World Trade*, p. 48.

In light of public opposition Clement Atlee's government in the UK had already taken the political decision not to put the ITO Charter to a vote in Parliament before it had been approved by the US Congress. But the exceptions that the UK and other states had succeeded in carving out to non-discrimination in the Havana Charter, particularly concerning developing countries and regions, were seen as extensive in Washington. Amongst other reasons, those exceptions led US President Harry S Truman to conclude by 1950 that the Charter would face certain defeat if submitted to the US Senate for ratification.

21 The first global trade (non-)institution: the General Agreement on Tariffs and Trade

Twenty-three countries had signed the original General Agreement on Tariffs and Trade in November 1947, collectively representing nearly half of the total number of sovereign states and 80 percent of world trade at the time.[58] As the Havana Charter did not take effect owing to the non-ratification of the United States, the International Trade Organization did not come into operation under the terms of the Charter. Hence signatories to the GATT, having signed the Protocol of Provisional Application of the GATT pending creation of the ITO, took the decision to implement the GATT under the guidance of a provisional and informal administrative secretariat.[59] At the Havana conference, delegates had established an Interim Commission for the International Trade Organization (ICITO), which they charged with preparing for the first conference of the ITO and to serve as a secretariat to coordinate the work of the Contracting Parties to the GATT in the meantime. The ICITO's secretariat function, with the approval of the UN, became the GATT Secretariat once it became clear that the ITO would not be submitted for ratification. Sir Eric Wyndham White, a British economist who had organized the London, Geneva, and Havana conferences, was the first Executive Secretary of the GATT, serving until 1965, after which he served for three additional years as GATT Secretary General.[60]

That such a provisional arrangement was agreed by the delegates at Havana is indicative of the transformation of trade diplomacy toward

[58] Sidney Pollard, *Peaceful Conquest*, Oxford: Oxford University Press, 1981, p. 319.
[59] Scammell, *The International Economy Since 1945*, pp. 45–46; John H. Jackson, *Restructuring the GATT*, London: Pinter Publishers Ltd., 1990, pp. 10–13
[60] Curzon, *Multilateral Commercial Diplomacy*, pp. 48–49.

institutionalization for several important reasons. First, it shows that fundamental differences between trade policy priorities of the major trading powers were not overcome by the experience of the global economic collapse that in part precipitated World War II. Moreover, the overwhelming economic dominance of the United States in the immediate aftermath of the war was not sufficient to enable the total basket of preferences of the USA to prevail at the negotiating table. Second, it indicates that the resolve of governments and their negotiators to press forward with a diplomatic solution to the problem in the form of a new institutional approach to trade diplomacy was not broken by continued strong differences of opinion and priorities. Third, the domestic political cleavages over trade policy issues within major countries such as the United States and United Kingdom were not overcome by the experience of the war. Diplomats were still constrained in terms of what they could agree with trading partners by the shifting distribution of trade policy interests within their respective domestic political systems. That the administration of President Truman was willing to proceed with implementation of the GATT in the absence of Congressional approval of the Havana Charter and ITO shows the degree of their commitment to a new institutional basis for international trade diplomacy.

The coming into operation of the GATT Secretariat and the beginning of the successive GATT multilateral trade rounds can be seen as the tipping point in the process of institutionalizing trade diplomacy. The Secretariat, although constituted as an *ad hoc* body from the start, began to work with the GATT contracting parties to agree upon objectives and to develop and implement strategies for achieving them. From the start, the Executive Secretary of the GATT Secretariat took an active part in the diplomatic heavy lifting involved in mediating between the contracting parties and resolving disagreements. Although originally the Secretariat was established in a diplomatic sense to act as a representative for the contracting parties, through its actions it rapidly took on aspects of diplomatic actor-ness in its own right, much as the other new and more formally constituted international organizations (United Nations, International Monetary Fund, etc.) were doing. Curzon describes the GATT Secretariat as more akin to a club than to an international organization or international commercial parliament.[61] By doing the tasks they were set to do, the staff of the Secretariat began to articulate the Secretariat's own identity. One of the Secretariat's central tasks was the organizing and managing of the multilateral trade rounds, which from

[61] *Ibid.*, pp. 49–53.

then until now have been almost continuously either in preparation or underway. This hitherto untested format for trade diplomacy rapidly became a norm, the primary vehicle for negotiating trade liberalization and the mediation of differences between members over a broadening array of issues relating to international trade. The significance of the multilateral rounds was magnified further over the decades as more and more nations joined the GATT and its successor, the WTO.

The GATT as originally agreed in 1947 was an institutional mechanism to multilateralize in a formal way the hitherto essentially bilateral character of trade negotiations. GATT principles addressed the unintended negative consequences for the international trading system since the mid-nineteenth century of states signing bilateral trade liberalization treaties with varying structures and durations and differing impacts upon third countries. Foremost, the GATT enshrined the principles of unconditional MFN and 'first difference reciprocity' (if not nondiscrimination).[62] First difference reciprocity differs from full reciprocity of concessions in that

> tariff cuts are to proceed via bargaining that reflects a balance of perceived advantages at the margin rather than via negotiations that result in a perceived full equality of market access and reverse market access…[63]

Each negotiation should assume equality of participants at the start and aim for concessions of reciprocal value, assessed across the range of sectors under negotiation, rather than on a sector-by-sector basis (as some contemporary advocates of 'fair trade' demand).[64] The GATT also adopted the principle that the concurrent series of bilateral negotiations that would comprise a GATT multilateral 'round' of tariff negotiations should take place between 'principal suppliers' of each good produced. This principal supplier principle was adopted to avoid the problem that plagued the Cobden-Chevalier treaty-era trade liberalization treaties in Europe after 1870. The result of that system had been that a country that negotiated an MFN-plus-tariff cutting treaty with another country was then obliged to grant to any third countries, with which it had already signed MFN treaties, the newly agreed tariff concessions

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[62] Winham, *International Trade and the Tokyo Round Negotiations*, p. 371.
[63] Jagdish Bhagwati, *Protectionism*, Cambridge, MA: MIT Press, 1988, p. 36.
[64] Jagdish N. Bhagwati and Douglas A. Irwin, 'The Return of the Reciprocitarians – US Trade Policy Today', *World Economy*, Vol. 10, No. 2, June 1987, p. 117.

without receiving any additional concessions from the others in return.[65] Adoption of the principal supplier rule was advantageous to the major trading powers that signed the GATT. The principal supplier principle tended to leave countries that were principal suppliers of no goods, many developing countries and regions in particular, relatively ill-served in GATT multilateral negotiating rounds.[66]

A major failing of the Cobden-Chevalier treaty era that the GATT addressed was the series of negative knock-on effects being unleashed as bilateral treaties containing MFN clauses expired at different times. Signatories to the GATT solved this problem by binding tariff concessions made in GATT negotiating rounds against subsequent increase. If a country needs to raise a bound tariff (for domestic political or economic reasons, for example), it must offer its GATT trading partners a compensating tariff concession on another product.[67] Notwithstanding the GATT's efforts to correct weaknesses in the Cobden-Chevalier treaty system, the GATT's rulebook is notable for the degree to which it formalized, codified, and institutionalized the largely bilateral diplomacy of liberalization that had begun in the mid-nineteenth century.

Another crucial element that differentiated the GATT from most of the bilateral trade agreements that preceded it was that, although its implementation was provisional and it was not an institution in a formal sense, it nonetheless rapidly assumed an air of institutional permanence. As most bilateral treaties were agreed either for a fixed term e.g. the Cobden-Chevalier Treaty's ten years, new negotiations for renewal had to take place often at a time of changed domestic political conditions in one or both countries. Non-fixed-term treaties could be denounced at will after a set number of years by either party (with a lead time to termination of usually one year). The GATT was intended to be an open ended agreement, from which contracting parties were free to withdraw upon giving six months' notice.[68] A small number of countries have withdrawn from the GATT, but the overwhelming trajectory of membership in the GATT and subsequently the WTO has been one of enlargement, primarily through the progressive inclusion of more and more developing (now including the least developed) countries and of

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[65] Robert E. Baldwin, *Trade Policy in a Changing World Economy*, New York: Harvester Wheatsheaf, 1988, pp. 190–191.
[66] Kenneth W. Dam, *The GATT; Law and International Economic Organization*, Chicago and London: University of Chicago Press, 1970, pp. 61–62.
[67] Dam, *The GATT*, pp. 17–18.
[68] Curzon, *Multilateral Commercial Diplomacy*, p. 38.

the former socialist economies in transition following the end of the Cold War and the dissolution of the Soviet Union (see discussion below on the diplomacy of GATT/WTO accession). The possibility of mass exodus from the WTO always remains, just as it does for the United Nations. Yet history suggests that one of the defining characteristics of international institutions is an ability to perpetuate their existence and the need for their services. This capacity strengthens according to their longevity and the comprehensiveness of their membership. From 1947 up to the present day, most countries have not found it useful or attractive to use the threat of withdrawal from the GATT or WTO as a counter in their diplomatic bargaining, let alone to carry out such a threat. For nations to belong to a multilateral organization within which much of their trade diplomacy is conducted is qualitatively different from simply having signed one or several bilateral trade agreements of fixed duration.

The processes of how the GATT contracting parties make decisions concerning the major business of executing the agreement – organizing the multilateral rounds, accessions to the GATT, and enforcement of GATT rules and disciplines – have become a central part of trade diplomacy for governments of contracting parties. These processes, initially provisional and informal, were adapted by the contracting parties according to need and by the 1950s had already taken on a lasting institutional nature. Initial annual multi-week meetings of the Contracting Parties,[69] which became biennial ministerial meetings, are the diplomatic equivalent of summits, at which governments are represented at the highest level (heads of government, foreign ministers, or trade ministers) to debate and take decisions on the most significant and contentious issues. The GATT Council of Representatives, in which participation is open to any contracting party with the interest and resources to participate, meets more often for shorter periods of time and can meet at short notice on an as needed basis. From the start, the Contracting Parties invited other nations to send observers to meetings. The contracting parties from the beginning have also made use of committees, working groups, and groups of experts, a number of which met almost throughout the year, adding further to the permanent institutional character of the GATT. The mechanism for GATT Contracting Parties to take decisions evolved by custom, given the provisional and

[69] The Contracting Parties (in upper case) refers to the formal identity of the GATT, as its institutional identity was only provisional. The Contracting Parties met and took major decisions collectively at ministerial meetings.

informal initial nature of GATT implementation. The Contracting Parties generally took decisions by consensus, polled by the chair, with certain limited exceptions, such as the granting of waivers of particular GATT obligations to countries under Article XXV. Voting, when it took place, was one country, one vote, as envisioned for the ITO in the Charter, with the exception of accessions, which required a two-thirds majority, and certain major modifications to core GATT obligations, such as MFN under Article I.[70]

The GATT mechanism of institutional diplomacy proved to be essential for negotiating issues too difficult to address within the structure of the multilateral rounds. The most important of those issues was the foundational question of the relationship between the GATT and economic development. The issue of how to link development objectives of developing countries, which made up a significant number of the original signatories of the GATT, to trade expansion and liberalization objectives of the most powerful of the GATT contracting parties remained unresolved from the GATT's founding to its incorporation into the WTO. Diplomacy between industrialized and developing countries changed, and became more central, as the number of independent developing countries increased significantly following the 1960 UN Declaration on the Granting of Independence to Colonial Countries and Peoples (UN Resolution 1514) and as more and more developing countries became signatories to the GATT. Developing countries sought approval from the GATT to form preferential trading areas amongst themselves, to discriminate against imports from industrialized countries (including the right to impose quantitative restrictions), and tariff preferences in industrialized countries on imports from the developing world. Beginning in 1954, the GATT Secretariat addressed the development question through a series of investigative panels of experts. Developing countries as a group negotiated directly with the GATT Contracting Parties concerning the content of the findings of the panels. At a GATT Council of Ministers meeting in 1961, positions of industrialized and developing countries remained far apart.[71]

In this environment of stalemate, Soviet delegates to the UN Economic and Social Council in 1962 proposed a conference on world trade under the auspices of the United Nations to be held in 1964, with the trade-development relationship high on its agenda. At the height of the Cold War, the Soviet Union, in order to be a leader, needed followers as

[70] Curzon, *Multilateral Commercial Diplomacy*, pp. 39–47.
[71] *Ibid.*, pp. 225–241.

much as the United States did. Theirs was a clever diplomatic tactic for seeking greater global influence. The USSR was not a GATT contracting party and traded primarily within a closed alliance of satellite countries. The Soviet proposal at the 1964 conference to create a new global trade organization with different priorities linking international trade rules explicitly to economic development objectives had its desired effect of attracting broad support from developing countries. The Soviets aspired to replace or supersede the GATT with a new institutional structure for international trade diplomacy that would reapportion leadership of the global economy in their direction by positioning them as champions of the economic development agenda. In practice, delegates to the UN Conference on Trade and Development (UNCTAD) agreed to institutionalize their project by holding a quadrennial conference and creating a permanent secretariat and other institutional structures to carry out their purposes on an ongoing basis. But for the GATT contracting parties, UNCTAD was as much a solution as a new problem. The GATT Council took the view that an additional multilateral organization that would focus on trade and development need not hinder the GATT's broader objectives of promoting multilateral trade coöperation. The founding of UNCTAD did spur the GATT Contracting Parties to accelerate fulfilment of their own commitments on trade and development.[72]

The GATT Contracting Parties agreed to cooperate with the new organization on development issues, in addition to agreeing in November 1964 to adopt a new section of the GATT, Part IV. Part IV clarified and enumerated the GATT's commitment to granting special and differential treatment to developing countries by relaxing the expectations of the GATT founding principle of reciprocity in trade liberalization.[73] GATT Part IV permitted the United States, EEC, and other industrialized countries to choose to grant tariff preferences to developing countries in accordance with UNCTAD objectives by domestic legislation, under a programme agreed at the second UN Conference on Trade and Development in 1968 known as the Generalized System of Preferences (GSP). This approach enabled major industrialized trading powers to grant preferences at a time when it was feasible to do so in accordance with domestic political conditions. The EEC instituted GSP

[72] *Ibid.*, pp. 241–247; United Nations Conference on Trade and Development, About UNCTAD, A Brief History of UNCTAD, http://unctad.org/en/Pages/About%20UNCTAD/A-Brief-History-of-UNCTAD.aspx, accessed 23 February 2014.

[73] Curzon, *Multilateral Commercial Diplomacy*, pp. 247–248.

initially in 1971, the United States in 1976 under the Trade Act of 1974. The trade and development agenda would not take centre stage in the multilateral negotiating rounds until the Uruguay Round (see below), where it played a key part in negotiations to create the WTO and after which it subsequently became the dominant issue for trade diplomacy.

22 Institutionalizing trade liberalization negotiations: the GATT and WTO rounds

Beyond the diplomatic business of administering the GATT and taking policy decisions connected thereto, three significant diplomatic processes have dominated international trade relations in the age of the GATT: multilateral negotiating rounds aimed at trade liberalization; the process of accession of states as new members of the GATT; and the enforcement of rules and resolution of disputes. Over the history of the GATT and WTO, the distribution of power has shifted dramatically between GATT contracting parties and, later, between WTO members. Nowhere have the outcomes of trade diplomacy reflected these shifts more vividly than in the first of these diplomatic processes, the multilateral rounds. The agreed institutional template for trade liberalization diplomacy in the GATT multilateral rounds was the reciprocal exchanging of concessions of equivalent value between the contracting parties, albeit according to first difference reciprocity (see above). Yet it was clear from the early rounds that, in order for trade liberalization to generate global economic growth, the United States, as the dominant economy in the international system, would need to make disproportionate concessions in GATT rounds. For the first two decades of GATT operation successive US administrations, backed by bipartisan support in Congress, were willing to do this. This defined the primary mission of the first four GATT rounds as promoting the recovery of the European and Asian economies from the Second World War.[74]

The approach that the United States took from the early 1940s to the early 1960s of accepting temporary discrimination against US exports in trade negotiations can be understood as analogous to Britain's programme of trade liberalization from the 1840s through the 1860s.[75] Just

[74] Thomas W. Zeiler, 'The Expanding Mandate of the GATT: The First Seven Rounds', pp. 102–121 in Amrita Narlikar, Martin Daunton and Robert M. Stern, eds., *The Oxford Handbook on the World Trade Organization*, Oxford: Oxford University Press, 2012, pp. 102–103.
[75] Stein, 'The Hegemon's Dilemma', pp. 377–381.

as Britain had accepted in the Cobden-Chevalier treaty negotiations that France would maintain a less liberal trade regime than Britain, the United States took a series of steps intended to build a liberal world economy, of which the USA would be a prime beneficiary and whose members would be securely bound together against perceived Communist encroachment.[76] US negotiators accepted delays of up to ten years in the implementation of various parts of the GATT, including those concerning removal of quantitative restrictions on imports and termination of Britain's tariff preferences for Commonwealth countries and colonial possessions.[77] In the interest of facilitating restoration of trade flows, Washington also accepted a similar delay in the activation of many of the IMF's mechanisms in order to assist European states to restore their balance of payments equilibrium and convertibility of their currencies at the least destabilizing pace possible.[78]

US early willingness to accept trade discrimination in the early years of GATT extended to supporting initiatives that were at variance with the GATT's founding principles to which all the contracting parties had agreed, non-discrimination in particular. The United States promoted the creation of the first major postwar regional preferential trading area (PTA), the European Economic Community (EEC), permissible under GATT Article XXIV notwithstanding its inconsistency with non-discrimination and its potential for trade diversion rather than trade creation (see section on PTAs below). Officials in the administration of US President Dwight Eisenhower in the 1950s perceived that supporting the European diplomacy that resulted in the signing of the Treaty of Rome in 1957, which created the EEC, was in US geopolitical and economic interests because it strengthened the west European allies against a potential Soviet threat.[79] US willingness to exempt developing countries from reciprocal obligations under the GATT was enshrined first in GATT Part IV, which was agreed in 1964. The United States, European Economic Community (later European Union), and other industrialized countries subsequently extended trade preferences to developing countries in accordance with GATT Part IV under Generalized Systems of Preferences (GSP).

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[76] I.M. Destler, *American Trade Politics*, 4th edn., Washington: Institute for International Economics, 2005, pp. 6–7.
[77] Gardner, *Sterling-Dollar Diplomacy*, pp. 148–150, 358–359.
[78] Scammell, *The International Economy Since 1945,* p. 37.
[79] Henry R. Nau, *The Myth of America's Decline*, Oxford: Oxford University Press, 1990, pp. 107–109; Zeiler, 'The Expanding Mandate of the GATT', pp. 102–103.

Policy choices by the United States, as the dominant power, to limit liberalization or not to liberalize trade in certain sectors or with certain trading partners also played a significant part in the negotiating dynamics of the early GATT rounds. Situations arose where US policy makers perceived that producers in politically sensitive Congressional districts would be at risk from increased imports. As has been the case throughout US history, Congress has been more skeptical of trade liberalization than the executive branch of government. Pressure from Congressional constituents contrasts with structural incentives for US presidents to articulate the broader national interest on the global stage.[80] Congress' initial authorization for the executive branch to engage in multilateral trade liberalization did not mandate tariff cuts, only an end to discrimination and other trade barriers.[81] Protectionist Republicans in Congress managed to include in trade legislation for two separate periods between 1948 and 1962 a 'peril point' provision wherein the extent of tariff reductions that US negotiators could accept would be restricted according to their impact upon import-competing US industries.[82] The peril point provision was consistent with GATT Article XIX, which permits GATT members to suspend particular tariff concessions in the event of 'serious injury to domestic producers' but permits trading partners penalized by such suspensions to impose countervailing suspensions of equivalent concessions.[83]

Another such mechanism, the 'escape clause', which provides temporary protection against sudden import surges, was introduced in the 1942 US-Mexico bilateral commercial agreement and remained enshrined in US trade law thenceforth.[84] The escape clause was also consistent with GATT Article XIX. The most important sector for the global economy that Washington chose to exclude from GATT multilateral trade liberalization was agriculture. The large and indefinite waiver that the United States obtained from the GATT under Article XXV for its agricultural import quotas, price supports, and export subsidies in 1955 set a precedent that confined the ambit of the early GATT multilateral rounds to trade in manufactured goods.[85] By protecting US agriculture in the 1950s, policy makers arguably squandered potential negotiating

[80] See Lake's argument in *Power, Protection and Free Trade*.
[81] Scammell, *The International Economy Since 1945*, pp. 11–12.
[82] Baldwin, *Trade Policy in a Changing World Economy*, p. 23.
[83] Dam, *The GATT*, pp. 99–100.
[84] Gardner, *Sterling-Dollar Diplomacy*, p. 159.
[85] Andrew Shonfield, *International Economic Relations: the Western System in the 1960s and 1970s,* Beverly Hills & London, Center for Strategic and International

Table 3.1 GATT multilateral rounds

Dates	Name/Place	Issues Addressed	Participating countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva II	Tariffs	26
1960-1961	Dillon Round (Geneva)	Tariffs	26
1964-1967	Kennedy Round (Geneva)	Tariffs, anti-dumping measures	62
1973-1979	Tokyo Round (Geneva)	Tariffs, non-tariff measures, 'framework' agreements	102
1986-1994	Uruguay Round (Geneva)	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, WTO	123

Source: 'Understanding the WTO: Basics; The GATT Years: from Havana to Marrakesh', World Trade Organization, http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm, accessed 21 February 2014.

leverage that might have been used to force multilateral agricultural trade liberalization upon Europe prior to the formation of the EEC in 1957 and the subsequent enactment of the EEC's highly protectionist Common Agricultural Policy.[86]

As noted above, tariff negotiations in the early GATT rounds followed the rules for negotiating that were agreed at the start: negotiations would take place between principal suppliers of each good according to the offer-request method. This approach institutionalized a new way of negotiating tariff reductions that managed to reconcile objectives that hitherto often conflicted: non-discrimination (unconditional MFN) and reciprocity, bilateral, and multilateral exchanges of concessions. In this negotiating method, the GATT Secretariat played a critical rôle in gathering and coordinating the release of information to facilitate the negotiating process. Although actual negotiations were conducted bilaterally, between pairs of principal suppliers of goods, all the countries participating in the negotiations were present, which enabled tradeoffs

Studies, Sage Publications (The Washington Papers, Vol. IV: 42), p. 20; Curzon, *Multilateral Commercial Diplomacy*, p. 46.

[86] Lynden Moore, *The Growth and Structure of International Trade Since the Second World War*, Brighton: Wheatsheaf Books, 1985, pp. 65–70.

to be agreed between three or more countries involving tariffs on numerous products at once. Several months before the formal negotiating round even began, each principal supplier country supplied to the GATT Secretariat and to individual countries from which it sought tariff reductions a list of requests. The GATT Secretariat promulgated the lists of requests to all the contracting parties, which enabled them to adjust their list of requests tactically to cooperate with third countries, to add additional requests and to compensate for potential negative effects of other countries' requests. In the next stage of the process, each country prepared and submitted to the Secretariat a list of which tariffs it was willing to reduce and by how much. Countries usually made an offer to a country that requested a particular tariff reduction, which was likely to be a principal supplier of the good in question. Groups of countries producing a particular good could make offers collectively as the principal suppliers of the good. The Secretariat gathered in all the lists of offers and released them to all the countries simultaneously, in order to prevent countries from being able to adjust their lists of offers after seeing the offer lists of others.[87]

Negotiations could then take place under very different, and potentially much more favourable, circumstances from those that prevailed in traditional bilateral trade talks. Countries could assess whether they were being offered sufficient concessions in return for a particular concession that they had offered and could take into account the possibility that those concessions might come from more than one supplier of the good or from a different supplier of a different good. Formal negotiations began with a period in which delegates could make queries and request clarifications, followed by a pause for governments to consider their list of offers further. Bilateral negotiating sessions then began in earnest, with side consultations with third countries taking place as required. As each pair of negotiating countries agreed on mutual concessions, they deposited their agreement provisionally with the Secretariat until negotiations between all pairs of countries that had exchanged lists of offers and requests were complete. At that stage, any delegation could reopen negotiations with any other, if they perceived that the balance of concessions that they previously agreed had been adversely affected by the other country's agreement with any third countries. Once these issues were resolved, a final agreement on tariff reductions in the round could be agreed containing all of the bilateral sets of concessions within. The GATT's multilateral approach to tariff negotiations

[87] Curzon, *Multilateral Tariff Negotiations*, pp. 71–73.

facilitated tariff cutting in several important ways. By increasing the number of tariff cuts requested, it encouraged countries to offer more concessions than they might have done otherwise. Exchanges of concessions could be agreed between three or more countries on three or more products, making possible reductions that might not have been on offer in a strictly bilateral negotiation. The greater level of concessions made by a larger number of countries were extended immediately to all participants through unconditional MFN, maximizing potential gains to multilateral trade.[88]

US negotiators at the three GATT rounds in the 1950s that followed the negotiation of the initial 1947 GATT, which took place at Annecy (1949), Torquay (1951) ,and Geneva (1956), respectively, were faced with the potential impact on trade of the gradual phasing out of temporary restrictions on trade and currency flows to and from Europe and Japan that were permitted to facilitate economic recovery. Hence one of the primary US objectives even in advance of securing reciprocal tariff cuts was to commit European states and Japan to bind their tariffs against future increases. For the recovering Western economies, accepting tariff binding was itself a significant commitment to trade liberalization that also bound them diplomatically to a consolidating Cold War alliance against the emerging military strength of the Soviet-backed Warsaw Pact nations, whose economies were growing rapidly.[89] At the Annecy Round in 1949, eleven additional countries became GATT contracting parties, and a further six at Torquay in 1951. Both rounds accomplished little. Most tariff concessions offered at these rounds were made by the United States, but the Europeans sought even more from the Americans. US negotiators for their part sought further reductions in Commonwealth preferences from the UK, but without success. The entry into the GATT of West Germany in 1951 and Japan in 1955, onerous conditions imposed upon Japan by GATT members notwithstanding, solidified their economic recovery and re-integration into the global economy as members of the Western alliance. Their entry influenced the negotiating environment for the second Geneva round, in 1956, which again yielded modest achievements in tariff reductions. [90]

This shift presaged a much more dramatic change in the balance of power between the major diplomatic actors in the GATT by the time that the next round, named for its chief proponent, US Under

[88] *Ibid.*, pp. 73–77.
[89] Zeiler, 'The Expanding Mandate of the GATT', pp. 105–107.
[90] *Ibid.*, pp. 107–108.



Fruit transport ship, Port of San Diego

Photo: G.A. Pigman.

Secretary of State and subsequently Treasury Secretary Douglas Dillon, began in 1960. A new actor entered the diplomatic stage: the European Economic Community had begun operating in 1958. The 1957 Treaty of Rome bound the original six signatories (France, West Germany, the Netherlands, Belgium, Luxembourg, and Italy) to a customs union with a common external tariff, under which the signatories would negotiate and implement external tariff and trade policy communally. The formation of the EEC committed its member states, which would number 28 in the European Union by 2013, to engage in trade diplomacy at two levels. The first level consisted of member states negotiating common tariff and trade policies with one another, a process that, whilst guided by the terms of the succession of European treaties of integration, in practice fell under the 'legislative' process of the EEC/EC/EU. The mediation of significantly different trade interests of European states through this process yielded policy results, such as the Common Agricultural Policy, that often put Europe at odds with negotiating partners (see below). The second level consisted of the EEC/EC/EU engaging

in trade diplomacy with the rest of the world, including the GATT and WTO, as if it were a single state. Because member states voluntarily pool sovereignty over trade policy, the EEC/EC/EU acts as a single diplomatic actor on behalf of all of its members, and its decisions, e.g. to sign trade treaties, are binding on its entire membership.

Scammell describes the formation of the EEC as a challenge to US dominance: 'In tariff bargaining and international monetary policy there would once more be a balance of power. The days of American hegemony were over.'[91] The emergence of the EEC as the largest trading power after the United States also had the effect of downgrading the importance of the United Kingdom, which would not become a member of the EEC until 1974, as a primary interlocutor in trade diplomacy. The rise of the EEC and Japan as actors relative to the United States in trade diplomacy was constrained to a degree for the duration of the Cold War, as both Western Europe and Japan remained dependent upon the United States for defence against the Soviet bloc.[92] However, US President Eisenhower, faced both with the economic recovery of Europe and Japan and with significant redistribution of power in the primary venue for trade diplomacy, declared that the objective of the next GATT round would be to remove trade restrictions to strengthen the Western alliance. The focus of the next four GATT rounds, as Zeiler argues, would shift from economic recovery to competition between strong and more equal economies.[93]

Officials in Eisenhower's administration and that of John F. Kennedy, who took office in January 1961, were keenly aware that although tariff reductions negotiated in the early GATT rounds had been significant, gains began to decline in the 1950s from each successive GATT round as the bilateral item-by-item negotiating approach began to run short of tariffs that were ripe for reduction by mutual agreement on an individual basis.[94] In the Dillon Round, the USA and EEC, by far the two largest trading powers, held the most important set of tariff negotiations. However, the formation of the EEC customs union introduced a whole new level of complexity to this round of GATT talks. Under GATT rules, when contracting parties form a customs union, they may not raise tariffs on outside contracting parties without offering compensating

[91] Scammell, *The International Economy Since 1945*, p. 97.
[92] David P. Calleo, *Beyond American Hegemony*, New York: Basic Books, 1987, pp. 44–49.
[93] Zeiler, 'The Expanding Mandate of the GATT', pp. 108–111.
[94] Destler, *American Trade Politics*, pp. 12–13.

concessions of equivalent value. As the common external tariff negotiated between EEC members had the effect of raising tariffs in West Germany and the Low Countries toward higher French and Italian levels by $2 billion in potential lost imports, non-EEC GATT countries demanded that the EEC offer compensatory concessions on different products equal to that value. EEC negotiators countered that France and Italy had agreed to lower their own tariffs in negotiating the common external tariff, without receiving any concessions from other non-EEC GATT contracting parties in return, and thus had already provided sufficient compensation. As the compensation issue delayed completion of the round for months into autumn 1961, US negotiators eventually persuaded the EEC to offer $1.6 billion in concessions, substantially less than the $2 billion they had sought. The GATT Dillon Round yielded $4.9 billion in overall tariff reductions on manufactured goods by the offer-request method at its conclusion in 1962, as well as some minor tariff bindings on agricultural products. Yet US officials regarded this success as meagre because it only reduced average unweighted tariffs on manufactures by one percent.[95]

In response to the adverse shift in the distribution of power between the GATT contracting parties, the US administration of President John F. Kennedy decided to stimulate trade liberalization through innovation in the GATT multilateral negotiating process. Kennedy's government was facing increased external trade tensions. A tariff war had already erupted with the newly formed EEC over duties on frozen chicken imports, and political pressure from domestic industries adversely affected by the growth of imports, such as textiles, from countries such as Japan was increasing.[96] The Kennedy administration had taken on board the 'bicycle theory' of proponents of trade liberalization, *i.e.* trade liberalization must continue to pedal forward if it is not to fall flat.[97] In the wake of the limited harvest of gains from the Dillon Round, President Kennedy proposed, and sought authorization from Congress to negotiate on the basis of, a new 'across-the-board' tariff cutting approach for subsequent GATT rounds. Kennedy, envisaging launching a new GATT round as a vehicle to unify the Atlantic market both commercially and politically, advocated a 50 percent across-the-board

[95] Scammell, *The International Economy Since 1945*, pp. 171–172; Zeiler, 'The Expanding Mandate of the GATT', pp. 108–109.
[96] John A.C. Conybeare, *Trade Wars; The Theory and Practice of International Commercial Rivalry*, New York: Columbia University Press, 1987, pp. 160–164.
[97] Bhagwati, *Protectionism*, p. 41.

tariff reduction in a new GATT round instead of continuing with the item-by-item offer-request approach.[98] The US Congress' passage of the 1962 Trade Expansion Act, championed by Treasury Secretary Dillon, facilitated the launch of the GATT Kennedy Round the same year. The price that the Kennedy administration paid to Congress for its passage of the 1962 Act was agreeing to impose import quotas on textiles under the Long Term Textile Arrangement.[99]

The significant increase in the number of GATT contracting parties and in goods being traded suggested to participating countries the advantages of revisiting the notion of basing tariff cuts on an across-the-board or linear formula, which the United States and United Kingdom had considered as early as 1943. There was a risk that ever more pairs of bilateral negotiations over an ever larger list of requests and offers would become not only unfeasibly lengthy but vulnerable to a lengthening process of governments reconsidering their overall balance of concessions following initial negotiations. Under the linear approach, GATT contracting parties would negotiate multilaterally to reach agreement on a percentage number for across-the-board tariff reductions. Bilateral negotiations would then take place between principal suppliers of goods over exceptions to the across-the-board formula. Formula-based tariff cutting raised a new set of challenges for GATT contracting parties. The broadest problem arose from the fact that countries have dramatically different overall tariff structures. Some countries impose generally low tariffs, whereas others' tariffs are much higher. Some countries impose relatively similar tariff rates on all imports, whereas others admit many goods duty free or at very low tariff rates whilst imposing very high tariffs on other goods.

In the Kennedy Round negotiations, the EEC yielded to the United States over the structure of tariff cuts. This permitted the Americans to claim achievement of a major objective: to commit EEC trade policy to liberalization rather than mercantilism.[100] European negotiators accepted, with certain key exclusions, the US preference for linear (across-the-board) tariff cuts, whereby high and low tariffs would be cut by an equal percentage. The Europeans had argued for *écrêtement*, or tariff harmonization, whereby higher tariffs would be cut by

[98] Ernest H. Preeg, *Traders and Diplomats*, Washington: The Brookings Institution, 1970, pp. 260–261.
[99] Baldwin, *Trade Policy in a Changing World Economy*, pp. 26–27; Destler, *American Trade Politics*, p. 26.
[100] Shonfield, *International Economic Relations,* pp. 12–13.

a greater percentage than lower tariffs.[101] This difference of preferred approach arose because the structure of US tariffs differed from that of the recently adopted EEC common external tariff. European tariffs overall were slightly higher than those of the USA, but US tariffs had greater dispersion: on average, more US tariffs were either higher or lower than their European counterparts. In Japan-US negotiations, Japanese negotiators achieved significantly greater cuts in US tariffs on Japanese goods than they conceded to the Americans. Kennedy Round negotiators made progress for the first time on non-tariff barriers (NTBs) to trade as well. US and EEC negotiators compromised on trade in chemicals: in return for cuts in EEC chemicals tariffs, the United States agreed to convert its 'American Selling Price' system for customs valuation of chemical imports, to which other nations had long objected, into tariffs. This established a precedent for 'tariffication' of NTBs, a process that facilitated liberalization by rendering NTBs more transparent and more easily 'tradeable' with other countries in negotiating tariff cuts. Negotiators at the Kennedy Round also agreed for the first time to adopt an Anti-Dumping Code for the GATT, clarifying that dumping, setting export prices for goods at below the home country selling price, is an unfair trade practice. The code entitled countries to impose anti-dumping duties to compensate for the unfair price advantage that dumped goods achieve. [102]

Another major US negotiating objective, to limit EEC agricultural protection, went largely unmet in the Kennedy Round.[103] The EEC had used their development of a Common Agricultural Policy (CAP), a shared system for supporting and protecting the agricultural production of its member states, used as a reason for keeping agricultural trade liberalization off of the agenda of the Dillon Round. EEC member states had not completed their internal process of constructing the CAP's mechanisms at that point. By the time of the Kennedy Round, the CAP's higher import tariffs, domestic price supports and production subsidies were firmly in place. After a difficult internal process of agreeing on the CAP, EEC diplomats were loath to negotiate away its achievements externally. US negotiators secured a relatively minimal average 20 percent cut in agricultural tariffs, which undermined the competitiveness of future US grain and poultry

[101] Evans, John W., *The Kennedy Round in American Trade Policy,* Cambridge, MA: Harvard University Press, 1971, pp. 191–192.
[102] Zeiler, 'The Expanding Mandate of the GATT', pp. 110–112.
[103] Preeg, *Traders and Diplomats*, pp. 257–258.

exports to the EEC.[104] The minimal cuts in agricultural tariffs also did not please representatives of developing countries, who continued to press for special and differential treatment within the GATT to promote economic development (see discussion of the trade and development agenda above).

As negotiations proceeded to their final stages under the across-the-board approach, diplomats encountered a new problem that institutionalization of trade diplomacy under the GATT system had not solved: each country negotiating, seeking to ensure that reciprocity of concessions was applied, began to withdraw some of their previously offered concessions. These withdrawals of proposed concessions by one country, particularly by large powers like the USA or EEC, led to withdrawals of equivalent concessions by each other state affected. This in turn led to subsequent withdrawals of equivalent concessions by countries affected by the second round of withdrawals in a downward spiral that limited total gains to some degree.[105] Like the unravelling of concessions through MFN that had afflicted the Cobden-Chevalier treaty network when bilateral trade liberalization treaties began to expire in the 1870s, this was a dangerous reminder that MFN can also facilitate the trade liberalization bicycle's operation in reverse.

Most analysts do regard the Kennedy Round as a success, even if it did not meet diplomats' ambitious initial objectives. Concluded in 1967, the round partly achieved its stated objective of cutting major industrial tariffs by 50 percent, in fact reducing duties an average of 35 percent on sixty thousand predominantly industrial products.[106] The United States, EEC, United Kingdom, and Japan each reduced average tariffs by similar average percentages.[107] The Kennedy Round's tariff concessions were valued at $40 billion, four times the level of concessions agreed at Geneva in 1947.[108] Arguably the USA benefited disproportionately from tariff bindings, food aid provisions and what limited agricultural liberalization concessions were made.[109] Scammell argues that completion of the Kennedy Round was the apogee of the ability of institutionalized trade diplomacy to advance trade liberalization:

> All in all the conclusion of the Kennedy Round marked the high-water mark of the movement for trade liberalization in the twentieth

[104] Zeiler, 'The Expanding Mandate of the GATT', pp. 110–112.
[105] Evans, *The Kennedy Round in American Trade Policy*, pp. 294–295.
[106] Scammell, *The International Economy Since 1945*, p. 172.
[107] Evans, *The Kennedy Round in American Trade Policy*, pp. 282–283.
[108] Zeiler, 'The Expanding Mandate of the GATT', pp. 110–111.
[109] Preeg, *Traders and Diplomats*, p. 260.

> century. Like the Cobden Treaty of 1860 it seemed to bring the western world to the threshold of free trade. Even the United States, traditionally protectionist, saw in trade expansion in freer markets a solution to her growing balance-of-payments problem and through trade agreements with the EEC a base for a world trading community.[110]

Yet the Kennedy Round's very success made subsequent rounds more problematic by meeting major industrial tariff reduction objectives, leaving for future rounds the more difficult tasks of liberalizing non-tariff barriers and trade in agriculture and services.

The beginning of the next GATT round, the Tokyo Round, served as the resolution of a major diplomatic crisis between the erstwhile Western allies. The imposition of the 'Nixon Measures' by US President Richard M. Nixon (or 'Nixon Shokku', as Japanese analysts called it) and the subsequent collapse of the Bretton Woods gold standard international system of fixed exchange rates precipitated the greatest challenge to survival that the GATT as an institution was to face. The international economic crisis that came to a head in 1971 had been developing for several years and had worsened markedly following the conclusion of the Kennedy Round. The combination of expansionary US economic policies (President Lyndon B. Johnson's 'Great Society' domestic social programmes) and military spending on the Viet Nam War led to increasingly difficult economic straits for the USA, which in turn threatened further trade liberalization.[111] Despite enormous deficit spending that steadily eroded international willingness to continue holding US dollars as a reserve currency, the United States for geopolitical reasons could not take the necessary steps to win the Viet Nam War. The high fixed value of the US dollar to gold made some, mainly labour-intensive US industries less competitive on global markets, whilst ever more competitive imports surged into US markets. Japan's merchandise exports had been growing at 17.2 percent *per annum* throughout the 1960s. Not only Japan, but now also other developing countries in East Asia, such as Taiwan and South Korea, began to compete with US production in sectors such as textiles and consumer goods.[112]

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[110] Scammell, *The International Economy Since 1945*, pp. 172–173.
[111] David P. Calleo, *The Imperious Economy*, Cambridge, MA: Harvard University Press, 1982, pp. 87–102.
[112] Destler, *American Trade Politics*, pp. 46–47; Robert Gilpin, *The Political Economy of International Relations,* Princeton: Princeton University Press, 1987, pp. 193–194.

President Nixon and his Treasury Secretary John Connally had concluded that the rapidly worsening US trade deficit was a result of the French franc, deutschmark, and Japanese yen being undervalued relative to the US dollar. After US officials failed to persuade European and Japanese leaders to revalue their currencies, Nixon in August 1971 unilaterally devalued the US dollar against gold by ten percent, from $35/oz. to $38/oz. Making use of the escape clause permitting countries in balance of payments emergencies to impose temporary trade barriers, which American negotiators had inserted into GATT Article XIX, Nixon imposed a temporary ten percent tariff surcharge on imports from the EEC and Japan. US officials advised their European and Japanese counterparts that the surcharge would be lifted once negotiations to resolve the currency imbalance issue had reached a successful conclusion. Nixon's decision to act on both the trade and monetary crises effectively returned trade diplomacy to a central place on the US foreign policy agenda that it had not enjoyed since the late 1940s.[113] Yet the US policy shift was not an abandonment of the US commitment to trade liberalization or multilateralism but rather a very belated recognition that monetary policy and trade policy could not be conducted independently of one another.[114] Misaligned exchange rates, as the dollar-gold parity had become for the United States, showed that they could lead to politically unsustainable trade flows.[115] The temporary ten percent import surcharge that Nixon had imposed was GATT-legal for balance of payments adjustment purposes.[116] However, the unusual US demand that a $13 billion improvement in the US balance of payments come from trade flow adjustments by other countries was a political demonstration to US allies and trading partners that the US contribution to the global economy was not to be taken for granted.[117] Both the Americans and the Europeans played a high stakes game in the diplomatic negotiations that followed, which made the shift in the distribution of power away from the United States evident. When he was apprised of the EEC's plans to retaliate against the US import surcharge, Nixon acted to limit damage to the alliance. US Secretary of State Henry Kissinger was dispatched to meet French President Georges Pompidou in the Azores

[113] R.N. Cooper, 'Trade Policy *is* Foreign Policy', *Foreign Policy*, Winter 1972–73, pp. 18–36.
[114] Scammell, *The International Economy Since 1945*, pp. 179–183.
[115] Calleo, *Beyond American Hegemony*, pp. 68–70; Milton Gilbert, *Quest for World Monetary Order*, New York: John Wiley & Sons, 1980, pp. 216–220.
[116] Winham, *International Trade and the Tokyo Round Negotiations*, p. 24.
[117] Shonfield, *International Economic Relations,* pp. 44–45.

Islands to negotiate a settlement ending the surcharge, which met most of Nixon's goals and Pompidou's.[118]

Economic order was reëstablished for the 1970s on a different basis from the earlier postwar arrangements. The Smithsonian Agreements of 1972 restored provisional order to the monetary system, still based on fixed exchange rates but with a US dollar no longer convertible into gold. Support from major European and Japanese banks was necessary, but despite this broader sharing of economic responsibilities the new arrangements remained inadequate and collapsed in 1973.[119] Despite granting the United States less control over world monetary flows than Bretton Woods fixed exchange rates had done, the system of 'managed' floating rates that commenced in 1973 still left the USA in the position of being the world's largest market for imports.[120] In a decade characterized by slower global economic growth and exogenous energy supply shocks, Washington returned to more active trade liberalization diplomacy. Prompted by UK Prime Minister Edward Heath, President Nixon finally acted upon the 1971 Williams Commission report and a 1972 Organization for Economic Cooperation and Development (OECD) report, both of which had endorsed new multilateral negotiations on reducing tariffs and NTBs. Nixon proposed a new GATT round to be directed at lowering tariffs further and liberalizing NTBs, government procurement practices, customs valuation procedures, and technical barriers to trade, amongst others.[121]

Once again a change in US trade legislation sought by the White House facilitated the negotiation of a new GATT round. The Trade Act of 1974 for the first time permitted US officials to negotiate reductions in non-tariff barriers to trade without the cumbersome process of Congress needing to approve the amendment of each relevant law individually. This 'fast track' procedure that Congress approved allowed the White House to present to Congress, following unofficial consultations with Congressional leaders during the drafting stage, a single bill enacting the package of measures agreed by US negotiators with their negotiating counterparts in the GATT round. Congress would then vote on this single piece of legislation, up or down, without possibility of

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[118] Henry Kissinger, *The White House Years*, London: Weidenfeld and Nicolson, 1979, pp. 953–962.
[119] Gilbert, *Quest for World Monetary Order*, p. 220.
[120] International Monetary Fund, *Direction of Trade Statistics,* Annuals and Yearbooks, Washington: 1978, p. 2.
[121] Nau, *The Myth of America's Decline*, pp. 166–167; Winham, *International Trade and the Tokyo Round Negotiations*, pp. 15–17, 74–75.

amendment.[122] Once the bulk of simple, across-the-board reductions in tariffs on industrial goods had been negotiated, subsequent aspects of trade liberalization and harmonization of trade practices would become progressively more complex to implement, as a much wider range of legislation and regulations would need to be amended than tariff schedules. Hence the passage of the 'fast track' provision in the USA was crucial if US negotiators were to have any hope of reaching trade agreements and getting them through Congress without an interminable process of amending existing legislation, with the process held hostage to myriad particular interests. According to Destler, Congress accepted 'fast track' (renamed in the 2000s 'Trade Promotion Authority') for neutralizing the protectionism of particular interests because its faith in the trade policy leadership of the administrations of Nixon and Gerald R. Ford (following Nixon's resignation in August 1974) had been restored.[123]

GATT negotiators took on the ambitious challenge in the Tokyo Round of expanding the ambit of issues to be negotiated significantly beyond tariff cutting. Recognizing that the success of prior rounds in lowering tariffs was leading governments increasingly to rely upon other types of trade barriers to meet domestic political demands for protection, negotiators accelerated a process of addressing non-tariff barriers to trade that they had begun on a smaller scale in the Kennedy Round. In part, this involved governments acknowledging that many 'behind the border' measures affected international flows directly. Hence they would need to be redefined as trade issues analogous to tariffs and thus subject to negotiation under the GATT. For example, domestic production subsidies adopted by governments to meet industrial policy objectives gave producers receiving such subsidies an unfair competitive advantage selling in the international marketplace for the affected goods, which was prompting other governments to enact legislation sanctioning countervailing duties (CVDs) against imports of subsidized goods. Other non-tariff barriers addressed in the round included government procurement restrictions that obliged governments to purchase goods from domestic suppliers, customs valuation methods (such as the 'American Selling Price' mechanism criticized in the Kennedy Round), product standards and import licensing requirements intended to exclude foreign goods, and dumping, which had begun to be addressed in the Kennedy Round.

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[122] Destler, *American Trade Politics*, pp. 71–73.
[123] *Ibid.*, p. 206.

Many of the codes governing non-tariff barriers that negotiators were able to reach agreement in the Tokyo Round were very modest in scope. Yet the fact that diplomats were able to reach agreement on a range of NTB codes was important, in that it established the precedent for widening the GATT's remit to include diplomatic mediation of all issues affecting international trade. This would have a progressively greater impact in rounds to come. One of the reasons that negotiators were able to reach agreement on NTB codes in the Tokyo Round is that they agreed on a different mode of implementation of the codes. The codes, delegates agreed, would take effect on an 'opt in' basis wherein countries would need to become signatories to the codes to become subject to their discipline. Whilst procedurally this was a deviation from the founding GATT principle of non-discrimination, it did not release contracting parties in principle from participating. Rather, it recognized the different circumstances of an increasingly diverse club of participating countries by permitting countries to become signatories to each code when they were ready and able to implement its obligations. Predictably, many developing countries were unprepared to sign the codes at the time that they were negotiated, but as time passed more and more GATT contracting parties became signatories.[124]

Once the Tokyo Round negotiations began, the further enhanced power of the EEC, now enlarged by the joining of the UK, the Irish Republic, and Denmark, became evident in various ways.[125] On tariff cuts, negotiators began with the principle of a linear, across-the-board cut as they had done in the Kennedy Round. Once again they had to address the problem of the different tariff structures of the major actors. The eventually agreed upon 'Swiss formula' for tariff cuts reconciled the EEC's preference for *écrêtement* with US preferences for strictly linear cuts in a compromise closer to the EEC than to the US position. The Swiss formula called for cutting each tariff by an amount equal to the existing rate divided by 1.14 percent of the existing rate.[126] The Swiss formula produced outcomes under which higher tariffs would be cut by a somewhat greater rate than lower tariffs but not by so much that US negotiators would reject it. Prospects for agricultural trade liberalization were much worse. The strengthened EEC joined forces with Japan on agriculture to ensure that their objectives of stabilizing agricultural prices and supplies prevailed over US goals of further agricultural trade

[124] Zeiler, 'The Expanding Mandate of the GATT', pp. 112–117.
[125] Winham, *International Trade and the Tokyo Round Negotiations*, p. 101.
[126] Baldwin, *Trade Policy in a Changing World Economy*, pp. 195–196.

liberalization. As a result, very little progress on agriculture was on offer in the round at all.[127]

Negotiations had stalled by late 1976. Robert Strauss, an astute Texas politician who had chaired the US Democratic National Committee and the presidential campaign of Jimmy Carter, was named US Trade Representative by President Carter in January 1977. Strauss realized that it was more important to US interests for him to revive the by then moribund talks and reach agreement on some issues than to stand by and allow the whole process to collapse. In a personal initiative in September 1977, Strauss agreed to abandon the US principle that agricultural negotiations be conducted together with the other talks.[128] Strauss made several other concessions important to the EEC and other states, such as agreeing to adhere to the GATT's definition of injury from subsidies in CVD cases and surrendering the US' 'wine gallon tax' method of taxing spirits, which other countries regarded as protectionist. These US concessions were viewed internationally as big successes of the Tokyo Round.

For the United States, major gains included another tranche of significant tariff cuts, liberalization of government procurement regulations, and reducing regulations limiting trade in civil aircraft.[129] However, EEC unwillingness to make significant concessions on agriculture and temporary safeguards for domestic producers injured by import surges resulted in those areas being counted amongst the major failures of the round.

Signed in 1979 by 41 countries constituting 90 percent of world trade, the Tokyo Round cut average industrial tariffs by 34 percent, from an average 7 percent to 4.7 percent.[130] The round secured over $300 billion in tariff cuts overall.[131] Overall, the Tokyo Round is regarded as having liberalized trade, although by some measures not to the extent that the Kennedy Round had done.[132] A US-EEC row ensued when US temporary suspension of its CVD laws for the duration of the round expired whilst

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[127] Zeiler, 'The Expanding Mandate of the GATT', pp. 112–117.
[128] Winham, *International Trade and the Tokyo Round Negotiations*, pp. 165–167.
[129] *Ibid.*, p. 361.
[130] *Ibid.*, pp. 265–269; Robert Pastor, 'The Cry-and-Sigh Syndrome: Congress and Trade Policy', in Allen Schick, ed., *Making Economic Policy in Congress*, Washington: American Enterprise Institute, 1983, p. 178; General Agreement on Tariffs and Trade, *GATT Activities in 1979,* Geneva: April 1980, pp. 18–19.
[131] Zeiler, 'The Expanding Mandate of the GATT', pp. 113–117.
[132] Winham, *International Trade and the Tokyo Round Negotiations*, pp. 362, 383–384.

the round was still in progress, threatening European firms with immediate imposition of US CVDs. This further undermined international perceptions of the US commitment to GATT multilateral diplomacy.[133] But the Tokyo Round's gains did reconcile US-EEC trade and political relations for a time.

The conclusion of the Tokyo Round coincided with the onset of the most serious recession in the Western industrialized economies since the Great Depression of the 1930s. Historically during economic downturns public opinion has shifted away from support for trade-liberalizing diplomacy and toward support for greater protection. In response governments have tended to focus on domestic economic concerns rather than diplomacy. The response to the 1980 recession in major trading powers was no exception, with the UK government of Margaret Thatcher undertaking major structural reforms to the domestic economy from 1979, and French President François Mitterrand making an abortive attempt to move France's economy toward greater socialism in 1983. The sudden contraction of credit from North American and European banks occasioned by the 1980 recession punished developing countries, whose economies had been growing rapidly, by triggering a financial crisis from which it took many of them nearly a decade to recover. The crisis was particularly severe in Mexico and Brazil, amongst the largest developing countries with market economies at the time.

In the United States, the administration of President Ronald Reagan neglected trade policy and diplomacy for much of their first term in office whilst they sought to downsize government, even as they increased defence spending in the aftermath of the Soviet invasion of Afghanistan. The Reagan government alienated major trading partners by meeting constituent demands for greater protection through more aggressive implementation of domestically legislated unilateral trade remedies against alleged unfair trade practices, such as antidumping and countervailing duty legislation and Section 301 of the 1974 Trade Act.[134] In 1981 and 1982, the Reagan administration, under pressure from Congress, negotiated voluntary export restraint (VER) agreements on automobiles and steel with Japan, the EEC and 29 other countries

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[133] *Ibid*., pp. 213–220.

[134] Baldwin, *Trade Policy in a Changing World Economy*, pp. 81–85; Helen Milner, 'The Political Economy of US Trade Policy: A Study of the Super 301 Position', in Jagdish Bhagwati and Hugh T. Patrick, eds., *Aggressive Unilateralism*, Ann Arbor: University of Michigan Press, 1991, pp. 165–166.

that limited steel imports to 18.5 percent of the US market.[135] Hence when Reagan officials signalled to their European and Japanese counterparts that they wanted to return to the diplomacy of multilateral trade liberalization, unsurprisingly they were rebuffed. US attempts in 1982 to secure agreement from EC[136] officials to launch a new GATT multilateral round failed, as did a subsequent attempt the following year, notwithstanding the effects of the nascent global economic recovery by then. By the early 1980s accelerating globalization and the economic growth of a broadening group of developing countries made their participation in a new GATT round critical to the success of any future multilateral trade diplomacy. In 1983 these countries, still suffering severely from a financial crisis that they viewed as having been imposed upon them by their industrialized country trading partners, were not yet ready to commit to new talks.[137]

After another unsuccessful attempt at EC-US agreement on launching a new GATT round following Reagan's November 1984 reëlection, a launch deal was secured in September 1986 at a meeting at Punta del Este, Uruguay, which gave the new round its name, the Uruguay Round. The Uruguay Round was different from all the GATT multilateral rounds that had preceded it, not only because it realized the long deferred dream of creating a formal global organization to manage international trade. Negotiators at the round representing a much larger group of GATT contracting parties than had participated previously would tackle a much larger agenda than had been previously undertaken. Agreements on intellectual property protection, barriers to investment, and technical barriers to trade were key components of the round. The two most intractable issues in the history of GATT diplomacy, trade and development, and agricultural trade barriers, would be addressed substantively, in part because negotiators found the two issues related in ways that they had not been before. In the Uruguay Round the largest expansion of the agreed definition of trade since the signing of the GATT took

[135] Destler, *American Trade Politics*, pp. 77–83; Hans Van der Ven and Thomas Grunnert, 'The Politics of Transatlantic Steel Trade', in Yves Mény and Vincent Wright, eds., *The Politics of Steel: Western Europe and the Steel Industry in the Crisis Years (1974–1984)*, Berlin/New York: Walter de Gruyber, 1987, pp. 137–185; Martin Rhodes, 'The State and the World Steel Market: Industrial Policy, Trade Regulation and the GATT Uruguay Round', in M. Moran and W. Wright, eds., *The Market and the State: Studies in Interdependence*, London: Macmillan, pp. 1991.
[136] The EEC's legal negotiating identity had become the European Communities by that point.
[137] Nau, *The Myth of America's Decline*, pp. 220–221.

place through the recognition of trade in services as analogous to trade in goods. The GATT's dispute settlement process would be thoroughly overhauled, which itself would be the trigger for the next fundamental transformation in international trade diplomacy (see Part Four below). As a result, negotiating the Uruguay Round took eight years, half again as long as the Tokyo Round had taken to complete.

Even the negotiations over what would be included in the Uruguay Round's agenda proved to be contentious. As in earlier rounds, the principal stumbling block would be the long-running EC-US disagreement over agricultural trade liberalization.[138] Despite agriculture's declining percentage of trade volume amongst industrialized countries, the EC-US agriculture debate remained at the core of the power relationship between the two polities. Beyond the predictable US-EC disagreements, developing countries themselves were divided over the agenda. Some joined with industrialized countries to form a larger group of 47 that favoured a broad negotiating agenda, whilst Brazil and India led a group of ten developing countries that favoured keeping the remit much narrower. At Punta del Este, the balance shifted toward the broader agenda as Brazil showed willingness to compromise.[139] The Uruguay Round's goals agreed at Punta del Este were to tackle what were perceived to be the largest gaps in the liberal international trading system: full integration of developing countries, liberalization of trade in services, trade-related intellectual property and investment measures (TRIPS and TRIMs), and the ongoing problems of trade in textiles, agricultural trade barriers, and subsidies.[140] Configurations of support amongst GATT contracting parties for the different objectives of the round were more diverse than in any of the previous rounds. Developing countries' most important objectives were to lower industrialized country import quotas on textiles and apparel, reduce import barriers on tropical produce and ease industrial country temporary safeguards against import surges. The United States and a new coalition of agricultural exporting countries led by Australia known as the Cairns Group (after its founding meeting in Cairns, Australia) pressed for agricultural trade liberalization

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[138] Bhagwati, 'Multilateralism at Risk', pp. 160–164.

[139] Ernest H. Preeg, 'The Uruguay Round Negotiations and the Creation of the WTO', pp. 122–140 in Narlikar, Daunton and Stern, eds., *Oxford Handbook on the WTO*, pp. 122–123; Jeffrey J. Schott with Johanna W. Buurman, *The Uruguay Round; An Assessment,* Washington: Institute for International Economics, 1994, p. 5.

[140] Jagdish N. Bhagwati, 'Multilateralism at Risk; The GATT is Dead. Long Live the GATT', *The World Economy*, Vol. 13, No. 2, July 1990, pp. 164–165.

from the EC. Industrialized countries joined together on issues such as intellectual property protection to secure their advantage in growing developing country markets, in an environment in which trade in grey market and counterfeit goods was growing enormously. US negotiators in particular sought liberalization of barriers to trade in services, a market where the United States retained a strong competitive advantage. For the Americans, liberalizing trade-related investment measures (TRIMs) would also serve the services trade liberalization agenda by facilitating the ability of US firms, including services firms, to own and operate subsidiaries in foreign markets.[141]

US efforts to press for a huge liberalization agenda were plagued with difficulties from the start. Other countries perceived US unilateral and regional actions to be outside of GATT rules, which undercut US leadership in the Uruguay Round. Only weeks before the Uruguay Round commenced, for example, US officials signed a trade-diverting Semiconductor Marketing Arrangement with Japan, a non-liberal orderly marketing agreement (OMA) that set unofficial market shares for US-produced semiconductor chips in Japan and third markets. Another US-Japan OMA allotted US beef an unofficial market share in Japan.[142] The continued enlargement of the EC to Spain, Portugal, and Greece in 1981 and the deepening of integration through passage of the Single European Act in 1986, with the prospect of more to come, motivated US leaders to contemplate how to respond. The decision by the Reagan administration that the United States would negotiate bilateral free trade agreements (FTAs) for the first time, which culminated in the signing of the US-Israel and Canada-US Free Trade Agreements in 1985 and 1988, respectively, sent very mixed signals about the extent of the US commitment to GATT-based multilateral trade liberalization to the rest of the GATT contracting parties.

As negotiators began work in earnest in fifteen negotiating groups in January 1987 they set as a goal to reach agreement on an 'early harvest' of issues that could be formalized at a mid-term ministerial meeting scheduled for Montreal in December 1988 and to complete the round by 1990. The early harvest showed prospects of yielding modest but measurable results. Negotiators agreed to ease import barriers on tropical products, which benefited developing countries, even if gains were small in scale. More importantly, significant framework agreements were agreed, with delegates committing to negotiate details during

[141] Preeg, 'Uruguay Round Negotiations', pp. 123–124.
[142] Bhagwati, *Protectionism*, pp. 83–84.

the remainder of the round: a comprehensive framework agreement on services, a plan to phase out import quotas on textiles and apparel, and agreement on an overall across-the-board average tariff cut target of 33 percent. On some issues, little or no progress had been made by the time of the Montreal meeting: antidumping duties, safeguards, and intellectual property, the latter of which significantly divided industrialized and developing countries. At Montreal differences of opinion over agriculture became highly polarizing, dividing the USA, EC, and the Cairns Group into competing camps. GATT Director General Arthur Dunkel used his power of the chair to suspend proceedings until April, during which time he engaged in shuttle diplomacy between the capital cities of the major interlocutors. Dunkel was able to hammer out compromises on the most contentious issues that allowed an overall mid-term agreement to be finalized when the ministerial meeting reconvened. Dunkel secured substantive commitments on agriculture that included freezing and subsequently lowering domestic support prices and a phaseout of export subsidies. On intellectual property protection, India-led opponents of a deal accepted in principle the importance to the round as a whole of concluding a TRIPS agreement.[143]

The next phase of negotiations was influenced dramatically by the fall of the Berlin Wall in November 1989, the end of the Cold War, and a cascade of political reforms across Eastern Europe and the developing world that brought elected governments committed to market economies and liberal trade to power. The atmosphere for negotiating was more challenging in some respects, with European leaders distracted by pressing needs to respond to rapid political transformation across Europe and governments from Taiwan and Korea to Latin America similarly preoccupied by reforms at home. The next ministerial meeting, which was intended to resolve major remaining disagreements, was scheduled for December 1990 in Brussels. This left some months for remaining details to be ironed out and the final agreement signed before 'fast track' negotiating authority for the US president, which the US Congress only granted for fixed periods, expired. Negotiators made significant progress on all of the major issues with the exception of agriculture, over which they remained deadlocked owing to EC intransigence. The European Commission signalled EC willingness to give ground on agriculture if other negotiating issues were moving toward resolution, but, in a particularly vivid example of the two-level diplomacy of the EC, the Commission was held back from making

[143] Preeg, 'Uruguay Round Negotiations', pp. 124–127.

concessions by the French government's unwillingness to give their support. Once again Director General Dunkel suspended the meeting in favour of another round of shuttle diplomacy to attempt to resolve the outstanding issues, agriculture in particular.[144]

One year later, after numerous consultations in national capitals and further meetings of the negotiating groups that yielded some results, Dunkel proposed a text of a final agreement that reflected all the areas of agreement reached thus far and indicating still contested issues, such as agriculture, in sections of text rendered in brackets. (Bracketed text is a common practice in the process of reaching agreement in negotiation over contested issues.) Dunkel's text, although not embraced by the EC and accepted by the USA only with reservations, ended up constituting much of the final agreement signed at Marrakech in 1994. The Dunkel text resolved a dispute between the USA and others over the proposed 33 percent across-the-board tariff cutting formula. US negotiators had favoured a return to the offer-request approach. Under the Dunkel compromise, negotiators agreed on a sectoral approach, under which tariffs in some sectors, such as farm machinery, would be lowered to zero, and in other sectors, different, harmonized tariff cutting formulas would be applied. The impasse over agriculture, which the Dunkel text had not overcome, came to a head again in November 1992 just at the time when US President George H.W. Bush was defeated in his bid for reëlection by Bill Clinton. EC Agricultural Commissioner Ray MacSharry became sufficiently angered by French government opposition to resolving the agriculture negotiations that he resigned his post. At the same time, US Trade Representative Carla Hills used an ongoing US GATT trade dispute with the EC over oilseeds to bring diplomatic pressure on the EC to give ground over agriculture in the Uruguay Round. The EC had failed to implement measures advised by a GATT dispute panel, which had found that the EC's CAP caused the United States to lose $1 billion in oilseed exports to Europe. Hills announced the imposition of retaliatory tariffs on French wine and luxury goods imports from the EC totalling $300 million as from December, with the additional $700 million to be imposed later in the absence of an Uruguay Round deal. Hills's gambit paid off, as France backed down, and MacSharry agreed to resume his post with a mandate to reach an agreement. On 20 November at Blair House in Washington, the official residence for visiting dignitaries of

[144] *Ibid.*, pp. 127–129; Schott and Buurman, *The Uruguay Round*, p. 6.

the highest level, the two sides agreed to a deal on agriculture that cut EC export subsidies and resolved the oilseeds dispute.[145]

Despite the Blair House accord, talks intended to conclude a final agreement made little progress in early 1993. The new US administration of President Bill Clinton signalled to the other GATT contracting parties that the USA was serious about concluding a deal rapidly but had other trade policy options if a deal was not forthcoming. Clinton persuaded Congress to renew fast track negotiating authority for an additional year and at the same time accelerated negotiations on regional PTAs. In December 1993 the United States signed an agreement with Canada and Mexico expanding the Canada-US Trade Agreement into the North American Free Trade Agreement (NAFTA), bringing a major developing country into a regional PTA with industrialized countries for the first time. The same month at Seattle Clinton hosted the first meeting of the Asia Pacific Economic Cooperation forum (APEC) of Pacific Rim nations, a consultative body designed to facilitate trade liberalization throughout the Pacific region. Against this backdrop new US Trade Representative Mickey Kantor and EC Trade Commissioner Leon Brittan pressed ahead with negotiations. New GATT Director General Peter Sutherland, a former attorney general of the Irish Republic and EC Commissioner, added his diplomatic experience to enable delegates to reach a final deal on 15 December 1993, just in time to meet deadlines imposed by the US fast track authority. Ultimately, industrialized countries agreed to cut tariffs on manufactured goods by an average 40 percent, from 6.3 percent to 3.8 percent, and developing countries by 20 percent, from 15.3 percent to 12.3 percent. Making significant progress on agriculture for the first time, governments agreed to convert non-tariff barriers to agricultural imports to tariffs, which made way for industrialized countries to cut agricultural tariffs by 35 percent and developing countries by 24 percent. Industrialized countries also cut export subsidies by 36 percent by value (21 percent by quantity) and internal agricultural price supports by 20 percent.[146]

The Uruguay Round achieved additional results that broke new ground. In signing a General Agreement on Trade in Services (GATS), negotiators created rules and principles for trade in services analogous to those for trade in goods, with sectoral schedules of applicability that varied by country. The GATS mandated much less sectoral coverage for

[145] Preeg, 'Uruguay Round Negotiations', pp. 129–131; Schott and Buurman, *The Uruguay Round*, p. 7.
[146] Preeg, 'Uruguay Round Negotiations', pp. 133–140.

developing countries than for industrialized states. An agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) established more rigorous standards and enforcement for intellectual property rights such as patents and copyrights. An agreement on Trade-Related Investment Measures (TRIMs) strengthened GATT measures intended to prevent countries from using mechanisms such as local content requirements to exclude foreign investors in businesses in traded sectors. In a measure particularly sought by developing countries, industrialized countries agreed to phase out quotas and other non-tariff barriers to textile imports over ten years.[147] One of the latest additions to the final agreement was the creation of a World Trade Organization, originally proposed by Canada in 1990 without much notice. Of all the components of the Treaty of Marrakech, which delegates signed formally on 14 April 1994, creation of the WTO would arguably have the greatest impact upon trade diplomacy going forward (see below).[148]

23 The diplomacy of accession to the GATT and WTO

For the GATT and subsequently the WTO as an institution, how new prospective members were permitted to join was pivotal to determining the trajectory of future GATT/WTO diplomacy, in the sense that each new member changed the makeup of the body of members making each subsequent decision and negotiating each future agreement. At one of the first GATT multilateral rounds, at Annecy in 1949, members reached agreement on what became Article XXXIII of the GATT, which established procedures for accession of new members. A Model Protocol of Accession was agreed in connection with Article XXXIII. Under the procedure established, a country wishing to join the GATT would submit a written request, including a statement of their existing tariff schedule. The request would then need to be approved by a two-thirds majority of the existing GATT Contracting Parties. In the 1950s GATT members began the practice of establishing a working party to examine and negotiate membership requests by countries with special circumstances, such as non-market economy countries and Japan (which was a special case for different reasons, as noted below). By the 1960s the establishment of working parties had become the norm in accession negotiations. Accession negotiations in the GATT's early years tended

[147] *Ibid.*, pp. 133–140.
[148] *Ibid.*, pp. 129–131; Schott and Buurman, *The Uruguay Round*, p. 15.

to be uncontroversial and were completed rapidly.[149] Forty-seven of the 128 states that joined the GATT prior to creation of the WTO acceded under GATT Article XXXIII. A second and equally important route to GATT membership for developing countries that gained their independence from colonial powers lay through GATT Article XXVI:5(c), which granted to newly decolonized states the automatic right to join the GATT if their territory had previously been a possession of a colonial power that was a member of the GATT. Under this process, GATT members accepted the former colonial power's terms and conditions of entry into the GATT as continuing to be valid for newly independent former colonies, without requiring further negotiations. Sixty-four states joined the GATT under Article XXVI:5(c).[150]

The establishment by GATT members of the two principal routes to accession to what was already becoming an institution (even if not yet in name) does not gainsay the notion that terms and conditions for membership from the start were political in nature. When differences between interests of existing and aspiring GATT members needed to be mediated, diplomacy was required, just as the initial agreement signed between the 23 original contracting parties itself was a product of diplomatic negotiation. The first major country whose accession to the GATT required extensive negotiation was Japan. By the mid-1950s, when the defeated World War II Axis powers Japan and Germany rejoined the international community under full sovereignty, the intensifying Cold War threat posed by the Soviet Union provided a powerful incentive to victorious World War II allies the United States, United Kingdom, and France to reintegrate Japan and Germany into the emerging structure of western international economic institutions. Yet GATT members had strong reservations about admitting Japan to the GATT on the same terms as other states acceding at the time, owing primarily to historically-based fears that, as Japanese industry rebuilt their manufacturing base, Japanese exports of manufactured goods would pose a threat to industry in GATT member states. Under Article XXXV of the GATT, existing members are permitted to withhold most favoured nation concessions to acceding new members. As many as forty GATT members invoked this article against Japan by the 1960s, which forced Japan to make significant concessions to GATT members on tariffs and,

[149] Hardeep Basra, 'Increased Legalization or Politicalization? A Comparison of Accession under the GATT and WTO', *Journal of World Trade*, Vol. 46, No. 4, 2012, pp. 937–960.
[150] Basra, 'Increased Legalization or Politicalization?', p. 946.

later, non-tariff barriers to imports in order to secure the same GATT benefits that other members already accorded to one another. Japan was the only acceding country against which GATT members invoked Article XXXV.[151]

GATT members' treatment of Japan and other conditions placed upon non-market economy countries Poland, Romania, and Hungary foreshadowed a progressively increasing degree of conditionality to be imposed upon applicants for membership in the GATT and, later, the WTO. Basra argues that this process reflects the capacity and intent of the GATT's most powerful members, particularly the United States, to use the institutionalization of the international trading system to advance their own interests. The evolution of the process of accession to the GATT and WTO is an example of the path-dependent development of an institution. According to Basra, as more members have joined the GATT and WTO, and as additional liberalization commitments and disciplines of membership have been included in successive multilateral trade negotiating rounds, the demands made of prospective new members have increased steadily. This tightening of conditions for entry has worked to the detriment of developing countries seeking to join the GATT and WTO in order better to use trade as a means of economic development.[152] By the mid-1980s, when the GATT Uruguay Round of multilateral negotiations began, GATT members placed greater demands upon applicant countries under Article XXXIII, such as Mexico, and also upon developing countries seeking entry under Article XXVI:5(c) to lower tariff and other trade barriers as a condition of admission.[153] Once the Uruguay Round was completed and the WTO became operational in 1995, the accession process remained just as political as it had been under the GATT, notwithstanding the much greater legal codification of international trade rules that the WTO heralded. The WTO created an office within its Secretariat, the Accessions Division, to manage the accession process for applicant countries. Yet despite the best efforts of the Accessions Division, the process of admission to the WTO has become steadily longer, with recent applicants waiting between three and nineteen years to gain entry. The wait under the WTO has averaged ten years, by contrast with eighteen months under the GATT. From a diplomatic perspective, this can be seen as inevitable to the extent that each accession agreement must be acceptable to an ever increasing

[151] *Ibid.*, pp. 945–946.
[152] *Ibid.*, pp. 937–944.
[153] *Ibid.*, p. 947.

number of WTO members, each with particular interests to be satisfied. However, it has also been the case that some of the WTO's most powerful members (United States, European Union, Japan, Australia, Switzerland) have sought to serve on every accession working party so as to ensure that their particular interests are represented properly.[154]

The complexity of the agreements between WTO member states relative to the 1947 GATT means that the negotiations that must take place between applicant countries and WTO members has become correspondingly more complex. Applicant countries must make offers of access to their markets for goods and services, which they then must negotiate bilaterally with existing WTO members until members of the WTO accession working party are satisfied. Members of the working party generally press applicant countries to open their markets farther as a condition of membership, irrespective of whether they have particular export interests from which such opening would benefit. All members of the WTO may participate in accession working parties and are free to hold up an application. No negotiating powers are delegated to the WTO Secretariat.[155] Market opening concessions demanded by the WTO of large applicant countries, such as China, Saudi Arabia, and Russia, have raised the cost of entry for other states, particularly weaker and more vulnerable economies. Applicants must also negotiate multilaterally with the WTO over issues involving bringing the applicant country's trade laws and other regulations into compliance with WTO rules and disciplines. Transitional periods for applicants to make legislative and regulatory reforms, which were available as of right to original WTO members, are now only available automatically to least developed countries (LDCs). The WTO has shown little inclination to negotiate transition periods for other applicant countries. By contrast, WTO members are tending to use accession negotiations to demand 'WTO plus' commitments from applicants: commitments to open markets beyond what original WTO members were expected to do. WTO members have been making these demands particularly with respect to services markets, which differ from goods markets in that services liberalization under the GATS has been on an 'opt in' basis for WTO members, in contrast to liberalization of trade in goods, which has always been compulsory under the GATT.[156] As developing country demands

[154] *Ibid.*, pp. 948–950.
[155] Kent Jones, *The Doha Blues; Institutional Crisis and Reform in the WTO*, Oxford: Oxford University Press, 2010, p. 63.
[156] Basra, 'Increased Legalization or Politicalization?', pp. 952–954.

for S&DT in multilateral rounds have increased, the accession process has become the last point at which industrialized country members can place high liberalization demands upon particular developing countries as a condition of participation in the WTO.[157]

The 'big tent' accession process of the GATT has given way to the narrow gateway of the WTO, according to Jones.[158] Path-dependent development is an endemic feature of institutions, as theories of historical institutionalism contend, so the institutional trajectory of the GATT and WTO toward ever more stringent conditions for membership has continued up to the present day, notwithstanding the subsequent transformation of trade diplomacy in the direction of judicialization (see Part Four below). However, whilst the conditions for entry into the WTO for the relatively few states that have yet to join may be the most onerous, the process at this stage is a sort of endgame diplomatically. At the time of writing, Ethiopia and Iran, with populations larger than 60 million, are the largest nations yet to join the WTO. Once the remaining states have completed their accession, the institutionalization of trade diplomacy will itself be in one important sense complete.

24 Enforcing GATT/WTO rules and resolving disputes

The final major focus of institutionalized trade diplomacy in the age of the GATT is the enforcement of the rules of the GATT and WTO. Between GATT contracting parties and between WTO members, the process of ensuring that participating countries are observing the rules for trade to which they agreed has taken two primary forms. The first is the mediation and resolution of disputes that arise because one or more countries find themselves disadvantaged by another's apparent transgression of the rules. The second is the general monitoring of and sharing information between members about each participating country's rule observance, which fulfils a benchmarking function that promotes best practice in rule observance. Both approaches are inherently diplomatic, reflecting the sovereignty of the participating countries, and at the same time both approaches require institutions to be viable. Under most bilateral trade treaties that had been negotiated prior to the GATT, situations in which one signatory believed the other to be not in compliance with an agreement's terms were cause for diplomatic

[157] Rorden Wilkinson, *What's Wrong With the WTO and How to Fix It*, Cambridge: Polity Press, 2014, pp. 71–72.
[158] Jones, *The Doha Blues*, p. 68.

communication and, if required, negotiation between representatives of the two signatories. Negotiating a resolution of the dispute would normally be in the interest of both parties. It would often take the form of mutual clarification of the facts of the alleged violation and reaching agreement on the correct application of the treaty's terms. Under the fundamental principle of international law *pacta sunt servanda* ('treaties are to be observed'), one party's continued non-observance of a treaty obligation would be grounds for the other party to treat the violating party to be in breach of the treaty and thus to regard the treaty as no longer in force. This 'self-execution' as a norm of trade treaties began to change with the emergence of the first multilateral trade treaty that created an institution to administer its provisions, the Brussels Sugar Convention of 1902. As noted above, the Convention created the Permanent Sugar Commission (PSC). The PSC was empowered to monitor the pricing of sugar exports worldwide and to order the imposition of countervailing duties or import prohibitions against sugar from countries that they found to be paying export bounties, an enforcement power that even the WTO does not enjoy.

The GATT advanced this institutional approach to rule enforcement and dispute resolution using a different structure. GATT Article XXIII outlined briefly procedures to be followed if a GATT contracting party perceived 'nullification or impairment' of any benefits to which they were entitled under the GATT. Article XXIII mandated that, in the first instance, the parties involved consult with one another. In the event of a failure of the parties to resolve the issue on their own, the GATT Contracting Parties were empowered collectively to investigate the matter and to issue recommendations and rulings to parties concerned, as appropriate.[159] The Contracting Parties collectively were empowered to permit an injured party to withdraw concessions granted to the offending country in compensation for benefits lost as a result of the offending practice in the event of the offending country's unwillingness to implement a panel recommendation. The procedure was diplomatic in essence, but in two important respects it differed from the traditional recourse to 'self-help' in bilateral treaties, the right to regard a treaty as no longer in force owing to breach of obligations by the other side. First, the GATT established that the Contracting Parties collectively had an interest and a rôle to play in the resolution of disputes. Second, the sanction that the GATT permitted to the injured party, the right to withdraw concessions to the violating country equivalent in value to

[159] General Agreement on Tariffs and Trade 1947, Article XXIII.

income lost in the injured party owing to the violation, enabled both the violator and the injured party to remain as full participants in the GATT and maintained the full force of their reciprocal GATT obligations to one another and to all other GATT contracting parties.

As usage of the procedure increased, the GATT process for resolving disputes evolved gradually and organically according to need. The GATT Council would put on a different hat and sit as the Dispute Settlement Body (DSB). As the number of contracting parties and disputes between them grew, procedures were elaborated and codified into a system under which the Dispute Settlement Body would appoint a three-member panel to consider a dispute in the event that consultations between disputants failed to achieve resolution. Critically, any panel could only be seated and its recommendation implemented if all the parties to the dispute agreed to accept it. There was a degree of institutional pressure upon countries to accept and implement panel recommendations that went against them if, in cases where they themselves were the injured party, they expected other countries to implement recommendations as well. In his definitive work on the first two decades of the GATT's operation, *Multilateral Commercial Diplomacy*, Curzon makes the case for this power of moral suasion. 'While sanctions can only be imposed in the case of nullification or impairment of concessions granted, the moral condemnation of a country and the publicity arising therefrom have in practice been coercive enough to be mentioned as one of the new elements in international economic relations.'[160] By the early 1960s the GATT contracting parties had sanctioned only one such withdrawal of concessions, in connection with a complaint brought by the Netherlands against the United States.

However, by the 1980s a general perception was emerging that the GATT's dispute resolution process was lengthy and lacked teeth. Routinely the EC and Japan, frequent respondents in dispute complaints, would use their prerogative to block the DSB from adopting panel reports or even from establishing panels to investigate complaints. Perceptions of the dispute settlement procedure's ineffectiveness at a time of heightened international trade tensions motivated governments, particularly that of the United States, to make their own evaluation that a trading partner had violated their obligations under the GATT and to impose sanctions authorized under domestic trade

[160] Curzon, *Multilateral Economic Diplomacy*, pp. 43–44.

legislation without receiving the approval of the GATT DSB.[161] This view provided substantial motivation for negotiators in the Uruguay Round to construct a more robust dispute settlement system. Even once the round was under way, the United States brought pressure on GATT negotiators. The US Congress passed, and President Reagan signed, the Omnibus Trade and Competitiveness Act of 1988. The 1988 Act's notorious 'Super 301' provision required the administration to identify systematic foreign market barriers to US exports over two years and demand bilateral market-opening negotiations with the implicated governments under the threat of mandatory US retaliation if concessions were not forthcoming.[162] But Uruguay Round negotiators viewed the GATT's dispute settlement procedure as having been enough of a success over past decades to warrant what would in effect be a quantum upgrade to improve its effectiveness. In so doing, they transformed the core diplomatic functions of the WTO and trade diplomacy more broadly (see Part Four).

The second approach to rule enforcement, the trade policy review process, is anything but judicial in nature. Trade policy review (TPR) relies upon diplomatic principles of communication, information gathering and exchange. What began as regular meetings of the GATT Council to review general developments in the international trading system soon took on a monitoring focus, organized around a note produced by the GATT Secretariat. In 1985 a GATT Eminent Persons Group recommended that the GATT should undertake regular surveillance of contracting parties' trade policies and actions and share the information publicly. The proposal made it onto the Uruguay Round agenda, and agreement was forthcoming rapidly enough for the provisional establishment of a Trade Policy Review Mechanism (TPRM) to be part of the 'early harvest' of gains agreed at the 1989 Montreal Uruguay Round mid-term review. The TPRM was formalized and extended from trade in goods to include services and TRIPS in the Treaty of Marrakech in 1994.[163]

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[161] Thomas Bernauer, Manfred Elsig, and Joost Pauwelyn, 'Dispute Settlement Mechanism – Analysis and Problems', pp. 485–506 in Amrita Narlikar, Martin Daunton and Robert M. Stern, eds., *The Oxford Handbook on the World Trade Organization*, Oxford: Oxford University Press, 2012, pp. 486–489.

[162] Geoffrey Allen Pigman, 'United States trade policies at loggerheads: Super 301, the Uruguay Round and Indian services trade liberalization', *Review of International Political Economy,* Vol. 3, No. 4, Winter 1996, pp. 728–762

[163] Sam Laird and Raymundo Valdés, 'The Trade Policy Review Mechanism', pp. 463–484 in Narlikar, Amrita, Martin Daunton and Robert M. Stern, eds., *The*

The TPRM's objective was to promote better adherence to GATT and WTO rules through transparency and benchmarking without penalizing countries for non-compliance through any judicial procedure. Making information on country trade policies and practices widely available would stimulate political debate domestically over how they might better be brought into compliance with GATT/WTO obligations and by informing their trading partners as well would provide leverage for trading partners to press a country for greater compliance.[164] Under the TPR process, the GATT Council meets, again wearing a different hat as the Trade Policy Review Body (TPRB), to review WTO members' trade policies on a regular basis. The four largest trading powers are meant to be reviewed every two years, the next sixteen on a four-year cycle and the remainder every six years. Reviews begin with submission of two parallel reports, a research report prepared by the WTO Secretariat and a 'policy statement' by the government of the country being reviewed. The WTO provides technical assistance to governments of developing countries in preparing their policy statement if they request it. A series of meetings take place during which questions are asked and answered, culminating in the production of the Secretariat's final report, which is made public. At the formal TPR meeting, representatives of the country under review meet with the whole TPRB to engage in further dialogue over the contents of the Secretariat's final report. The chair of the TPRB's final comments summarize the dialogue but contain no formal recommendations for the country under review. On occasion the country under review holds a seminar at home to share the TPRB's findings with the public.[165] Since the TPRM began operation, the WTO has conducted regular appraisals of its operation and have made procedural adjustments as a result. Overall, members have appreciated the TPRM for its non-confrontational, non-judicial approach to promoting compliance, an approach that could not be undertaken without an institution to carry it out. However, some have asked whether there is a way that TPRM findings could be used more effectively and extensively without compromising the widespread support that the process has garnered. The TPRM has also imposed an extensive and growing burden upon the

Oxfowrd Handbook on the World Trade Organization, Oxford: Oxford University Press, 2012; David A. Lake, *Power, Protection and Free Trade*. Ithaca, NY: Cornell University Press, 1988, pp. 464–466.

[164] Laird and Valdés, 'The Trade Policy Review Mechanism', pp. 466–468.

[165] *Ibid.*, pp. 468–476.

WTO Secretariat in keeping up with its TPR calendar as the WTO has expanded its membership steadily.[166]

25 Negotiating, again, the creation of a World Trade Organization: the institution for an institution

The World Trade Organization, when it was finally summoned into being by the Treaty of Marrakech half a century after negotiators first contemplated an organization to oversee the implementation of multilateral trade rules, represented the completion of the project of constructing an institutional structure for trade diplomacy. The WTO radically redistributed power in a diplomatic sense, much more than its framers envisaged it would or than its critics believe even today. Whilst the addition of the institution to the Uruguay Round agenda in 1990 almost seemed an afterthought at the time, its creation has had a huge impact on how the former GATT contracting parties, now WTO members, conduct business. Different proposals in the Uruguay Round for creating a multilateral trade organization to subsume the GATT came initially from Canada and the EC, both of which saw advantages in establishing a stronger institutional framework within which a strengthened dispute settlement system could be administered and a country-by-country trade policy review process could be launched. Moreover, the GATT Secretariat had come to oversee not only not only the GATT itself but a series of existing plurilateral agreements (e.g. on government procurement and on civil aircraft), and the Uruguay Round negotiations were set to generate new parallel agreements (General Agreement on Trade in Services, Trade-Related Aspects of Intellectual Property Rights). Hence the need for a more robust organization to coordinate all of the related pacts became clearer to a broad segment of industrialized countries. Developing countries as a group were more skeptical of the proposed organization, not seeing that the creation of such a body would either address their primary issue concerns directly or create a better diplomatic venue through which they could pursue their agenda more effectively.

In the final phase of the Uruguay Round negotiations between 1991 and 1994, supporters of a WTO won over developing countries by offering them what trade expert Sylvia Ostry described as a diplomatic 'Grand Bargain': developing countries would accept the inclusion of new issues such as services, TRIPS and TRIMs and the WTO with

[166] *Ibid.*, pp. 482–484.

its 'Single Undertaking' mechanism for membership (see below) and strengthened dispute settlement system, in return for which they would receive significant concessions on industrialized country import barriers against their agricultural exports, phaseout of quotas and related trade barriers on their textile exports, and further formal codification of special and differential treatment (S&DT) in the form of extended periods for them to implement certain Uruguay Round agreements.[167] United States negotiators took the most persuading, as, keen to close an overall Uruguay Round deal, they saw the risk of a WTO provoking strong opposition to ratification in Congress. Congressional opponents of a trade package on the left and right opposed cession of any US sovereignty to a supranational organization, albeit for different reasons. Ultimately the US delegates to the Uruguay Round extracted maximal concessions on other issues from the EU and their other negotiating partners before conceding on inclusion of the WTO at the last minute, thus clearing the way for the signing of the Treaty of Marrakech.[168]

By signing and ratifying the Marrakech Treaty, governments put themselves in a very different position with respect to the WTO than they had previously enjoyed as contracting parties to the GATT. To become a member of the WTO meant accepting the Single Undertaking, which obliged members to accept the entirety of the agreements reached during the Uruguay Round, including revisions to the GATT, the GATS, the TRIPS agreement, the dispute settlement mechanism, the trade policy review process, plus all previous plurilateral accords. There was no more flexibility for states to choose to opt in and out of particular agreements. As a principle, the Single Undertaking resembles the EU's *acquis communautaire*, over 80,000 pages of European legislation and regulations that any new member of the EU must agree to adopt and to modify its domestic legislation and regulations in conformity therewith. As noted above, in return for accepting the Single Undertaking, developing countries were granted extended periods to implement some of their obligations under the principle of S&DT.[169] As expected, the greatest domestic battle to secure ratification of the treaty took place within the United States. In the ratification debate in Congress, which took place under

[167] Amrita Narlikar, *The World Trade Organization; A Very Short Introduction*, Oxford: Oxford University Press, 2005, pp. 23–25.
[168] Narlikar, *The World Trade Organization*, p. 25; Geoffrey Allen Pigman, 'The Sovereignty Discourse and the U.S. Debate on Joining the World Trade Organization', *Global Society*, Vol. 12, No. 1, 1998, pp. 75–101; Preeg, 'Uruguay Round Negotiations and Creation of the WTO', pp. 131–133.
[169] Narlikar, *The World Trade Organization*, pp. 31–32.

the fast track provision (meaning no amendments were permitted), opponents of the treaty on the left and right contended that signing the treaty would transfer US sovereignty to a supranational body, meaning that obligations of WTO membership would overrule US legislation on issues vital to their respective constituencies: for the left, labour, environmental, and other social protection; for the nationalist right, the ability to impose trade sanctions for national security objectives, amongst others. The pro-trade political centre of both parties, backed by the Clinton administration, argued in response that the United States would maximize its power to achieve foreign policy objectives by pooling elements of its sovereignty in the WTO. In a significant indication of how trade diplomacy had shifted in the four and a half decades of the GATT's existence and of how US legislators viewed the utility of institutional structures for trade diplomacy, Congress voted to ratify the Treaty of Marrakech by 288–146 in the House of Representatives and 76–24 in the Senate.[170] When the WTO came into operation on 1 January 1995, 128 states had embraced the Single Undertaking and were ready to join as founding members.

WTO voting rules essentially replicated the formal rules stipulated in the GATT: one country, one vote, with a simple majority required on most issues. And in practice, the GATT custom of decision making by negative consensus in which no member present objects, *nemini contestavit*, also carried over into the WTO. Consensus is built through several negotiating mechanisms, including Heads of Delegation meetings open to all WTO members, and until recently smaller, 'Green Room'-style meetings organized by the Director General, of representatives of the most powerful WTO member states, historically always the USA and EU and a limited number of additional invited participants. GATT Directors General began organizing Green Rooms during the Tokyo Round to facilitate consensus building in response to the growing number of GATT contracting parties. By tradition, lists of Green Room participants, which varied by issue, were not publicized, discussions were off the record, and minutes were not taken.[171] Narlikar argues that this often exclusive and non-transparent approach to decision making disadvantages developing countries, as close to two dozen least developed countries cannot afford even to maintain full time diplomatic representation to the WTO, and even those that can do have not customarily

[170] Preeg, 'Uruguay Round Negotiations and Creation of the WTO', p. 133.
[171] Jones, *The Doha Blues*, pp. 85–88.



The Centre William Rappard, Headquarters of the GATT and World Trade Organization, Geneva

Photo: © Lightmotif/Blatt.

been invited to participate in Green Room-style meetings.[172] Only since the negotiations preceding the December 2013 Bali WTO Ministerial Meeting has WTO Director General Roberto Azevêdo dispensed with

[172] Narlikar, *The World Trade Organization*, pp. 43–47.

the Green Room approach by holding wider consultations amongst member delegations.

26 The longest round: the WTO's Doha Development Agenda

The World Trade Organization, once it was up and running, marked a major shift in focus from the GATT. Whereas the GATT's focus was on continued liberalization through successive multilateral rounds, arguably the majority of the WTO's activities have come to lay elsewhere: first, in implementing all of the agreements reached in the Uruguay Round, second, in monitoring compliance with the agreements through the TPRM (see above), and third, in resolving disputes between members (see Part Four below). This aspect of institutionalization of the international trading system has been a somewhat unintended consequence of the process of transformation that culminated in the establishment of the WTO. The assumption by many WTO member state governments and by the Secretariat that the multilateral liberalization process would continue as before, underpinned by the prevailing 'bicycle theory' of trade liberalization, was challenged for the first time by developing countries, which had different priorities. In particular they sought completion of the implementation of measures agreed in the Treaty of Marrakech that would bring them concrete benefits in the international trading system. This opposition, which delayed even the start of a new multilateral round for six years, was emblematic of the shift in the distribution of power toward developing countries that the WTO reflected (if not facilitated). Jones conceptualizes power, in the sense of being able to influence the outcomes of WTO negotiations, as derived from two primary sources: a nation's economic and political influence outside of the WTO and the size of the nation's import market.[173] The shift in power toward developing countries meant that the WTO's only multilateral round to date, the Doha Development Agenda, has at time of writing been extended indefinitely from its 2001 launch with no clear prospect of conclusion. As such, it has become a study in how negotiating to a deadlock can be a marker of diplomatic success for actors that previously considered their interests to be ill-served by trade liberalization agreements reached under the GATT.

At the WTO's Singapore ministerial meeting in 1996, EU negotiators, with support from other industrialized countries, pressed for early talks

[173] Jones, *The Doha Blues*, p. 38.

on further liberalization in four issue areas of general concern to industrialized countries, which later became known as the 'Singapore issues': competition policy, investment, government procurement, and trade facilitation. They were countered by the first new alliance of developing countries, the Like Minded Group (LMG), a grouping led by India that increased to fourteen members by 2001. The LMG made specific demands for implementation of already agreed measures and proposed reforming the 'Green Room' method of drafting agendas and negotiating texts before they would be willing to consider a new multilateral round. As a diplomatic strategy to advance their objective of launching a new round, the traditional 'Quad' consultative grouping of industrial powers in the GATT and WTO (USA, EU, Japan, Canada) offered individual members of the LMG a mixture of carrots and sticks to create incentives for them to split from the group and back the new round. By 2001, when the Doha round was launched, only India remained in opposition. Yet the LMG's opposition was a harbinger of negotiating coalitions to come. The Quad's first attempt to launch the new round, at the WTO's Seattle ministerial meeting in November 1999, had met with failure.[174]

Seattle marked another significant evolution for the WTO as the institution for trade diplomacy. As a formally constituted institution with a membership of member states, the WTO had already been recognized as an actor on the diplomatic stage at a level considerably beyond that of the GATT Secretariat. The WTO arrived on the diplomatic stage at a moment in history in which diplomacy was changing through the engagement of non-state actors (global firms, civil society organizations, transnational organizations) with traditional governmental actors and through the rise in importance of bidirectional communication with the global public. At the Seattle ministerial, industrialized country ministers seeking to launch a new 'Millennium Round' were already opposed by developing countries. The clash manifested itself further in a contest over the succession to Renato Ruggiero, the WTO's first Director General. What ministers were unprepared for was tens of thousands of protesters against the WTO and the new contemplated round on the streets of Seattle. The protests were organized by CSOs, fresh off of their success the previous year in blocking the signing of an OECD-sponsored Multilateral Agreement on Investment, using the internet as a tool to mobilize transnational civil society opposition to the WTO's

[174] *Ibid.*, p. 39; Narlikar, *The World Trade Organization*, pp. 100–104.

agenda.[175] Leaving Seattle largely empty handed in the face of highly negative international publicity for the as yet young organization, the WTO Secretariat and representatives of the whole range of WTO members realized that they would have to take into account civil society actors to a much greater degree than previously and would also have to engage in much more effective diplomacy with the global public.

The next WTO ministerial conference took place at Doha, Qatar in November 2001 against a very different geopolitical and diplomatic backdrop from that of Seattle. In the aftermath of the 9/11 al-Qa'eda terror attacks on the United States, ministers felt a strong imperative to launch a new multilateral trade round both to help prevent the onset of a global recession that terrorists could claim as a 'victory' and to show international solidarity in the face of aggression by extremist non-state actors. The WTO Secretariat did a better job of preparing the agenda for the round than they had done prior to Seattle, but, notwithstanding the 9/11 imperative, the round was still launched in the face of broad opposition from developing countries. That ministers elected to name the round the 'Doha Development Agenda' is indicative of their improved efforts to communicate to the global public that the WTO is not a 'rich persons' club'. Nonetheless the extent of developing country opposition to the round even from the start conditioned the sort of diplomatic engagement that delegates would face as they began negotiations.

The course of the Doha round between its launch in 2001 and early 2015 has not been unlike those of earlier GATT rounds: periods of intensive negotiation leading up to ministerial meetings, at which attempts are made to consolidate interim achievements. Impasses on particular issues have been surmounted, in some cases, by interventions by WTO Directors General. As the round has neither been concluded nor definitively abandoned, its diplomatic history as such cannot yet be written. However, after running for over thirteen years and counting, more than half again as long as the Uruguay Round, the round is widely perceived as having reached a sort of structural deadlock between industrialized and developing countries. The nature of and reasons for the deadlock can be found in how the WTO functions as an institution and how its membership negotiates within it. Developing countries as a group scored a significant early victory on one of their highest priority items at the Doha ministerial even before the round's negotiations got underway by using public diplomacy effectively and by cooperating with CSOs. South Africa and other African representatives persuaded delegates to

[175] Narlikar, *The World Trade Organization*, pp. 100–101.

sign the Declaration on Trade Related Intellectual Property Measures (TRIPS) and Public Health, which enabled developing country governments to force compulsory licensing of pharmaceutical patents and engage in parallel imports of drugs during public health emergencies. This addressed the HIV/AIDS pandemic, particularly virulent in sub-Saharan Africa, by loosening pharmaceutical patent protection enough to allow governments access to affordable supplies of anti-retroviral medications.[176] Yet once issue-specific negotiating sub-committees were organized (agriculture, non-agricultural market access (NAMA), services, rules, trade and environment, denominations of origin for wine and spirits, dispute settlement reform) and the talks got underway, positions rapidly became more entrenched, and there was little room for manoeuvre.

In contrast to the emphasis in the Tokyo and Uruguay Rounds that industrialized countries had placed on the temporary nature of S&DT for developing countries and the importance of their taking on fuller obligations of the GATT and WTO as early as they were able to do, developing countries were able to insist at the Doha Declaration on re-enshrining S&DT as a fundamental principle of a new multilateral agreement. Intent on using their greater power to achieve that objective once negotiations began, developing countries learned from the experience of the Like Minded Group having been bought off one by one in the run up to Doha. Hence after Doha they began to organize in negotiating coalitions differently to prevent a repeat of the unpicking of the LMG. A series of new negotiating coalitions of developing countries emerged, in some cases specific to particular issues, in others specific to broader negotiating stances at ministerial meetings. In these new coalitions, significantly, larger and wealthier developing countries such as Brazil, India, South Africa, and Mexico, decided that it was in their interest not only to cooperate with one another more systematically than they had done in the past, but also to represent the interests of larger groupings of smaller and poorer developing countries even when their interests were not perfectly aligned.[177] At the September 2003 Cancún ministerial meeting a negotiating group known as the G20 (not to be confused with

[176] Jones, *The Doha Blues*, p. 39; Narlikar, *The World Trade Organization*, pp. 105–107; Doha WTO Ministerial 2001, Declaration on the TRIPS agreement and public health, 14 November 2001, http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm, accessed 3 March 2014.

[177] Wilkinson, *What's Wrong With the WTO and How to Fix It,* pp. 73–75.

the G20 forum of industrialized and big emerging economies that holds semi-annual economic summits), comprised mostly of middle income countries led by Brazil, India, South Africa, and China proposed a draft text on agriculture to counter a joint EU-US draft proposal. Efforts by industrialized countries to buy off G20 members and an attempt by the chair to advance a compromise draft bore no fruit. Against USA and EU predictions of traditional developing country negotiating weakness, the G20 stood their ground, which contributed in large part to the Cancún ministerial's failure to make any significant progress and set a pattern for subsequent Doha round ministerial conferences.[178] Additional negotiating groups that played parts at the Cancún talks were the ACP, the African Group, the Core Group on the Singapore issues, the G90 of least developed economies, and the G33 on Special Products and Special Safeguard Mechanisms.[179] Another major coalition of developing countries with significant manufacturing industries, the NAMA-11, took a similar coordinated position on non-agricultural market access beginning at the 2005 Hong Kong ministerial conference. The NAMA-11, led by South Africa, sought greater policy space and flexibility in the NAMA liberalization disciplines to safeguard their industrial production against import surges.

Another developing country coalition in the Doha round, the Cotton Four (C4), has also proven effective at advancing its agenda of opening industrialized country markets to its members' cotton exports against even greater odds. Composed of four small, least developed countries (LDCs) in West Africa, Benin, Burkina Faso, Chad, and Mali, the Cotton Four succeeded in elevating cotton to a central position within the agricultural trade agenda and publicizing in particular how US domestic production subsidies for cotton put downward pressure on world market prices. States that are both small and poor face enormous technical challenges achieving objectives diplomatically at the WTO owing to their limited human and financial resources, even when they are able to pool resources. The C4 have worked cooperatively with other coalitions, such as the African Group. Even more significant, the Cotton Four have worked cooperatively with CSOs such as Oxfam in organizing public

[178] Narlikar, *The World Trade Organization*, pp. 110–112; Amrita Narlikar and Pieter Van Houten, 'Know the enemy: uncertainty and deadlock in the WTO', pp. 142–163 in Narlikar, Amrita, ed., *Deadlocks in multilateral negotiations: causes and solutions*, Cambridge: Cambridge University Press, 2010, pp. 153–154.
[179] Narlikar and Van Houten, 'Know the enemy: uncertainty and deadlock in the WTO', p. 152.

diplomacy campaigns and direct lobbying of domestic political interest groups in the United States. The C4 have made a persuasive political case in the USA based around the opportunity that freer markets, rather than foreign aid or other forms of S&DT, would offer them, as the most competitive cotton producers in the world, to develop economically. Two members of the group secured seats on the Agriculture Negotiating Committee, further increasing their leverage in the negotiations.[180]

The emergence of new developing country negotiating coalitions as the round proceeded had a significant impact upon the effectiveness, and thus the purpose for maintaining, the traditional 'Quad' grouping of industrialized countries: the EU, United States, Canada and Japan. Like the G20 and other developing country coalitions, the Quad was an alliance of convenience, as during GATT rounds often the USA and EU were on opposite sides of major issues. The EU and USA again found themselves on opposing sides over agricultural subsidies in the Doha round in 2006.[181] Yet to secure agreement to proceed in rounds prior to Doha, agreement of the Quad was usually necessary and often sufficient. But in the various negotiating cycles of the Doha round, the old Quad tended to be superseded by new negotiating groups of large states that joined the USA and EU, always including big emerging markets Brazil and India, plus varying combinations of Japan, China, and commodity-rich Australia (sometimes dubbed the G4/G5/G6/G7 as appropriate). These gatherings served as venues for representatives of different groupings of interests to attempt to reach bargains that could advance negotiations over particular issues or facilitate the making of tradeoffs across issue areas.[182] They were significant in that they replaced older structures in which the most influential industrialized countries met amongst themselves to resolve disagreements with new structures in which the most influential industrial and developing countries met together. This did pose an element of risk for the likes of Brazil, India, China and South Africa of being susceptible to being bought off by the EU, USA, Australia and Japan. Even in the event of that not happening,

[180] Donna Lee, 'Bringing an Elephant into the Room: Small African State Diplomacy in the WTO', pp. 195–206 in Andrew F. Cooper and Timothy M. Shaw, *The Diplomacies of Small States*, Basingstoke: Palgrave Macmillan, 2012.
[181] Narlikar and Van Houten, 'Know the enemy: uncertainty and deadlock in the WTO', p. 157.
[182] Vickers, Brendan, 'The Role of the BRICS in the WTO: System-Supporters or Change Agents in Multilateral Trade?', pp. 254–274 in Narlikar, Amrita, Martin Daunton and Robert M. Stern, *The Oxford Handbook on the World Trade Organization*, Oxford: Oxford University Press, 2012, pp. 260–267.

they might come to be perceived as less credible representatives of broader groups of developing countries by virtue of their participating in small group meetings with the industrialized powers. In the event, neither has occurred, despite efforts by the industrialized members at the G6 grouping meeting in 2006 to persuade Brazil and India to press the G20 for concessions on agriculture.[183] This is indicative both of the enhanced power of the big emerging markets states and of their continuing perception that representing broader coalitions of developing countries now serves their interests.

The result of the emergence of developing country coalitions and the shifts in membership of large country negotiating groups has not been to swing negotiating outcomes in favour of developing countries. Rather, the negotiations have now reached a position of persisting deadlock, wherein developing countries have more ambitious agendas and industrialized countries no longer have the leverage to convince developing countries to make sufficient concessions. Yet neither do developing countries have the leverage to secure from industrialized countries the concessions they now require or to shape the agenda proactively.[184] Different explanations have been advanced to explain the persisting pattern of deadlock in the Doha round. One, advanced by Narlikar and Van Houten, argues that industrialized countries have not been able to adjust their understanding of how developing countries have changed their preferences and negotiating strategies in multilateral rounds. Long familiar with public claims of developing country solidarity that rapidly broke down in the face of deals offered in one on one negotiations, representatives of industrialized countries have been unable to discern the impact of developing countries' formation of new negotiating coalitions upon their willingness to make deals and on what terms. Narlikar and Van Houten attribute this to the difficulty that the new developing country coalitions have in signalling credibly their willingness to reach agreement through such means as cross-issue tradeoffs, which are inherently more difficult when coalitions focus on single issue agendas. Another explanation for deadlock has been declining perceptions of the value of a potential Doha agreement relative to what theorists call BATNA: the best alternative to a negotiated agreement. More and more nations, industrialized and developing countries alike, have been signing regional, plurilateral and bilateral trade agreements even as they

[183] Narlikar and Van Houten, 'Know the Enemy: Uncertainty and Deadlock in the WTO', p. 157.
[184] Interview with Brendan Vickers, June 2014.

have participated in the GATT/WTO multilateral process (see below). As they do so, they have come to view the need to make significant concessions in a multilateral round as progressively less urgent or even attractive. Negotiating PTAs has opportunity costs, Jones argues, in that it draws diplomatic resources away from multilateral negotiations.[185] Yet, as Narlikar and Van Houten suggest, the persisting deadlock in the Doha round has been a motivation for as well as a result of the drive to sign alternative accords.[186] A third possibility that increases with each year that the Doha round remains incomplete is also a form of BATNA: that big emerging economies such as Brazil are learning to use the dispute settlement process effectively for advancing their particular trade policy objectives. China is learning rapidly from Brazil's experience, and each year an increasing number of developing countries make use of the dispute settlement procedure. Even a modest measure of success in the Dispute Settlement Body may reduce incentives to reach a multilateral agreement (see Part Four below).

27 Institutionalizing trade diplomacy through regional and plurilateral agreements

Regional and plurilateral trade agreements create tariff and other trade preferences between adjoining or in some cases more distant countries. Although any form of differential trade liberalization was hard fought against by the United States in the original GATT negotiations, negotiators in Geneva in 1947 agreed to make customs unions and free trade areas permissible under GATT Article XXIV, provided that they encompassed the majority of traded goods, that the adjusted tariffs did not exceed prior tariff levels of the participating countries, and that they were completed within a reasonable amount of time. In the context of the Cold War security rivalry, support of the USA and Canada for European integration through the EEC rapidly legitimated regional integration as a practice. Developing countries as they became independent sought a range of trade advantages to stimulate development, including the right to form regional trading bodies as well as tariff preferences from industrialized nations. In the event, trade volumes between developing countries in their early years of independence remained so low that there was relatively little incentive to form regional institutions.

[185] Jones, *The Doha Blues*, pp. 187–188.
[186] Narlikar and Van Houten, 'Know the enemy: uncertainty and deadlock in the WTO', pp. 158–160.

Not until the 1980s did regional agreements begin to proliferate. In this period governments began to shift their diplomatic strategies for seeking market access for their exports whilst at the same time continuing to shield markets of their own that they wished to protect. By signing free trade agreements with Israel and Canada, then expanding CUSTA to include Mexico in the North American Free Trade Agreement (NAFTA) and leading the Pacific Rim nations in signing the APEC agreement, all between 1985 and 1993, the United States sent a powerful signal both to the EU and to developing countries that the 'both-and' strategy of multilateral and regional or plurilateral diplomacy was the new normal. The EU, having been the first major adopter of this strategy, could hardly argue and rapidly began signing free trade agreements with new partners of their own.

The wide range of types of regional, plurilateral and bilateral trade agreements creates significantly different levels of institutional authority. The European Union is by far the most highly institutionalized of regional agreements (see below). Some regional bodies, such as ECOWAS, ASEAN and MERCOSUR, have secretariats, administrative organs for their dispute settlement mechanisms, and other permanent institutional structures. By contrast, many bilateral agreements in particular are self-executing, much like traditional bilateral trade agreements of the nineteenth century. But even some bilateral agreements that create no other significant institutional structures have their own dispute settlement mechanisms, which may have a significant impact upon trade diplomacy between the two signatory countries (see Part Four below). Plurilateral agreements have tended to be motivated by different sets of diplomatic objectives, some more closely related to trade than others. The African, Caribbean, and Pacific (ACP) Group of States, an inter-regional grouping initially of former colonies of European countries, organized themselves initially in a formal sense at Georgetown, Guyana in 1975 to negotiate with the EEC over unilateral trade preferences extended by the EEC to former colonies under a series of fixed term agreements signed at Yaoundé, Lomé and Cotonou. Since 2007 the structure of the unilateral trade preference agreements has now been changed into the form of EU 'Economic Partnership Agreements' with smaller subsets of ACP members in order to meet newer WTO requirements. Yet the organization has expanded its membership to 79 at time of writing, including additional developing countries such as Cuba. ACP objectives include sustainable development, trade and poverty reduction. Another plurilateral grouping, BRICS, was founded initially as BRIC by representatives of Brazil, Russia, India, and China on

the sidelines of the UN General Assembly meeting in 2006 as a consultative body of rapidly growing emerging economies that are also regional great powers. Representatives of the four nations began holding an annual summit to discuss issues of common concern, including trade, development and international finance. In 2010 they invited South Africa to become a member and created the BRICS Forum, an institution to coordinate BRICS cooperative endeavours. At the sixth BRICS summit in Fortaleza, Brazil in July 2014, BRICS leaders established the New Development Bank, the first developing country-controlled bank to fund international development projects.[187]

When a regional or plurilateral agreement creates an institution, the institution becomes at least to some degree another diplomatic actor, just as the GATT did over time and as the WTO did immediately upon its creation. When the institution is empowered to act as a diplomatic representative of its members, the member states must first go through the diplomatic process of setting trade policy objectives and priorities and of agreeing diplomatic strategy, tactics, boundaries and limits. Regional organizations engage in diplomacy with other regional organizations, sometimes resulting in the signing of 'inter-regional' agreements such as the EEC/EC/EU-ACP Yaoundé, Lomé and Cotonou Agreements. The institutionalization of regional and plurilateral agreements has taken place in parallel with the foundation and growth of the GATT/WTO multilateral process of institution building. What has changed since the 1980s is that most nation state governments have shifted their positions from favouring participation in the GATT and at most one regional institution with a trade remit to seeking to sign as many different regional and plurilateral agreements as they find efficacious. This process has taken the form of a diplomatic competition of its own, in which winners and losers have emerged. An international trading environment has come about where a majority of countries now enjoy varying degrees of regional or plurilateral trade preferences that lower tariffs and non-tariff barriers below multilaterally agreed GATT/WTO levels. Bhagwati describes the contemporary situation as a 'spaghetti bowl' of overlapping and in some cases conflicting agreements.

States that for different reasons have failed to sign as many such agreements as their main competitors can find themselves substantially disadvantaged. Many of the newer PTAs do not in fact meet the GATT stipulation that they create more trade between the PTA and outsiders than they divert to trade between PTA members, according to Bhagwati.

[187] Vickers, 'The Role of the BRICS in the WTO'.

Moreover, in order for goods to be eligible for preferential tariff treatment within most PTAs they must conform to the PTA's rules of origin for their component parts. Hence an automobile manufactured in Mexico containing less than 62.5 percent of content by value manufactured within NAFTA may not be imported into the USA or Canada duty-free under NAFTA's rules of origin.[188] Each additional PTA that a state signs has an impact upon the rules of origin governing its trade within existing PTAs, rendering the calculation of percentages under rules of origin infinitely more complex. For example, an auto part produced in Australia that is used in an automobile assembled in Mexico would not count as a non-NAFTA part for purposes of calculating whether the auto is eligible to be imported into the USA duty free, because the USA and Australia also have a free trade agreement. But if the same part were manufactured in Belarus, it would count as a non-NAFTA part under NAFTA rules of origin.

Although trade liberalization through WTO-sponsored multilateral diplomacy may have lost momentum or even exhausted its potential, the institutionalization of trade diplomacy proceeds apace up to today through the development of existing and new regional and plurilateral arrangements. But the inefficiency of overlapping PTAs for trade liberalization that Bhagwati has identified in his spaghetti bowl argument is not a function of the institutionalization of these agreements. Rather, it is a weakness more analogous to the fatal flaw in the previous international trading system of burgeoning overlapping bilateral tariff treaties, wherein each additional treaty signed had an impact on existing treaty relations that the signatories already had with third countries (see above). Bhagwati acknowledges as much through his recommended solution to the problem, which is that WTO MFN tariffs need to be negotiated as close to zero as possible, which reduces the tariff preferences in PTAs accordingly close to nil.[189]

28 Regional and plurilateral institutions case study: the European Union

The European Union is a special case of institutionalization of trade diplomacy for several reasons. It is both the largest and the deepest

[188] Gary Clyde Hufbauer and Jeffrey J. Schott, *NAFTA; An Assessment*, Washington: Institute for International Economics, 1993, pp. 40–41.
[189] Jagdish Bhagwati, *Termites in the Trading System; How Preferential Agreements Undermine Free Trade*, Oxford: Oxford University Press, 2008, pp. 97–98.

such institution in the world today. From its inception with the Treaty of Rome in 1957, the institution as a whole and its component bodies were designed to be an integral part of the agreement between the initial six European nations (France, West Germany, Italy, the Netherlands, Belgium and Luxembourg) to integrate their economies rather than an add-on or a subsequent evolution dictated by need. Negotiators representing the six recognized the necessity to create an institutional venue for the ongoing diplomacy that would be required not only to implement the integration commitments enumerated in the Treaty of Rome but to drive the process of further integration mandated by the treaty's overarching objective of 'ever closer union'. Even the antecedents to the EEC, the European Coal and Steel Community (ECSC) and Euratom, were structured around supranational administrative institutions to manage the transnational pooling of productive capacity in the coal, steel and nuclear industries respectively.

The EEC was the first major GATT-legal regional trade agreement and as such legitimated the coexistence of regional and multilateral trade liberalization processes. Negotiations on European integration began almost immediately after the GATT was signed. As the extent of Europe's financial crisis became known and the need for what would become the $16 billion Marshall Plan for Europe's economic reconstruction became evident, the US government, with the support of Canada, not only promoted European integration for security and economic growth purposes but made integration a condition for extensive North American economic assistance. The initial diplomacy between European member states to negotiate the pooling of sovereignty, first in the ECSC and Euratom, took place even before full sovereignty had been restored to West Germany by the victorious World War II allied powers. US and UK officials viewed the combining of the core heavy industrial and energy industries of France and Germany as the only way to ensure that the two countries would not ultimately go to war in yet another repetition of the historical pattern of three such wars in seventy years. Hence with broad support from their North American allies and against a backdrop of rapid economic growth of the Soviet Union and their East European satellite states, West European leaders were encouraged to design an integration process and negotiate an integration treaty that would serve western Europe's economic and security objectives.

From the beginning, the institutional structure of the EEC and later the EU was both supranational and intergovernmental. Member states agreed in the treaty to pool sovereignty over some, but not all, areas of economic governance by transferring 'competence', in EU parlance,

to supranational European institutions to make decisions on their collective behalf. Initially, international trade was the most important of these 'competences'. In Article 113 of the Treaty of Rome signatories delegated authority to the European institutions to initiate and negotiate international trade agreements.[190] Over time, member states have transferred progressively more competences to the European institutions. However, in a number of economic areas such as competition policy and the regulation of numerous services, member states have elected explicitly to retained shared competence with the EU. This hybrid of intergovernmentalism and supranationalism can be understood to be a direct result of the fact that European integration is a product of diplomatic negotiation between sovereign states, not a result of a political process of state formation by a people or peoples following a revolution or decolonization, for example.

The EU's own tripartite structure of governmental bodies reflects the hybrid intergovernmental-supranational model. The European Council is an inherently intergovernmental body, a diplomatic venue in which representatives of each member state (who can be in the person of the head of government, foreign minister or any cabinet minister when the relevant issue is being debated) cast a vote representing the interests of their home country. On some issues, voting is conducted by qualified majority, under which the votes of more populous states receive greater weight than those of smaller members. Hence the diplomacy between member state governments surrounding decision making on major issues takes place within the framework of the Council. The European Commission, the EU's supranational organ, is tasked with proposing legislation and regulations and, once they have been approved, with implementing and monitoring EU law and directives. The European Parliament, granted the power to review and to vote on legislation alongside the Council, is more supranational than intergovernmental, in the sense that voters elect its members from constituencies independent of national parliaments. Once elected, members of the European Parliament engage in their own political process of forming pan-European political party blocs, which is also diplomatic by virtue of its cross-border nature.

Diplomacy at the European Union, with respect to trade as much as other issues, is further complicated by the fact that member states must

[190] Chad Damro, 'EU Delegation and Agency in International Trade Negotiations: A Cautionary Comparison', *Journal of Common Market Studies*, Vol. 45, No. 4, 2007, pp. 883–903.

engage in diplomacy with the EU as an institution in addition to engaging diplomatically with one another at the EU. The EU has evolved a greater degree of diplomatic 'actor-ness' than arguably any other non-state actor. Hence member states maintain Permanent Representations in Brussels, the functional analogues of embassies and high commissions, headed by Permanent Representatives (akin to ambassadors) and staffed by representatives from numerous member state government departments, including departments of trade and industry, agriculture, and competition. When trade issues are in contention, this multilevel diplomacy becomes particularly important when competences are shared between the EU and member states on particular trade-related issues such as competition.

The EU has gone farther than other regional agreements in its evolution of a system of three-level trade diplomacy. Whilst in some respects this three-level game resembles the more familiar two-level game in which most national governments must engage with domestic interest groups and with external diplomatic interlocutors at the same time, it is significantly more complex. At the lowest level, within each member state a policy making process operates in which domestic interests are articulated and mediated through the national government. Once national governments have formed their own policy preferences across the ever broadening range of issues that affect international trade, they must then engage in diplomacy between all the member states to formulate EU trade policy. Once EU trade policy is formulated, the European Commission must engage diplomatically on behalf of the EU as a single actor with external actors, whether bilaterally, interregionally or multilaterally in the context of the GATT and WTO. This process confirms the argument made by scholars of contemporary diplomatic studies that the traditional primacy of nation state actors has become less significant, at least to the extent that intra-EU diplomacy resembles in some respects the 'domestic' side of trade policy making in other states.

The EU's uniqueness as a trade policy actor suggests that it is likely to be a different sort of diplomatic actor on trade issues from other states. The EU process of making trade policy differs dramatically from analogous processes in the United States, China or Brazil, because it is an inherently diplomatic process. The member states retain their essential sovereignty, even as they pool aspects of it within the EU. In some issue areas that are now defined as 'trade related' and subject to negotiation under the auspices of the WTO, EU member states have not thus far pooled their sovereignty. Hence member state governments

participate in WTO negotiations alongside EU delegates. Until the Treaty of Nice was signed in 2003, the EU and member states shared 'mixed' competence with respect to numerous services sectors and intellectual property rights, so when those issues were discussed at the WTO, representatives of member states sat alongside representatives of the Commission. The Treaty of Nice, whilst increasing the EU's exclusive competence over some areas, still maintained mixed competence over cultural, audiovisual, education, health and social services.[191]

The actual process of conducting EU trade diplomacy on behalf of its members, where the EU is granted competence, can be understood as a 'principal-agent' relationship wherein the member states are the principals and the European institutions act as their agents. Acting upon the recommendation of the European Commission, representatives of member states, by voting in the European Council, authorize the Commission to engage in external trade negotiations. In the course of negotiations, the Commission receives ongoing advice by a Council committee known as the 113 Committee (referring to Article 113 of the Treaty of Rome). The 113 Committee, which meets weekly in Brussels, is made up of trade experts from the member states. The Commission uses the 113 Committee as the most direct means to seek approval of the member states for negotiating positions that they take. The Commission is also obliged to abide by directives of the Council as a whole, which govern issues such as the scope for negotiations and the time available for negotiations. Council-mandated time limits on negotiations tend to constrain the Commission to keep within the Council's mandate for negotiating. The Commission is given an incentive to keep within the mandate and anticipate the preferences of the member states, lest future mandates granted be narrower and more constraining.[192] Once the Commission has signed an international trade agreement, the Council must approve it.[193] Coalitions of member states within the Council are known to shift according to the particular trade issue under consideration. The European Parliament takes positions on major negotiations as well, which the Commission takes into account.[194]

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[191] Andreas Dür and Hubert Zimmermann, 'Introduction: The EU in International Trade Negotiations', *Journal of Common Market Studies*, Vol. 45, No. 4, 2007, pp. 771–787.
[192] Damro, 'EU Delegation and Agency in International Trade Negotiations', p. 897.
[193] *Ibid.*, pp. 893–894.
[194] Dür and Zimmermann, 'The EU in International Trade Negotiations', pp. 774–775.

Within the European Commission, positions taken in trade negotiations are shaped by the varying institutional preferences of the different Directorates General (DGs) involved with trade issues and in some cases by the nationality of a particular Commissioner.[195] DG Trade takes the lead in trade negotiations, but DG Agriculture, DG Development, DG Competition and other DGs all have a stake. DG Development tends to take stances on issues that promote economic development, whilst DG Agriculture tends to take protectionist stances in defence of provisions of the Common Agricultural Policy that benefit its primary constituency, European farmers. Tensions have often erupted between the more pro-trade DG Trade and DG Agriculture. The EU Trade Commissioner, as head of DG Trade, regularly consults directly with senior officials of member state governments to secure their political backing and to resolve disputes, as when Trade Commissioner Peter Mandelson met with French Prime Minister Dominique de Villepin, as well as France's foreign minister and agriculture minister in January 2007.[196]

Through its diplomatic-political process, the EU has had to address a wide range of issues in the course of its quest to create a single European market that are equally relevant in the context of GATT-WTO multilateral trade rounds. For the EU, as is coming to be the case for the GATT and WTO, tariff cutting was the easiest part of trade liberalization. They encountered far greater challenges in lowering 'behind the border' measures such as professional standards, health and safety standards, technical standards for products, and regulations concerning competition, labour and the environment, which member states had long used as barriers to keep out competition from foreign firms, products and services. The EU tackled this thorny task through the approach of mutual recognition of standards, a principle wherein each member state recognizes that standards applied in fellow member states should be recognized as equally valid in other member states in which those firms wish to do business. A debate had emerged within the EU over whether states needed to harmonize all of their regulatory structures and codes to achieve a single market or whether competition between different regulatory systems through mutual recognition might not only achieve a single market but encourage the best regulatory structures used within the EU to prevail over time. The European's Commission's natural inclination has been to promote regulatory harmonization as its

[195] *Ibid*.
[196] Damro, 'EU Delegation and Agency in International Trade Negotiations', p. 896.

preferred approach, which is unsurprising given that greater harmonization concentrates more power in the Commission through the issuance and enforcement of more directives. Yet the farther the Commission's push for harmonization proceeded, the more resistance it encountered from member state governments. Hence the Commission's attempt in the 1970s and 1980s to harmonize regulation of services was largely unsuccessful.[197] Adoption by member states of mutual recognition of standards, subject to certain limited baseline conditions, was mandated in a huge series of internal market directives issued by the Commission in the 1980s. The 2006 Services Directive, by enshrining mutual recognition of standards in provision of services, took a position that regulatory competition was at least as valid an approach as harmonization. Messerlin argues that by developing mutual recognition of standards, the EU contributed a uniquely useful set of tools to trade diplomacy than can be applied in the WTO or inter-regional setting to lowering trade barriers in challenging areas such as services and technical barriers to trade (TBT) (customs valuation procedures, etc.).[198]

Regulatory coöperation as opposed to harmonization comports well with Sharp's notion of diplomacy as relations of separateness, of two or more actors negotiating ways to live with their differences. By institutionalizing regulatory coöperation as an alternative to regulatory harmonization in pursuit of their single market objectives, the EU has created a model for addressing behind the border trade and trade-related issues that can be applied in other venues for trade diplomacy. This institutionalization of regulatory coöperation would not have been possible in the EU had it not been for the rôle of the European Court of Justice (ECJ), which under the treaties governing European integration is granted the power of judicial review of EU-level and member state legislation. The Treaty of Rome specifically granted to the ECJ broad powers to interpret the language of the treaty. For example, the treaty's ban on quantitative restrictions on imports and on export restrictions also prohibits 'equivalent measures' thereto. Hence in the 1979 Cassis de Dijon ruling, the ECJ interpreted the treaty's 'measures having equivalent effect' to rule in favour of regulatory competition between member states.[199]

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[197] Patrick A. Messerlin, 'The Influence of the EU in the World Trade System', pp. 505–549 in Amrita Narlikar, Martin Daunton and Robert M. Stern, eds., *The Oxford Handbook on the World Trade Organization*, Oxford: Oxford University Press, 2012.

[198] Messerlin, 'The Influence of the EU in the World Trade System'.

[199] *Ibid*.

Overall, the EU as a diplomatic actor is limited in the extent to which it can exercise leadership in trade diplomacy with the rest of the world because of the extent to which they must focus on securing internal coordination of their trade policies. EU interests in trade are heterogeneous, in some respects more so than what is generally found within other major nation-state actors. And as the process of reaching agreement is diplomatic rather than political in the domestic sense, it is more complex and demanding. That said, the EU has been effective in negotiating major trade-related deals: for example, getting Russia to agree to ratify the Kyoto Protocol in return for backing Russia's bid for membership in the WTO.[200] Other nations, such as Australia and New Zealand, have adopted EU approaches to behind the border trade issues, such as general mutual recognition of standards with a 'negative list' of exceptions presented.[201] At the end of the day, the EU's institutionalization of trade diplomacy goes one step beyond the model of institutionalization adopted in the GATT and WTO. The EU's uniquely structured diplomatic model of governance is reasonably well tailored to achieving its primary mission of creating a single internal market whilst respecting the persisting sovereignty of its member states. As such, the EU may serve in due course as a model for overcoming the limitations of both institutionalized and judicialized trade diplomacy witnessed in the WTO's current challenges, as Part Five of this book considers.

29 Limitations and weaknesses of trade diplomacy institutionalization

As the institutionalization of trade diplomacy has proceeded, both multilaterally through the GATT and WTO and through regional and plurilateral agreements, trade diplomacy has once again become more difficult, as it did when bilateral agreements were the norm. Institutionalized trade diplomacy has encountered particular weaknesses springing from the nature of institutions. These weaknesses have manifested themselves as limitations upon what trade diplomacy within institutions such as the WTO can achieve. To start, the club of members in the GATT and WTO has become much larger and less like minded over the more than six decades of GATT-WTO operation. This has made the range of WTO members' interests significantly more diverse than it was when 23 countries signed the GATT in 1947. Equally

[200] Dür and Zimmermann, 'The EU in International Trade Negotiations'.
[201] Messerlin, 'The Influence of the EU in the World Trade System'.

significant, power in the global economy is now distributed in a much more diffuse way than it was at the end of World War II. Power has been redistributed amongst older industrial economies toward commodities giants like Australia, new 'Great Powers' such as China, Brazil and India have arisen, an old Great Power, Russia, has returned to the international economy and to trade diplomacy by joining the WTO, and a wave of emerging powers such as South Africa, Mexico, Indonesia and Nigeria has crashed the historically small party around the GATT negotiating table. Thus the structure and organization of negotiations and the prospects for reaching agreements have become notably more difficult. The ability of developing countries to form groups and alliances, both within the structure of WTO rounds, such as the WTO-G20, NAMA-11 and Like Minded Group, and outside of the WTO, such as ASEAN, MERCOSUR and BRICS, has made it more difficult for WTO members to reach broad, comprehensive multilateral trade agreements.

The second major limitation is the growing complexity of international trade and trade diplomacy. More and more economic and social issues have been considered to fall potentially under the ambit of international trade. As noted above, in the 1960s the GATT began to undertake to lower non-tariff barriers to trade, a set of economic restrictions much more complex than tariff schedules. In the 1980s, the selling of services across borders was consciously redefined as an international trade issue. Regulations governing foreign investment, intellectual property protection, environmental protection, labour conditions, food and industrial workplace safety have all come to be defined as trade-related issues, in what Bhagwati fears as an ever-expanding 'trade plus' agenda. [202] This has made trade negotiations under the auspices of the GATT, WTO and regional and plurilateral institutions exponentially more complex. The process of negotiating tradeoffs between concessions has become much more difficult, in part because it has become more difficult for trade diplomats to gauge the value to their affected constituents of a concession to be traded in a given negotiating situation. Valuations of such complex tradeoffs of concessions are also likely to be inherently more contested. This has led to the inevitable result that multilateral negotiating rounds, which became progressively longer and harder to negotiate during the GATT years, have become even more challenging under the WTO, with the Doha Development Agenda still unfinished at fourteen years and counting at time of writing. An additional limitation, as the number and interests of actors

[202] Bhagwati, *Termites in the Trading System*, pp. 71–81.

grow and diverge and the range of issues to be negotiated expands, has been the rise of BATNA for the Doha round in the view of many governments. More attractive BATNA has evolved in part because of the profusion of regional and plurilateral agreements and institutions, which open alternate routes for governments to achieve trade policy objectives. Hence in this regard, institutionalization of trade diplomacy, by proliferating, may be a victim of its own success. Institutional proliferation, indicative of and at the same time a cause of the increasing inability of GATT/WTO multilateral rounds to achieve trade liberalization gains, has contributed to the need to develop other means of trade diplomacy. The next transformation in trade diplomacy, judicialization, is a response to that need.

Part Four
Judicialization: The Third Transformation

30 Introduction: trade policy and diplomacy through judicial processes

At the core of the third transformation in international trade diplomacy is the rise to prominence since the 1990s of essentially judicial mechanisms and procedures for resolving trade disputes. As more traditional diplomatic approaches to negotiating and enforcing trade agreements have yielded progressively less fruit over the past two decades, judicial mechanisms increasingly are coming to substitute for traditional diplomacy, perhaps if only by default. Judicial processes have become much more important not just for resolving trade disputes, but in advancing trade coöperation. Judicialization initially appears to focus diplomacy on smaller, narrower objectives: bringing a complaint against another government for depriving one of benefits from trade due under an international agreement, negotiating a resolution, winning the adjudication of a particular dispute. But it is genuinely different diplomacy, in that governments can no longer opt out if they dislike a ruling. Unlike in bilateral or multilateral negotiations, there is not the option of a BATNA, no real choice to withdraw from negotiations. Thus judicialized trade diplomacy, like more traditional types, can be either positive-sum or adversarial, but in a different way. Both sides in a dispute are compelled to negotiate, to accept judgements, to implement rulings. There is an arbitration element present in which the judicial process, whilst not substituting for the essentially diplomatic nature of the interaction between states, has become a permanent part of negotiation.

The original model for the judicial approach to trade dispute resolution was introduced by the European Economic Community in the 1950s, but the 1947 GATT's somewhat ineffectual dispute settlement

mechanism would form the basis of a reformed and strengthened WTO Dispute Settlement Understanding that has begun to transform trade diplomacy since the 1990s. The European Union's supranational European Court of Justice (ECJ), originating in the European Coal and Steel Community in 1952, established a binding legal mechanism for resolving trade disputes between EU member states. The ECJ, by coming to serve as a backstop in the event that conventional diplomatic negotiation between member states failed, presaged the WTO's approach to dispute resolution. The coming into force of the World Trade Organization's new, upgraded Dispute Settlement Understanding (DSU) in 1995, foreshadowed by the implementation of the North American Free Trade Agreement's (NAFTA) trilateral dispute settlement body a year earlier, resulted in the establishment of institutional procedures for resolving trade conflicts. The NAFTA and WTO judicial mechanisms have broad powers to override the domestic legislation of WTO and NAFTA member states.

An increasing number of other regional and plurilateral trade agreements now contain their own dispute resolution mechanisms. At its inception in 1994, NAFTA created a dispute resolution mechanism overseen by a tri-national NAFTA Secretariat, itself modelled on a bi-national model introduced in the 1988 Canada-US Trade Agreement. In 2002 members of MERCOSUR signed the Protocol of Olivos, which created a dispute resolution mechanism to which trade disputes may be submitted.[1] Not only do the EU, NAFTA, MERCOSUR and other regional agreements contain judicial mechanisms for resolving trade disputes, but a significant number of bilateral trade agreements contain such mechanisms as well.[2] These dispute settlement procedures, whilst they may not transform the nature of international law in itself to the extent of creating a supranational policing and judicial power, make it significantly more difficult for many of the states in the international trading system to avoid the consequences of not complying with agreed international trade rules by offering adversely affected states formal recourse against them. The decisions of NAFTA's dispute settlement body supervene over contrary legislative and administrative rulings within the

[1] Protocolo de Olivos para la Soluccion de Controversias en el Mercosur, http://www.mercosur.int/innovaportal/file/722/1/cmc_2002_protocolo_de_olivos_es.pdf, accessed 31 October 2013.

[2] Peter Drahos, 'Weaving Webs of Influence: The United States, Free Trade Agreements and Dispute Resolution', *Journal of World Trade*, Vol. 41, No. 1, 2007, p. 192.

three NAFTA member states. WTO Appellate Body decisions, whilst not similarly self-executing, empower states harmed by non-enforcement of a decision to demand concessions of equivalent value by the violator. In the absence of such concessions, the injured party may retaliate by withdrawing existing trade concessions in proportion to the harm caused.

The transformation in trade diplomacy that the functioning of these dispute resolution mechanisms has triggered is evident on several levels. Procedures for resolving trade disputes have become governed by a transparent set of rules to a much greater degree. This does not mean that the diplomatic communication and negotiating skills required to negotiate a trade agreement, either within an institutional context or outside of one, have become less important. It does mean, however, that the ways in which information is presented and evaluated in disputes, and the ways in which judgements are reached, have been assimilated to the sorts of judicial procedure with which practitioners of civil law in many countries are familiar. Professionals with legal training have become much more integral to the process. At the same time, as the GATT's established practice of diplomacy conducted through multilateral trade liberalization rounds has gradually become incapacitated through the members' failure to reach agreement in the WTO's Doha Development Agenda over fourteen years (at time of writing), the locus of the diplomacy for revising, updating and altering international trade rules has itself shifted progressively toward the dispute settlement mechanisms.

This transformation raises several important concerns for trade diplomacy going forward. First, the acceleration and increased enforceability of the dispute resolution process mandated by the Treaty of Marrakech has made the process fairer to developing countries formally, but less so in practice. At the same time the judicialization of the process has imposed new costs on smaller and poorer states that act as a disincentive for them to use the process. Second, the language of the Treaty of Marrakech structuring the WTO Dispute Settlement Understanding did not envisage that WTO trade law would be made by judicial precedent, in the way that lawyers arguing cases in common law judicial systems cite past judgements to validate their own legal arguments. The amended GATT, GATS, TRIPS, Subsidies and Countervailing Measures and related agreements adopted under the Treaty of Marrakech were envisaged as sufficiently detailed in their enumeration of the rules for international trade that a *code civil* or Roman Law approach of reference to published rules alone was intended to become the legal norm in trade dispute resolution. Yet in practice, *stare decisis*, the use of judicial

precedents by jurists in ruling on disputes, has become commonplace. This has resulted in wealthy nations with access to the most skilled practitioners of international trade law extending the advantages they already possess in trade disputes with poorer or smaller adversaries. It also in effect empowers jurists sitting on panels, in particular the professional jurists on the Appellate Body, in effect to 'legislate from the bench' in the absence of a different diplomatic and political forum for addressing uncertain and contested issues within a reasonable time frame. This has had a profound impact upon the diplomatic strategies of governments and non-state actors in seeking to advance their interests with respect to international trade. The effects of this process are only beginning to be felt. Governments are learning gradually how to use judicial procedures for trade dispute resolution to amend the multilateral trading system rules to reflect the real redistribution of political and economic power that has occurred in the world since the end of the Cold War. The fact that now most states are now members of the WTO explains why the WTO's dispute settlement system has facilitated diplomacy in a changed international system. This was not the case for a long period under the GATT.

31 The WTO's stepped up Dispute Settlement Understanding

One of the most significant transformations for trade diplomacy that the coming into force of the WTO DSU occasioned is the breaking down of the former separation between judicial processes for trade dispute resolution and the more traditional aspects of trade diplomacy: bilateral and multilateral consultations, negotiation of agreements, monitoring of implementation. Under the 1947 GATT's weaker dispute settlement mechanism, governments could choose whether or not to implement rulings of the Dispute Settlement Body or even to allow the DSB to appoint a panel to investigate a dispute. Hence disputes tended to fall into one of two categories. Those that were not fundamentally contested were adjudicated in a more narrowly juridical frame, under which the loser accepted and implemented the ruling. The disputes that the parties contested more fundamentally in a political sense often did not even make it to panels for adjudication, but rather were referred immediately back to trade ministers to be negotiated bilaterally through traditional bilateral diplomatic consultations. Under the WTO, the entire dispute settlement process functions as a structure for the diplomatic negotiation and resolution of even the thorniest,

most contested issues in international trade. Each discrete stage of the process provides a distinct opportunity for the interested parties to negotiate and resolve the dispute, if they wish to do so. One country's government brings a complaint to the WTO against another country. Consultations and, if both sides are willing, negotiations take place between the complainant and respondent (and other interested parties). Arbitration is also an option to which both sides can agree, even if they rarely do so. If the dispute cannot be resolved through consultation or arbitration, the DSB refers it to a panel, which conducts an investigation and issues a report to the DSB, which in turn makes its ruling based on the panel report.



Statues representing peace and justice, World Trade Organization, Geneva

Photo: © Pierre-Yves Dhinaut.

At that stage, the parties may accept and implement the ruling. If either country is unwilling to accept the report, they may appeal the ruling to a seven-person Appellate Body newly created in the WTO DSU. The Appellate Body is tasked with reviewing the application of the relevant WTO texts and international law in the ruling. The creation of the Appellate Body has had a substantial transformative effect

upon the dispute settlement process. Members of the Appellate Body are nominated by a DSB selection committee from amongst experts in trade and international law and approved by the full DSB to serve four year terms, renewable once. Hence the Appellate Body is more akin to a sitting court, as opposed to panels, which are appointed by the DSB on an *ad hoc* basis. Once the Appellate Body issues its finding to the DSB, the DSB almost always rules in accordance with the finding. The DSB's ruling then takes effect barring unanimous opposition of the parties to the dispute (see below). Further consultations may then take place over the time permitted for implementation of the ruling. If the respondent wishes instead to offer compensation to the complainant of equivalent value to trade lost as a result of the offending trade measure, they may consult over appropriate compensation. If timely implementation or compensation is not forthcoming, the DSB may consult over proportional retaliation (withdrawal of concessions granted to the respondent). Significantly, retaliation, when granted, is granted prospectively rather than retroactively. This approach creates an added incentive for respondent countries to implement rulings without proceedings becoming ensnared over recovering value lost prior to a ruling being made.[3] Tightened WTO time limits for the different phases of the dispute settlement process ensure that delaying is no longer a viable diplomatic tactic, as it was to some degree under the GATT.

The Appellate Body has functioned as a driving innovator in the process of judicialization. Arguably the most important reform in the GATT's DSM made by the Treaty of Marrakech was the shift from positive to negative consensus on implementation of the recommendation of the Appellate Body. Whereas under the GATT, any party to a dispute could block the DSB from adopting a panel report, in the WTO only unanimous opposition of the parties can block a recommendation from taking effect. Creation of the appeal mechanism was part of the Uruguay Round political bargain on dispute settlement. EC and developing country delegates had sought assurance that disputes and any retaliation forthcoming would be adjudicated exclusively within the WTO, whilst the United

[3] Thomas Bernauer, Manfred Elsig, and Joost Pauwelyn, 'Dispute Settlement Mechanism – Analysis and Problems', pp. 485–506 in Amrita Narlikar, Martin Daunton and Robert M. Stern, eds., *The Oxford Handbook on the World Trade Organization*, Oxford: Oxford University Press, 2012, pp. 485–486; Mitsuko Matsushita, 'The Dispute Settlement Mechanism at the WTO: The Appellate Body – Assessment and Problems', pp. 507–534 in Narlikar, Daunton and Stern, eds., *Oxford Handbook on the WTO*.

States had sought an end to the ability of parties to the dispute to block implementation of rulings. The Appellate Body, as the empowered vessel of the stepped up WTO DSM, has accomplished more than just reviewing panel recommendations on a series of disputes. In doing so, they have generated a body of jurisprudence that informs the viability of future potential complaints by establishing better understandings of important WTO texts, e.g. on the meaning of 'like products' as it is used in relation to the fundamental GATT/WTO principle of non-discrimination. The Appellate Body has also effectively created significant procedural principles to be applied with regard to issues ranging from the burden of proof required in complaints to the method for calculating dumping margins in anti-dumping cases.[4] The Appellate Body broke new ground for the WTO by permitting outside parties to cases, CSOs in particular, to file *amicus curiae* briefs in cases and appeals. To achieve this, they relied upon Article 13 of the DSU, which gives panels the power to seek and receive information from any source.[5] In so doing, they recognized the evolving nature of diplomacy and of the international system more broadly by granting to non-state actors their first formal rôle in the proceedings of the WTO, which in its formal structure was constituted as a highly state-centric international organization.

32 The age of WTO Dispute Settlement: diplomatic capacity and effectiveness

The establishment of the WTO's Dispute Settlement Understanding has without question transformed the process of trade dispute resolution between WTO member states, first and foremost by making use of the system for resolving the disputes much more of a global norm under the WTO than it ever had been under the GATT. Whereas in the first 47 years of operation of the GATT, fewer than 300 complaints were brought under the GATT 1947's dispute settlement procedure, in the first fifteen years of the WTO DSU alone over 400 complaints were lodged.[6] That complaints have precipitated diplomatic resolution of disputes is also

[4] Matsushita, 'The Appellate Body – Assessment and Problems', pp. 513–525.
[5] *Ibid.*, pp. 526–530.
[6] David Evans and Gregory C. Shaffer, 'Introduction', pp. 1–17 in Gregory C. Shaffer and Ricardo Melendez-Ortiz, eds., *Dispute Settlement at the WTO; The Developing Country Experience*, Cambridge: Cambridge University Press, 2010, p. 2; Magda Shahin, 'WTO Dispute Settlement for a Middle-Income Developing Country: The Situation of Egypt', pp. 275–297 in Shaffer and Melendez-Ortiz, eds., *Dispute Settlement at the WTO*, p. 277.

indisputable: by September 2010 only 125 of the over 400 complaints had resulted in a panel investigation. Hence the emerging norm in trade diplomacy in the twenty-first century is one of issues being raised initially as WTO disputes and then being resolved through diplomatic consultation and negotiation. The importance of the appeal process in validating panel findings and DSB rulings has also been demonstrated: 78 out of the 125 panel reports by September 2010 were appealed, 85 percent of which were modified or overturned. The process has also been effective at avoiding retaliation: in only 17 of the above cases did the DSB authorize retaliatory measures.[7] In addition, there has been a significant increase in the number of instances of member states participating in disputes as third parties. Decisions by governments to participate in cases as third parties reflect their judgements that an increasing number of cases in which they are not direct participants nonetheless have a direct impact upon their trading interests. At a deeper level, it also reflects the shift of the DSM itself toward becoming the central venue for trade diplomacy at the WTO.

Who is using the new dispute settlement system, and how, reflects continuity but also significant change. The dominant users of the system continue to be the largest trading members of the WTO. The United States and the European Union participated in roughly forty percent of cases as complainants and in a similar number as respondents.[8] But behind that headline, whilst the number of disputes between industrialized countries has been in decline, the number of disputes between industrialized and developing countries has been increasing, as has the number of disputes between developing countries.[9] India and China have both been respondents in a substantial number of cases, 20 each as of September 2010, placing them at fourth most frequently charged.[10] Amongst developing countries, only one 'Least Developed Country', Bangladesh, had initiated a trade dispute by 2010, and no African state has yet done so. Yet overall the number of cases between developing countries rose from 11 percent of total cases in the 1995–1999 period

[7] Bernauer, Elsig, and Pauwelyn, 'Dispute Settlement Mechanism – Analysis and Problems', pp. 486–489.
[8] Evans and Shaffer, 'Introduction', p. 2.
[9] Brendan Vickers, 'The Role of the BRICS in the WTO: System-Supporters or Change Agents in Multilateral Trade?', pp. 254–274 in Amrita Narlikar, Martin Daunton and Robert M. Stern, eds., *The Oxford Handbook on the World Trade Organization*, Oxford: Oxford University Press, 2012, pp. 260–267.
[10] Bernauer, Elsig, and Pauwelyn, 'Dispute Settlement Mechanism – Analysis and Problems', pp. 486–489.

to 26 percent in the 2000–2008 period, and cases involving developing and industrialized countries rose from 14 percent to 30 percent in the same time frame.[11] Over forty percent of complaints under the WTO DSU have been made by developing countries. Amongst the eleven states that have filed the greatest number of complaints, seven are developing countries.[12] On the other side, developing country participation as respondents in WTO disputes has also increased fivefold relative to their involvement under the GATT 1947. Under the WTO DSU, developing countries have been named as respondents more frequently than industrialized countries.[13]

One of the principal criticisms of the DSU has been that the legalism of the DSU makes it difficult for developing countries to take advantage of the WTO's dispute settlement procedure, according to Narlikar. Developing countries generally lack the resources in terms of staff, legal training, and funds both to bring and join cases to the Dispute Settlement Body (DSB) in order to assert their interests and to defend themselves when named as a respondent.[14] Small countries in particular need good evidence that bringing a case to the DSB will generate enough results to warrant it. Possessing adequate legal capacity under the WTO DSM is significantly more important than it was under the GATT.[15] In 2000 only 72 percent of developing countries staffed permanent diplomatic missions to the WTO in Geneva. Amongst permanent missions to the WTO, the average size of industrialized country delegations was 7.3 persons, whereas for developing countries it was 4.1 persons.[16] Yet the record of which states have used the WTO's Dispute Settlement Understanding most extensively during its first fifteen years of operation only partially addresses the question of whether the DSU is meeting its objectives of making the dispute resolution process accessible to all WTO members. Evidence suggests that countries possessing significantly different levels of power in the international system are

[11] Kent Jones, *The Doha Blues; Institutional Crisis and Reform in the WTO*, Oxford: Oxford University Press, 2010, p. 126.
[12] Evans and Shaffer, 'Introduction', p. 2.
[13] Shahin, 'Egypt's situation in the WTO', p. 279.
[14] Amrita Narlikar, *The World Trade Organization; A Very Short Introduction*, Oxford: Oxford University Press, 2005, pp. 85–86.
[15] Bernauer, Elsig, and Pauwelyn, 'Dispute Settlement Mechanism – Analysis and Problems', pp. 492–497.
[16] Constantine Michalopoulos, *Developing Countries in the WTO*, London: Palgrave, 2001, pp. 156–160, cited in Jones, *The Doha Blues*, pp. 157–158.

less likely to oppose one another in WTO disputes.[17] Yet several high profile cases have been won by developing countries against the United States and European Union with Appellate Body backing, including *US-Underwear*, (safeguards violation), *US-Gambling* (national treatment violation), and *EC-Sardines* (standards – TBT), brought by Costa Rica, Antigua and Barbuda, and Peru, respectively. The Appellate Body granted Antigua and Barbuda the right to cross-retaliate sectorally by suspending the intellectual property rights of US nationals in Antigua and Barbuda. Given their size and wealth disparities relative to the USA and EU (Antigua and Barbuda's population is 70,000), these small developing countries likely achieved a more advantageous outcome than they would likely have done through direct bilateral diplomatic negotiation with their larger and wealthier adversaries.[18]

The rise in the importance of the WTO Dispute Settlement Understanding has elicited a wide range of responses from member country governments and the industries and businesses lying within each. Each government has been forced to take decisions (or not) about how to adapt their trade diplomacy strategies to take advantage of the new system. WTO members such as the United States, Canada, the European Union, and Japan clearly entered the new era with enormous structural advantages not only owing to possessing large and highly evolved governmental institutions and industry consultative structures for trade diplomacy but also to the deep experience of large international law firms with established international trade law practices. For these members and others like them, the need for adaptation has been minimal and incremental. For developing countries, however, the need to adapt has been much greater. Whilst the smallest and poorest of developing countries clearly face major structural obstacles to participation, the success of many developing countries in meeting the challenge of judicialization in the first fifteen years has been governed by several different significant factors. Much of the difference between how successfully developing countries have adapted appears to lie in how and how much they have been willing to learn from the experience of others.

Large and rapidly growing middle income countries, such as the four originally dubbed 'BRICs' by analyst Jim O'Neill (then at Goldman Sachs), Brazil, Russia, India, and China, have increased their influence

[17] Bernauer, Elsig, and Pauwelyn, 'Dispute Settlement Mechanism – Analysis and Problems', pp. 492–497.
[18] Matsushita, 'The Appellate Body – Assessment and Problems', pp. 510–513.

and leverage in overall diplomacy dramatically since the end of the Cold War. Yet as judicialization transforms trade diplomacy, even amongst the original BRICs,[19] the capacity to engage and be effective under the new WTO system have varied significantly. Brazil and China have learned rapidly how to engage in trade diplomacy effectively using the WTO's dispute settlement system. Their successes are discussed in greater detail below. By contrast, India, although a founding signatory of the GATT in 1947, has not achieved nearly the same level of success. Russia falls even farther behind, having only succeeded in negotiating entry into the WTO in 2012. Brazil has achieved its noteworthy success by devoting resources to emulating the institutions and practices of industrialized states such as the USA. China has adapted rapidly over the short period of time since its accession to the WTO in 2001 by learning intensively through participating as a third party in dispute cases, notwithstanding China's culturally rooted predisposition against dispute resolution through litigation. India is unlike China to the extent that litigation as a means of dispute resolution comes naturally, owing to its long common law tradition inherited from Islamic jurisprudence subsequently overlain with many years of British rule. India has been the sixth most frequent user of the dispute settlement mechanism.[20] In the first nineteen years of WTO operation India was a complainant in at least 21 WTO dispute cases, a respondent in at least 22 cases and a third party in at least 91 cases.[21] Russia has been a member of the WTO for the shortest time, having joined in mid-2012, and hence has had the least experience in learning to use the DSU. By the end of 2013 Russia had filed no cases as a complainant, was named as a respondent in only two cases and participated as a third party in eight cases. Only time will tell whether Russia is able to emulate the successes of Brazil and China in engaging in judicialized trade diplomacy. Russian government threats in 2014 to bring complaints to the WTO against EU trade sanctions imposed following Russian violations of Ukraine's sovereignty did not augur well for Russia's future ability to use the system effectively.

Several important factors have been interacting to determine how effective previously inexperienced governments are becoming at conducting trade diplomacy as judicialization transforms the arena. They

[19] South Africa, a significantly smaller economy, joined the BRICs grouping in 2011, making it the BRICS.

[20] Evans and Shaffer, 'Introduction', pp. 8–9.

[21] World Trade Organization, Disputes by country/territory, http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm, accessed 11 November 2013.

include: the structure of governmental institutions; the level of WTO-related legal education, training, and skills; the extent of experience with WTO practice and procedures; the willingness of industry and the private sector more broadly to cooperate and participate in diplomacy; the availability of external assistance to the least developed and smallest states; and the capacity of governments to engage in dialogic public diplomacy with both foreign and domestic publics. The developing countries that are excelling in all or most of these categories are emerging as the most successful in joining the ranks of effective large industrialized country practitioners of trade diplomacy: the European Union, Japan, the United States, Canada, and Australia.

The first amongst these factors is the ability of a government to reform its institutional structure to make possible the most effective use of the WTO dispute settlement procedure. This includes a broad range of functions, including: gathering information on which industry sectors would benefit from using the WTO DSM for market opening; deciding which cases to bring as a complainant; staffing and pursuing cases; negotiating a political settlement if circumstances warrant; monitoring implementation of agreements (either political or DSB panel or Appellate Body rulings); and of course being ready to mount an effective defence when named as a respondent in WTO disputes. Organizing a workable institutional structure and establishing working lines of communication between departments to be able to use the WTO dispute settlement mechanism successfully is a classic challenge in what scholars of contemporary diplomacy refer to as 'whole of government' diplomacy. An increasingly broad range of government ministries, departments and offices beyond the traditional ministry of foreign affairs must work together to obtain the best result possible in a WTO dispute. Brazil, for example, not only developed career tracks for international trade experts in several government ministries but created an inter-ministerial coordinating committee, the Chamber of Foreign Trade (CAMEX) to ensure that the ministries coordinate and cooperate (see section on Brazil below).[22] China began this process after joining the WTO by restructuring its Ministry of Foreign Trade and Economic Cooperation into a new Ministry of Commerce, containing

[22] Shaffer, Gregory C., Michelle Ratton Sanchez Badin and Barbara Rosenberg, 'Winning at the WTO: the development of a trade policy community within Brazil', pp. 21-104 in Gregory C. Shaffer and Ricardo Melendez-Ortiz, eds., *Dispute Settlement at the WTO; The Developing Country Experience*, Cambridge; Cambridge University Press, 2010.

departments for WTO affairs and for treaty and law, the latter of which was specifically established to manage WTO disputes. However, China has yet to establish an inter-ministerial coordinating body, which has resulted in a lack of coordination between departments, for example in the determination of injury in anti-dumping cases.[23] South Africa has suffered from a lack of communication between the government's diplomatic mission to the WTO in Geneva and the relevant offices within the Department of Trade and Industry (DTI) and between different DTI offices. Hence the actual process of responding to WTO trade disputes has tended not to follow the prescribed procedure. According to Brink, this has led to less than optimal handling of disputes in which South Africa has been named as a respondent, in some cases resulting in disadvantage to domestic industries.[24]

The second major factor is the ability to develop a sizable cadre of well-trained lawyers and technical experts skilled in WTO practice. Virtually all developing countries suffered from a serious deficit in this area at the time of the founding of the WTO. The United States, the European Union and subsequently Japan built up huge reserves of legal expertise in international trade law, with many major international law firms establishing entire departments devoted to international trade. The international trade legal practice developed first and fastest in the United States, where since the 1960s industry has made extensive use of domestic legislation to seek protection against imports for particular products and industrial sectors. The legal services industry itself has globalized rapidly over the past two decades in the GATS era of services trade liberalization. Over two dozen law firms now employ more than 50 percent of their legal staff in countries other than that of their home base. Whilst legal services globalization has been led by US and UK-based firms, Asia-based firms are now joining their ranks.[25] By the last decades of the twentieth century major US-based international law

[23] Han Liyu and Henry Gao, 'China's Experience in Utilizing the WTO Dispute Settlement Mechanism', pp. 137–171 in Gregory C. Shaffer and Ricardo Melendez-Ortiz, eds., *Dispute Settlement at the WTO; The Developing Country Experience*, Cambridge: Cambridge University Press, 2010, pp. 163–164.

[24] Gustav Brink, 'South Africa's Experience with International Trade Dispute Settlement', pp. 251–274 in Gregory C. Shaffer and Ricardo Melendez-Ortiz, eds., *Dispute Settlement at the WTO; The Developing Country Experience*, Cambridge: Cambridge University Press, 2010.

[25] Lisa R. Smith, Fairfax Associates, 'How to Merge: 20 Years of Lessons from Law Firm Mergers', *Law Firm Strategies for the 21st Century: Strategies for Success*, Globe Law and Business, 2013.

firms such as Arnold & Porter and Cleary, Gottleib, Steen & Hamilton became integrators of expertise in trade policy, diplomacy and law. Firms sought out senior diplomats, former members of Congress, and other senior government officials as partners to lead their international trade practices. In the 1980s the New York-based law firm Milbank, Tweed, Hadley & McCloy hired Elliot L. Richardson, a former US ambassador to the UK, Secretary of Commerce and Attorney General, to head their Washington-based international trade practice. Richardson, who had negotiated the Beagle Channel dispute between Argentina and Chile in the 1970s and was the US representative to the UN Law of the Sea Conference, played a leading rôle in removing obstacles to growth US-China trade in the late 1980s.[26] The need to bring trade policy expertise under one roof led law firms to hire trade experts without law degrees, sometimes even at partner level. In the 1980s the major Washington, D.C.-based law firm Arnold & Porter set up an entire trade policy consulting subsidiary, APCO Associates, which they subsequently sold. APCO has become one of the largest privately owned international public relations and communications firms in the world.

This development of legal expertise in international trade law in industrialized countries has been accelerated since the 1990s by the growing phenomenon of cross-border mergers and alliances between major law firms in North America, the European Union, and East Asia. Unlike most national governments, which demand that foreign lawyers seeking to practice in a different country possess local legal qualifications, the World Trade Organization imposes no professional standards requirements upon lawyers representing governments involved in disputes. This makes advising governments on WTO cases possible for law firms worldwide. However, developing countries have only recently begun to develop WTO training and expertise within their own legal professions. Possessing such capacity locally is of enormous advantage to developing countries. Hiring US or EU-based firms to provide representation is very costly. Hourly rates for legal services can range from US $200–600 per hour, with total fees for representing a developing country in a small case through the panel stage in the neighbourhood of US $200,000.[27] For smaller and poorer developing countries, the potential

[26] This author worked as a political economist for Attorney General Richardson at Milbank, Tweed from 1986 to 1988.

[27] Gregory Shaffer, 'How to Make the WTO Dispute Settlement System Work for Developing Countries: Some Proactive Developing Country Strategies',

gains achieved for exporters through pursuing a successful WTO dispute case may be surpassed by the cost of litigating the dispute.[28]

Another advantage of having a network of local legal and other trade expertise is that it can serve as a nodal point for building broader networks linking private firms, industry associations, trades unions, universities, and other economic stakeholders together in such a way that they can work effectively with government in pursuing trade policy objectives using the WTO dispute settlement system. Developing countries differ enormously in the extent to which they have been able to nurture this capacity. Brazil's Ministry of Foreign Affairs (MFA) has consciously sought to structure such a network, calling it a 'three pillar' model for effective dispute settlement. Brazil's three pillars are a Dispute Settlement Unit inside the MFA in Brasilia, dispute settlement experts in Brazil's mission to the WTO in Geneva, and private industry and the attorneys and economic consultants who represent them in dispute cases.[29] China likewise has invested considerably in education and training in WTO affairs for lawyers and non-legal specialists in Chinese universities and through study and apprenticeships abroad.[30] Argentina's government began the process of developing domestic legal expertise inside its Ministry of Foreign Affairs and International Trade and its Ministry of Economy on an ad hoc basis following the filing of a complaint by the USA against Argentina concerning imports of textiles and apparel in 1996, owing to a lack of involvement by the domestic private sector. Pérez Gabilondo argues that Argentina has suffered from the lack of a robust network or 'matrix' for gathering information on cases from different stakeholders. Argentina also lacks sufficient expertise in the private sector and in education and training opportunities in universities and in government, at home and abroad.[31] Egypt is even

in International Centre for Trade and Development, *Towards a Development-Supportive Dispute Settlement System in the WTO*, Resource Paper No, 5, 2003, p. 16.

[28] Mohammad Ali Taslim, 'How the DSU worked for Bangladesh: the first least developed country to bring a WTO claim', pp. 230–247 in Gregory C. Shaffer and Ricardo Melendez-Ortiz, eds., *Dispute Settlement at the WTO; The Developing Country Experience*, Cambridge: Cambridge University Press, 2010, p. 240.

[29] Shaffer, Sanchez Badin and Rosenberg, 'Winning at the WTO', pp. 91–92.

[30] Liyu and Gao, 'China's experience in utilizing the WTO Dispute Settlement Mechanism', pp. 145–146.

[31] José L. Pérez Gabilondo, 'Argentina's experience with WTO dispute settlement: development of national capacity and the use of in-house lawyers', pp. 105–134 in Gregory C. Shaffer and Ricardo Melendez-Ortiz, eds., *Dispute Settlement at the WTO; The Developing Country Experience*, Cambridge: Cambridge University Press, 2010, pp. 113–115, 132–133.

farther behind, with WTO law yet to be added to domestic law school curricula, which leaves Egypt dependent upon foreign-based legal services.[32]

A third major factor is the ability of a government to gain experience with how the WTO dispute settlement system actually works from within. This includes experience with everything stretching from what kind of information is required to bring a complaint successfully or defend against one to how to hire and brief effective legal counsel. Discovering how to communicate with and secure the participation of relevant stakeholders in the private sector to how to communicate with the public about cases whilst they are underway is also important. WTO experience is another factor in which the divide between wealthy industrialized long time WTO members and developing countries is great, but that gap is far from sufficient to characterize relative gains from case experience. The United States, European Union and Japan had a long history of engaging in dispute resolution under the old GATT system before the WTO DSU came into operation, so adjustments to the revised procedures for them from 1995 were incremental at most. The extent of experience that developing countries have acquired in working with the WTO system varies enormously, as do circumstances under which they have acquired their experience.

Many developing countries had little or no experience with trade dispute resolution under the GATT prior to 1995. Their governments may not have had the resources or the inclination to attempt to bring cases for resolution. Industrialized countries may not have viewed their markets as sufficiently important to warrant using the GATT DSM as a diplomatic tool for market opening. (Or, in the case of China, they may not have even been a member of the GATT.) Moreover, developing countries were granted many exceptions from meeting GATT disciplines that disappeared when the Treaty of Marrakech took effect. The combination of rapid economic and trade growth in many developing countries since the 1990s and the greater obligations that they undertook under the WTO meant that the number of disputes involving developing countries was bound to rise significantly. A number of developing countries gained WTO dispute settlement experience not by their own choice, but by finding themselves the respondent in a complaint brought

[32] Magda Shahin, 'WTO dispute settlement for a middle-income developing country: the situation of Egypt', pp. 275–300 in Gregory C. Shaffer and Ricardo Melendez-Ortiz, eds., *Dispute Settlement at the WTO; The Developing Country Experience*, Cambridge: Cambridge University Press, 2010, p. 293.

by an industrialized country (or, increasingly, by another developing country). Argentina, for example, was a co-complainant once under the GATT DSM, a case against the USA concerning tobacco that they and their co-complainants won. Argentina participated as a third party in five other cases but was never a respondent. Hence when the WTO came into operation, the Argentines had more experience with dispute resolution than some other developing countries, but they were rapidly forced to gain more. By 1998 they found themselves the respondent in two cases filed by the USA and EU seeking greater access to Argentina's textiles and footwear market.[33]

Other developing countries chose to gain experience by adopting a proactive strategy of using the new WTO system to achieve trade policy objectives with respect to interlocutors – a 'learning by doing' approach. Thailand and Brazil partnered with Australia in bringing a case against the EU in 2001 seeking redress against a particular category of sugar exported by the EU. The complainants argued certain sugar exports violated EU obligations under the WTO Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures. A WTO panel backed by the Appellate Body found in favour of the complainants, to the effect that EU sugar export subsidies violated their obligations under the relevant WTO agreements.[34] China, upon admission to the WTO in 2001, decided to participate in a large number of cases as a third party. China's strategy was intended to gain the maximal WTO dispute settlement experience possible in the shortest time. Third-party participation involved making written submissions at the panel stage in some cases, either of a general nature or on one specific aspect of the case, and in some cases making written submissions at the Appellate Body stage as well.[35] Participating in these cases, whether or not they affected particular Chinese trade interests directly, gave China a degree of familiarity with the processes that prepared China to bring complaints and respond to the significant number of cases that China was bound to face, given its size and rapid economic growth.

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[33] Pérez Gabilondo, 'Argentina's experience with WTO dispute settlement', pp. 106–113.

[34] Pornchai Danvivathana, 'Thailand's experience in the WTO dispute settlement system: challenging the EC sugar regime', pp. 210–227 in Gregory C. Shaffer and Ricardo Melendez-Ortiz, eds., *Dispute Settlement at the WTO; The Developing Country Experience*, Cambridge: Cambridge University Press, 2010, pp. 210–212.

[35] Liyu and Gao, 'China's experience in utilizing the WTO Dispute Settlement Mechanism', pp. 159–160.

A fourth factor is the extent and effectiveness of the coöperation of industry and private sector organizations with government in gathering information, identifying cases worthy of pursuing (to seek market opening opportunities, for example), and in developing and implementing strategies for litigating dispute cases either as complainant or respondent. In industrialized countries, large firms have government relations and legal departments that have long experience using government trade policy and trade law as primary instruments for expanding market share and for defending against potential practices by foreign firms or foreign legislation that violate WTO obligations. US-based Boeing and EU-based Airbus Industrie in the commercial aircraft sector are prime examples of such firms. Industry associations and chambers of commerce in industrialized states play active rôles in lobbying ministries and legislatures and to political communication concerning trade disputes that affect their industries, member firms, and the regions in which they operate.

In developing countries, the extent and structure of private participation in trade disputes, and in trade diplomacy more broadly, varies enormously. Most developing countries have not had large private firms with long histories of international operations and of independence from government. These states also did not have a well established structure for public-private coöperation on trade diplomacy at the start of the WTO era, so they faced pressure to emulate their industrial country neighbours to maximize benefits from such coöperation in trade disputes. Brazil, as noted below, has achieved great success in developing structures for public-private coöperation on trade. At the end of the 1990s Brazilian industrial and agricultural associations formed a new association, the *Coalizão Empresarial Brasileira* (Brazilian Business Coalition) specifically to address trade issues. Brazilian agricultural and industrial associations have gone on to create international trade departments of their own, as have major Brazilian exporting firms such as aircraft manufacturer Embraer.[36] All of these developments have enabled Brazil's private sector to work closely and effectively with Brazil's evolved government trade policy apparatus. Private sector participation in trade disputes in China, by contrast, is not yet highly developed. Likewise India's effectiveness in using the new WTO system has been limited by the private sector's reluctance to work with government extensively in the litigation process, notwithstanding the large number

[36] Shaffer, Sanchez Badin and Rosenberg, 'Winning at the WTO', pp. 63–66.

of disputes in which India is either a complainant or a respondent. According to Dhar and Majumdar, guidelines for private sector consultation with government on trade policy have not yet been developed, in part owing to India's long history of import substituting industrialization and state dominance of heavy industry prior to India's economic liberalization from the 1980s.[37] Egypt is another example of lack of private sector participation limiting participation in the WTO dispute settlement process severely, Shahin argues.[38]

A fifth factor affecting governments' effectiveness at trade diplomacy in the age of judicialization is the availability of outside support for governments of the poorest and least developed states. These states have neither the skills and expertise within government and the private sector to use the WTO dispute settlement system nor the financial resources required to employ international law firms well versed in WTO practice. In 2001, WTO members established the Advisory Centre on WTO Law (ACWL), an independent intergovernmental organization, to provide free advice on WTO law to the least developed countries and legal services in WTO disputes to developing countries at rates discounted from commercial rates according to countries' levels of development. Funded by an endowment established by industrialized country WTO members, the ACWL provides legal services not only to WTO members but also to countries in the process of accession to the WTO.[39] To build skills and expertise within governments, the ACWL offers a series of training courses in WTO legal practice each year to representatives of developing country missions to the WTO in Geneva, as well as nine-month internships at the ACWL for developing country government trade lawyers.[40] In an effort further to build developing country experience with WTO practice, the ACWL is also authorized

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[37] Biswajit Dhar and Abhik Majumdar, 'Learning from the India-EC GSP dispute: the issues and the process', pp. 174–209 in Gregory C. Shaffer and Ricardo Melendez-Ortiz, eds., *Dispute Settlement at the WTO; The Developing Country Experience*, Cambridge: Cambridge University Press, 2010, pp. 182–183.

[38] Shahin, 'Egypt's situation in the WTO', p. 291.

[39] Advisory Centre on WTO Law, http://www.acwl.ch/e/index.html, accessed 18 November 2013; Agreement Establishing the Advisory Centre on WTO Law, http://www.acwl.ch/e/documents/agreement_estab_e.pdf, accessed 18 November 2013.

[40] News from the ACWL, '48 Geneva-based delegates attend the ACWL's 2012–2013 Training Programme', http://www.acwl.ch/e/news/news-00090.html; ACWL Training, http://www.acwl.ch/e/training/training.html; accessed 18 November 2013.

to provide legal support at no charge to least developed countries that wish to participate in a WTO dispute as a third party. To date, few countries have availed themselves of this opportunity.[41]

An instructive example of how a least developed country successfully used the legal services of the ACWL to bring a dispute case to the WTO is Bangladesh. Bangladesh had been a respondent in three prior antidumping disputes under the GATT and WTO dispute settlement systems, but in each case had been unable to defend itself and thus lost export revenue owing to antidumping duties imposed by the complainants. However, in 2005 Bangladesh successfully brought a WTO case against India for imposing antidumping duties on imports of lead acid batteries manufactured by the Bangladeshi firm Rahimafrooz. After exhausting all other routes to resolving the issue, including pursuing redress through the Indian legal system, Rahimafrooz then played a very active part in pressing the Bangladeshi government to pursue the case at the WTO (unlike private firms in some other developing countries, as noted). Nonetheless, without the assistance of the ACWL Bangladesh would have had a difficult time meeting the costs of legal representation needed in a WTO dispute. The Bangladesh-India case was a landmark for the WTO, as it was the first instance of a least developed country (LDC) bringing a complaint using the WTO dispute settlement system. Bangladesh was thus also the first LDC to win a WTO dispute, underlining the importance to LDCs of outside assistance with expertise and costs from bodies such as the ACWL.[42]

A final significant factor is the extent to which governments are able to communicate effectively about trade policy and diplomacy to the public, both at home and abroad. This reflects a broader trend in contemporary diplomacy as a whole. In the case of trade diplomacy, domestic constituencies in industrialized countries often make clear to their governments their minimum expectations from trade negotiations through modes of political communication ranging from lobbying legislators to staging strikes and protests. Workers in the European agricultural sector and trades unions in the US automobile industry engage in these practices regularly. Governments, needing to manage relationships with domestic economic constituencies (as noted in the previous chapter), have established mechanisms enabling regular bidirectional communication with constituencies during trade negotiations, such as

[41] ACWL, Least Developed Countries, http://www.acwl.ch/e/ld_countries/ld_countries.html, accessed 18 November 2013.
[42] Taslim, 'How the DSU worked for Bangladesh'.

the Industry Trade Advisory Committees established in the United States under the 1974 Trade Act. Increasingly, industrial country governments have learned to communicate to foreign publics effectively as well about trade (and other) policies, often using their embassies abroad. The WTO cases brought by Brazil and Canada against one another beginning in late 1996 concerning subsidies paid by each government to their respective domestic regional jet manufacturers Embraer and Bombardier illustrate the utility of involving the public in high profile trade disputes. The cases attracted extensive media attention in both countries and resulted in high levels of public awareness. Canada banned imports of Brazilian beef, ostensibly owing to concerns over contamination with bovine spongiform encephalopathy (BSE). In practice, Canada sought to convince the Brazilian public to press their government to implement a WTO Appellate Body ruling against Brazilian subsidies to Embraer. Brazilian agriculturalists, antagonized by Canada's ban, organized protests at the Canadian embassy and consumer boycotts against Canadian goods, which were widely reported in the Canadian media.[43]

The two case studies that follow, those of Brazil and China, illustrate how two large developing countries have been able to transform their own engagement in trade diplomacy in a judicialized environment. The two countries, whilst at different stages of the evolution of their trade diplomacy, both show how the emerging dominance of dispute settlement as the primary mode for mediating differences and shaping global trade policy has changed the way that governments seek to practice trade diplomacy. These individual country transformations are not a result of a particular party perspective on government or form of government, nor have they been triggered by achievement of a particular combination of size and level of development (as the heretofore lesser successes of India and Russia indicate). Rather, they have resulted from the conscious efforts of governments, in conjunction with civil society and private sector actors, to become aware of the requirements and demands of the new system and to master the art of operating within it.

33 Judicialized trade diplomacy case study: Brazil as best practice

The transformation of Brazil's trade diplomacy is emblematic of the impact of judicialization on trade diplomacy more broadly. Brazil is one

[43] Shaffer, Sanchez Badin and Rosenberg, 'Winning at the WTO', pp. 34–36.

of the largest and fastest growing developing countries. Its economy has itself been transformed since the 1990s by participation in international trade. The evolution of Brazil's trade policy making apparatus and of Brazil's skills at trade diplomacy has taken place in significant part in response to the judicial processes put in place under the WTO's Dispute Settlement Understanding (DSU) since the WTO's inception in 1995. Brazil has become the largest user of the WTO DSU amongst developing countries and the fourth largest user of the system overall, exceeded only by the USA, EU and Canada.[44] Prior to the completion of the Uruguay Round and the operation of the WTO's DSU, Brazil, like many developing countries, had a relatively underdeveloped trade policy making process. Before the 1990s Brazil's government pursued an economic policy of import substituting industrialization. Trade policy was managed by Brazil's Ministry of Foreign Affairs, which undertook Brazil's trade diplomacy with the GATT and bilaterally, until 1990, when a Department of Foreign Trade was established within the Ministry of Development, Industry and Trade. Business and civil society tended to lobby the government for protection from imports and promotion of exports in a relatively uncoordinated fashion.[45]

Shaffer, Sanchez Badin and Rosenberg argue that the judicialization of trade dispute resolution under the new WTO procedures that took effect from 1995 had an entirely salutary effect upon Brazil's capacity to use trade diplomacy effectively to achieve policy objectives. Brazilian government ministries, private sector interest groups representing economic sectors engaged in trade, universities and the Brazilian legal profession were forced to invest in developing expertise in trade diplomacy: economic research, legal expertise, political bargaining and negotiating skills. In the course of so doing, they built a dense network or epistemic community around trade policy and diplomacy, which permitted Brazil to take maximal advantage both of being a respondent and of being a complainant in WTO dispute settlement cases. This epistemic community took numerous forms. New trade policy and diplomacy career tracks within government ministries, at law firms, in economic consulting firms, think tanks and industry associations were developed. New degree programmes and specializations in trade law, policy and diplomacy were established in law schools and graduate schools of international relations. Internships for students and junior lawyers and officials were created in Brazil's mission to the WTO in Geneva, in

[44] Evans and Shaffer, 'Introduction', pp. 6–7.
[45] Shaffer, et al., 'Winning at the WTO', pp. 29–31.

trade-related areas in government ministries in Brasilia and at US-based international law firms specializing in trade law in Washington, D.C.[46] This diffusion of knowledge through public-private policy networks has strengthened Brazil's ability to represent itself in specific WTO cases and more broadly to promote Brazilian perspectives and interests internationally. 'Compared to investing in military means to gain international influence, Brazil's approach has been brilliantly cheap.'[47]

Brazil's experience with WTO diplomacy transformed its government in the direction of political pluralism, according to Shaffer, Sanchez Badin, and Rosenberg. Within the government, CAMEX (the Chamber of Foreign Trade), an inter-ministerial body, was created in 1995 to coordinate the trade policy and diplomacy activities of a growing number of government ministries.[48] This institutional shift away from the Ministry of Foreign Affairs having exclusive 'gatekeeper' control over trade diplomacy is emblematic of a broader shift toward 'whole of government' diplomacy. Foreign ministries, in order to remain effective in the face of this shift, have had to become 'boundary spanners', in Hocking's words, cooperating and coordinating diplomacy with other ministries rather than attempting to continue to exercise their gatekeeper function.[49] Brazil's legislature has become more attuned to the importance of trade negotiations at the WTO, and government overall has become more open to participation by business and civil society interest groups. Brazilian industry associations, particular large firms, such as Embraer, and think tanks developed expertise in international trade policy, diplomacy and negotiation, and began to work cooperatively with the government on WTO cases.[50] The Brazilian public too have become more actively engaged participants in trade diplomacy. Brazil benefited from finding itself as a respondent in an early high profile WTO case brought by Canada on behalf of its regional jet manufacturer Bombardier against Brazil's industrial policy to promote its Embraer regional jets. The case made the Brazilian public aware of the importance of the WTO to Brazilian economic development and mobilized public support for a more aggressive WTO-focused trade policy and diplomacy.[51]

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[46] *Ibid.*, pp. 49–56.
[47] *Ibid.*, p. 95.
[48] *Ibid.*, p. 42.
[49] Brian Hocking, 'Gatekeepers and boundary spanners; Thinking about European Union member state foreign ministries', in Brian Hocking and David Spence, eds., *Foreign Ministries in the European Union*, Basingstoke: Palgrave, 2003.
[50] Shaffer, Sanchez Badin and Rosenberg, 'Winning at the WTO', pp. 63–75.
[51] *Ibid.*, pp. 34–36.

The transformation of Brazil's trade policy making structure and capability to engage in trade diplomacy through the WTO dispute settlement process has benefited Brazil's trade diplomacy across a range of diplomatic venues. In the WTO Doha Development Agenda multilateral negotiations Brazil has championed reform of agricultural trade regulations on behalf of other developing countries as a leader of the WTO G20, a negotiating coalition of developing countries. Brazil also joined with India in a new 'G-4' consultative group with the European Union and United States to facilitate reaching agreements in the Doha round.[52] That such a new G-4 would emerge, alongside if not to replace the older, influential 'Quad' grouping of the USA, EU, Canada and Japan, was indicative of the effect upon trade diplomacy of the redistribution of power toward developing countries in the international trading system. Beyond the WTO, Brazil has also led in forging new diplomatic venues for coöperation on trade and other areas of mutual economic interest with other fast-growing large economies, joining with Russia, India and China to form BRICS (later joined by South Africa) in 2006.

34 Judicialized trade diplomacy case study: China catches up fast

China's trade diplomacy has been transformed by judicialization in ways very different from that of Brazil, but with no less impact. China's conversion of its economy since 1978 from a closed, planned system to an open trading economy driven by market principles could not be completed without full participation in the GATT and WTO, with the benefits that full MFN treatment for Chinese goods and services from fellow members that membership would bring. China began the process of seeking membership in the GATT in 1986. The process became more complex when the Treaty of Marrakech, signed in 1994, instituted the Single Undertaking, a more onerous obligation for new members of the WTO. Fifteen years after beginning the process, China joined the WTO in 2001. This step was transformative not only for China but for the international trading system and for trade diplomacy, given that China was on track to become the second largest economy in the world.[53] Upon joining the WTO, China faced two enormous challenges in adapting its trade policies and trade diplomacy to the WTO norms.

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[52] *Ibid.*, p. 94.

[53] Liyu and Gao, 'China's experience in utilizing the WTO Dispute Settlement Mechanism' , pp. 137–139.

The first was procedural and administrative: Chinese law and regulations, and the enforcement thereof, needed to be adapted to conform to China's new WTO obligations. The second challenge was more cultural in nature. The traditional Chinese dislike for using litigation as a means of dispute resolution, given the cultural perception of the resort to litigation as a 'loss of face', would have to be overcome if China was to learn to use the WTO DSU to its diplomatic advantage in furtherance of its trading interests. China would not be able to look upon being a complainant or respondent in a WTO dispute as a failure of negotiation, a breakdown of diplomacy.[54] As an already large economy rapidly growing through exporting, China would not have the luxury of time to learn the WTO dispute settlement system. In its first twelve years as a WTO member, China was named as a respondent in 31 disputes and engaged in 11 disputes as a complainant, placing it ahead of many developing countries that had been members of the GATT and WTO for much longer.[55]

For China, joining the WTO in 2001 brought the substantial advantage of making expectations that trade diplomacy with of its fellow WTO members would be conducted more uniformly in terms of rules and procedures than had been the case previously. This was important for a rapidly growing economy that by the mid-2000s was generating one third of its GDP from exports. Prior to acceding to the WTO, China had faced an annual and in some years highly politicized MFN status review by the United States Congress. Reviews were mandated by the Jackson-Vanik amendment to the Trade Act of 1974, which regulated trade with countries deemed to have non-market economies.[56] When China joined the WTO, the government organized intensive training programmes to facilitate use of the new system. Government ministries, sometimes in coöperation with overseas collaborators, including the WTO itself, trained judicial officials and legal academics in WTO law and procedure. This training made possible the education in WTO law of a new generation of attorneys through new courses at existing universities and through entirely new WTO-focused schools within universities at Shanghai, Beijing and Wuhan. From the start of China's WTO

[54] Liyu and Gao, 'China's experience in utilizing the WTO Dispute Settlement Mechanism', pp. 165–166.
[55] World Trade Organization, Disputes by country/territory, http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm, accessed 11 November 2013.
[56] Liyu and Gao, 'China's experience in utilizing the WTO Dispute Settlement Mechanism', pp. 142–143.

membership, the government sought to develop legal expertise on the WTO within leading Chinese law firms by including firm representatives in official delegations working on WTO cases and by pairing domestic firms with foreign law firms hired to represent China. The government availed themselves of the opportunity to participate as a third party in a significant number of WTO disputes as a means of giving domestic law firms a chance to become familiar with WTO legal practice.[57] As of November 2013, China had participated in 102 cases as a third party, not far behind the USA's 107 cases and the European Union's 137 cases despite only having been a member of the WTO for 12 years.[58]

In the first decade of China's WTO membership Chinese lawyers have further deepened their familiarity with the dispute settlement system by studying abroad, particularly in countries such as the United States. This has provided the added advantages of increasing their familiarity with the common law, case law-driven legal system in which *stare decisis*, the observation of legal precedent, prevails. The WTO dispute settlement system has come to approximate common law more than it has China's own civil law system, which does not rely upon the comparative study of case law. Chinese lawyers have also been able to learn WTO practices and procedures from within by serving as interns in the WTO Secretariat. These efforts began to bear fruit before long. By 2007, China saw one of its jurists serve on a WTO dispute settlement panel for the first time, and later that same year Zhang Yuejiao became the first Chinese national to be appointed to the WTO Appellate Body.[59]

35 Limitations and weaknesses of judicialization

As the WTO's Doha Development Agenda appears to have ground toward stalemate, the DSU has effectively been left as the core venue for WTO trade diplomacy. There is an argument to be made that this is not a bad thing. Bernauer, Elsig, and Pauwelyn note evidence that over its period of operation the WTO DSM has deterred the US government from giving in to domestic political demands for protectionism in situations where they have regarded their position with respect to WTO rules to be weak. The same scholars also cite evidence that the DSM

[57] *Ibid.*, pp. 145–148, 167–168.
[58] World Trade Organization, Disputes by country/territory, http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm, accessed 11 November 2013.
[59] Liyu and Gao, 'China's experience in utilizing the WTO Dispute Settlement Mechanism', p. 149.

has engendered a better record of implementation of WTO obligations across the membership than the prior dispute settlement had done with respect to the GATT.[60] Additional evidence suggests that the DSM is achieving its stated purpose of resolving disputes in ways that increase trade, in that there is a correlation between verdicts in WTO dispute cases and subsequent increased exports by complainants and by third parties in the same cases.[61]

But these observations do beg broader questions about the relationship between the DSM and compliance with WTO rules. Unlike in national legal systems, where criminal violators are always subject to arrest and prosecution of law irrespective of whether their violation directly harms another person, compliance with WTO rules is only enforced when another member complains of benefits lost as a result of the violation. Sykes contends that the DSM was never intended to ensure compliance with WTO rules, because paying compensation is always an option for a respondent found to be impairing a complainant's benefits. The agreements in the Treaty of Marrakech only demand that states must maintain the balance of concessions that they offered to their trading partners. Hence the right to pay compensation (indefinitely, even) instead of ending an offending trade practice allows governments of sovereign states the freedom to meet domestic political demands. This encourages diplomatic resolution of disputes even after a ruling. Given that retaliation usually cannot be punitive, only proportional, the option of paying compensation encourages what Sykes calls economically 'efficient breach of contract' or 'efficient compliance.'[62] However, paying compensation, whilst more efficient than retaliation, is likely to be less efficient than compliance, especially when the respondent is much larger and wealthier than the complainant. Hence this limitation serves further to discourage developing countries, particularly small states and LDCs, from bringing WTO disputes against large industrial states.

A broader limitation concerns judicial precedent as a substitute for processes of negotiating diplomatic agreements. Judicial precedent, as in *stare decisis*, when used as a guide to adjudicating international trade

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[60] Bernauer, Elsig, and Pauwelyn, 'Dispute Settlement Mechanism – Analysis and Problems', pp. 492–497.

[61] *Ibid*., pp. 498–500.

[62] Allan O. Sykes, 'The Dispute Settlement Mechanism: Ensuring Compliance?', pp. 560–585 in Amrita Narlikar, Martin Daunton and Robert M. Stern, eds., *The Oxford Handbook on the World Trade Organization*, Oxford: Oxford University Press, 2012.

disputes encourages and facilitates change in a deliberate and gradual way, for the most part. Major step change is rare and requires bold and creative jurisprudence, which the system of dispute settlement panels is not encouraged to generate. There is more opportunity for the WTO Appellate Body to make radical decisions when required, as the members of the bodies are chosen by the WTO for their expertise and, presumably, for representing the diversity of WTO members and their interests. Only time will tell if they will be capable of innovating substantively enough in response to situations that demand it. Moreover, in any political order (domestic or global) that comes to rest upon democratic legitimacy, there is profound ambivalence amongst the general public and amongst opinion leaders about the value and wisdom of 'legislating from the bench'. Most people generally view having courts decide important issues of public policy as inherently less desirable, and often as less democratic, than having those issues decided through the public contestation of opinions in the polity's established legislative process. Yet those same people are often more than happy to have a court resolve an issue in favour of their own opinion when a legislature has shown itself unwilling to do so. The fact that the WTO's Doha Development Agenda has become bogged down can be seen as indicative of a genuine lack of public support amongst WTO members for significant additional trade liberalization and resolution of major contested issues at this time. For those holding this view, diplomats at the WTO charged with negotiating a Doha deal are doing their jobs very effectively indeed. Deadlock should be regarded as a sign of trade diplomacy working correctly. Some regard a 'gridlocked' legislative process as an indicator of the health of a democracy that wishes for the moment to enshrine the status quo, warts and all.

This then begs the question of whether at some point the WTO might come to be perceived by the global public as having 'failed' because of lack of ability to close a Doha deal. In an age in which diplomacy enacted upon a global public stage has become the norm and a public expectation, international trading arrangements that are negotiated by dispute settlement panels and appellate bodies or that are negotiated privately by the contending parties at the margins of the judicial process do not come across as very transparent to the general public. Without transparency, decisions that change the international trading system are less likely to be embraced, especially by those whose interests the decision disfavours. Such decisions will consequently be more likely to elicit a public backlash of the sort that disrupted the WTO Ministerial at Seattle in 1999 and at numerous gatherings of trade diplomats since then. In order to be perceived by the global public as a worthy venue for

trade diplomacy in an age when diplomatic secrecy has been discredited by Wikileaks and the electronic surveillance revelations of Edward Snowden, the justice of the DSM will need to be regarded as valuable enough to justify its low profile and confidentiality.

Another potential weakness stems from the profusion of dispute settlement mechanisms that has followed the institutionalization of trade diplomacy. All of the dispute settlement mechanisms in bilateral, regional and plurilateral trade agreements differ substantially from the WTO's dispute settlement mechanism. Their dispute settlement mechanisms have not come to substitute for more traditional diplomatic negotiation to nearly the same extent as the WTO's has. However, they play a key part in the overall transformation toward judicialization of trade diplomacy. Many recent bilateral and regional agreements contain 'choice of forum' provisions that permit a country bringing a complaint to choose the judicial forum in which they prefer their complaint to be heard. For example, if the USA brings a complaint against Jordan, under the terms of the US-Jordan Free Trade Agreement the USA is entitled to choose whether their complaint is heard using the bilateral dispute resolution mechanism or using the WTO's dispute settlement mechanism.[63] Drahos argues that these choice of forum provisions unduly benefit powerful, industrialized countries, which have substantial resources for identifying potential market gains and bringing dispute cases in the most advantageous venue for achieving them. Dispute settlement in the WTO offers greater potential for disputes to be resolved favourably to developing countries than dispute resolution under bilateral agreements, according to Drahos, because the WTO offers developing countries the opportunity to form coalitions to defend themselves.[64] Choice of forum provisions will not disappear by themselves even if somehow, as Bhagwati recommends, the tariff provisions in PTAs all go to zero. Hence to establish the primacy of the WTO DSU over those of PTAs would require negotiation and approval of an amendment to the WTO DSU, one diplomatic challenge amongst many for WTO member states. The process of transformation of trade diplomacy in the direction of judicialization are clearly far from complete. Yet limitations of judicialized trade diplomacy that have already emerged beg the question of whether the contemporary transformed trading system will call forth a further transformation in future to address the structural shortcomings of the layered approaches to trade diplomacy that we currently undertake.

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[63] US-Jordan Free Trade Agreement, Art. 17, Chapter 1(e). http://www.ustr.gov/sites/default/files/Jordan%20FTA.pdf, accessed 19 January 2014.

[64] Drahos, 'Weaving Webs of Influence', pp. 192–193, 198–200.

Part Five
Transforming Trade Diplomacy Anew?

36 Challenges and prospects for trade diplomacy: the contemporary stage

It is perhaps more than just coincidence that substantive change in the international trading system and in the European Union have both tended to be precipitated by crisis, or at least by public perceptions of crisis. In the second decade of the twenty-first century, international trade plays a more vital rôle in driving global economic growth and prosperity than ever. The real ratio of imports to GDP worldwide more than doubled from the mid-1970s to the mid-2000s, reaching nearly 30 percent by 2004, indicating more clearly than ever the growing importance of international trade to global economic growth.[1] Hence in a period in which the global economic recovery from the severe 2008 recession has been slow and uneven, the need for increased global trade, and for the diplomacy that facilitates it, to stimulate global economic growth and to spread global prosperity more widely amongst all the citizenry of the globe has never been more pressing. The second decade of the twenty-first century, if not necessarily a time of crisis for international trade and economic growth, is at least a time of great uncertainty across many fronts.

New developments in trade diplomacy are taking place midway through the second decade of the twenty-first century that could produce either positive or negative results from the perspective of expanding international trade and stimulating global economic expansion. Perhaps the greatest challenges to trade diplomacy and to reform of

[1] UN statistics cited in Mark Dean and Maria Sebastia-Barriel, 'Why has world trade grown faster than world output?', *Bank of England Quarterly Bulletin*, Autumn 2004, pp. 310–320.

the international trading system that may result are the acceleration of negotiations to form super-regional trading blocs and the arrival of new great powers on the diplomatic stage. Diplomatic negotiations are underway with the purpose of creating super-regional trading blocs, TPP and TTIP, that would harmonize behind the border regulatory barriers to trade between countries in the Pacific basin and North Atlantic regions, respectively. Whether these negotiations will bear fruit is yet uncertain at time of writing. Super-regional blocs such as TPP and TTIP offer the prospect of accelerating the reduction of behind the border trade barriers and encouraging regulatory harmonization amongst Like-Minded countries. In doing so, they could institutionalize new norms that could in turn facilitate their adoption more broadly at the multilateral WTO level. Alternatively the prospective agreements could accentuate the differential speed of trade liberalization, creating new comparative disadvantages for countries not participating in either agreement. The question of which countries will benefit from the TPP and TTIP negotiations are causes for concern. Debate continued in early 2015 amongst the governments negotiating TPP over whether to include additional participants, China most notably.

The arrival of new great powers on the stage of trade diplomacy holds the potential to influence the international trading system for good or ill, but above all it brings greater uncertainty. The emergence the BRICS countries and other big emerging markets makes the need for further reforms to the trade diplomacy process more pressing. The new rôles of China and Russia are particularly instructive examples. From a trade diplomacy perspective, China's emergence as a significant diplomatic actor, evidenced by the Chinese government's learning to use the WTO dispute settlement mechanism, is bound to have a significant impact upon the diplomacy required to reshape the international trading system in ways that encourage the global economy to grow. By the time of publication of this volume, China will likely have become the world's largest economy by most metrics. Yet in the rapidly changing competitive landscape of production and trade, China's comparative advantages that made it the 'workshop of the world' in the 1990s and 2000s are being challenged increasingly by rising domestic labour costs and increasing scarcity of vital resources.[2] Hence China's interests on trade and monetary issues, already complex, are likely to be fluid. This may make China potentially open to new diplomatic

[2] Dambisa Moyo, *Winner Take All; China's Race for Resources and What it Means for the World*, New York: Basic Books, 2012.

bargains that could secure Chinese support for system reforms in return for concessions on issues (trade or otherwise) of concern to China. A China that is fully invested in the ongoing success of the international trading system and its institutions is ever more vital to ensuring international trade and economic growth. A China at odds with its major trading partners, by contrast, will possess increasing power to obstruct any future reforms to international trade institutions and the system that they help to manage.

The impact of Russia's joining the WTO and consequent emergence as a trade diplomacy actor is likely to remain less important than that of China, owing to Russia's relatively smaller size. Nonetheless Russia poses the potential to become a significant challenge for an international trading system that relies overly upon dispute settlement to legislate trade policy. The Russian government threatened in early 2014 to bring trade complaints to the WTO against the European Union's imposition of economic sanctions in retaliation for Russia's violations of Ukraine's sovereignty. In August 2014 President Vladimir Putin imposed counter-sanctions against imports to Russia from the EU and other trading partners. Whilst both sets of sanctions are arguably justified under the GATT's national security exemption (Article XXI), this sequence of events suggests that, under the current Moscow government, Russia will be a disruptive actor on the trade diplomacy stage for the immediate future.[3] The resurgence of geopolitical tensions between Russia and the Western powers underscores the urgency of continuing to maximize the capacity of international trade to promote and maintain peaceful relations between nations. Only an efficiently functioning international trading system that facilitates productive trade diplomacy can produce the sort of 'peace through commerce' outcomes so highly prized by Cobden and Chevalier, Hull and Morgenthau, Monnet and Schuman.

37 More questions than answers

There is a temptation to frame debates about the international trading system today, and about the ways that international trade diplomacy is conducted within and about it, in terms of a particular overarching set of problems and how those problems might be solved. In that problem set usually appear:

[3] Molly O'Neal, 'Russia in WTO: interests, policy, autonomy and deliberations', *Eurasian Geography and Economics*, Vol. 55, No. 4, 2014, pp. 404–421.

- the stalling of the Doha Development Agenda, and by extension the potential exhaustion of the possibilities of multilateral trade rounds;
- structural deficiencies of the WTO, including overly limited participation for non-state actors and, depending upon one's perspective, excessive weakness or strength of the Secretariat;
- the failure of international trade rules to promote economic development sufficiently, and the related unwillingness of industrialized countries to accommodate demands of developing countries for S&DT;
- the incompatibility of proliferating PTAs with GATT/WTO fundamental principles of non-discrimination;
- and the expansion of the trade agenda, or its insufficient expansion, to encompass behind the border regulatory issues involving industrial, competition, social, and environmental policies.

From the intensity of these debates it is not always easy to tell to what extent they represent contestation of the structure of the trading system itself as opposed to the mere (if aggressive) advancement of particular interests or sides within each debate. Likewise the form that diplomacy has taken in addressing these issues – consideration within multilateral rounds, bilateral consultations, debate within the WTO Council – may not yield sufficient clues as to the systemic nature of the issues being discussed. The objective of the final part of this book is not to review these debates systematically and in detail. Debates of this kind have taken place during the dominant period of each of the international trading systems that past transformations in trade diplomacy have heralded. Rather, this part seeks to draw insights on potential reforms to trade diplomacy from the relationship between the international trading system and transformations in trade diplomacy, transformations that have been both results and causes of the system as it has evolved today.

The international trading system today consists of jumbled elements of multiple approaches to trade diplomacy transformed. None of the trading systems that dominated in the past has disappeared altogether. Rather, each has been overlain in a somewhat disorderly fashion by successive transformations. Trade-as-diplomacy still appears in various guises, ranging from state trading companies to trade sanctions imposed as a diplomatic weapon short of war. The processes of liberalization proceed, more rapidly today in particular niche areas such as the signing of bilateral FTAs, bilateral investment treaties, and Bhagwati's proliferating spaghetti bowl of regional and plurilateral PTAs. Institutionalized trade

diplomacy remains the dominant form of trade diplomacy today, as the WTO and numerous regional bodies carry out their functions, ranging from continuing to host the Doha round to conducting trade policy reviews and processing accession requests from prospective members. Judicialization, the most recent transformation, proceeds apace. It is far from complete, as WTO and regional dispute settlement panels and the WTO Appellate Body each year build volumes of jurisprudence and accumulate case law. The use of judicial mechanisms to resolve trade disputes is of the essence of diplomacy as a method of mediating estrangement. International law, which has grown up alongside the modern diplomatic system, dates back to Grotius and the founding of Westphalia system. The fundamental difference between international law and national legal systems is that it has no external sanction or enforcer. International law's only effective sanction is the incentive of a state to observe rulings when in the wrong in the expectation that other states will comply similarly when the first state is in the right. The WTO DSU is evidence that international law has become inextricably intertwined with the other processes of diplomacy.

Yet diplomacy's other crucial task of negotiating the evolution of international norms and practices to keep up with change in the global economy (e.g. economic development) and the international system (e.g. redistribution of power, the emergence of new actors), in this case through multilateral WTO rounds, has encountered serious headwinds. Eventually this could make resolution of disputes more difficult as well. There are indications that Bhagwati's bicycle theory of trade liberalization diplomacy has run its course. As the distribution of power becomes more even in the international system, the risk of deadlock will increase, as more states and coalitions of states will find themselves in a position to block agreements with which they disagree. But by the same token, the rise of new powers and emergence of non-state diplomatic actors has created the potential for forming a greater variety of coalitions to reach agreements on particular trade issues and, possibly, agreements involving tradeoffs between trade and non-trade issues (such as security). In the absence of progress in multilateral dispute resolution, could the DSU by itself come to be accepted by the global public as the diplomatic mainstage of the WTO? Given that such a prospect is unlikely, it suggests that more fundamental reform of trade diplomacy will be required. This raises the possibility of another prospective transformation of trade diplomacy that would respond to changed conditions in the contemporary global trading system that judicialization has helped to bring about.

If the Doha round has been perceived as a relative failure thus far, it may only be because the process of multilateral negotiation to lower trade barriers, first tariffs, then NTBs, and now increasingly behind the border regulatory issues, has been such an enormous success over half a century. As Jones observes:

> (t)he history of trade diplomacy shows that the most efficient and effective way to maximize the global gains from trade is through a system of multilateral bargaining and rules based on institutions that can transmit the shared trading motivation into consensus on trade opening agreements.[4]

For developing countries, negotiating to a stalemate in the round is as much an indication of success as failure. If progressively longer rounds with more significant players and complex negotiating dynamics is the 'new normal', maybe that is not a bad thing. The continuing popularity of the WTO is attested to by the still long queue of candidates for accession, notwithstanding Doha deadlock, the expanding burden of the Single Undertaking and the accession committee's demands and the lengthening of the accession process. Nobody wants to be last one left out. In this regard, as in others, the WTO is similar to the European Union: the Greek financial crisis did not stop EU members from striving to join the Euro zone (Lithuania became the nineteenth EU member state to adopt the single currency on 1 January 2015), nor has it slowed the queue of countries seeking to join the EU (Croatia became the EU's 28th member on 1 July 2013).

To develop a viable plan for WTO reform or broader reform of trade diplomacy will depend in significant part on deciding how negotiators should reach agreement on which issues will be defined or redefined as trade issues going forward. The trade agenda has been expanding rapidly for several decades. In the 1980s services were redefined as a tradeable commodity in order that they could be brought under the aegis of the GATT trade liberalization process. Services became a subject of trade diplomacy in the age of institutionalization. Since then more and more areas of economic life traditionally governed within sovereign nation-states have become subjects of trade diplomacy and objects of the institutional trade liberalization imperative of the WTO. Many of these behind the border areas have traditionally been domains of economic

[4] Kent Jones, *The Doha Blues; Institutional Crisis and Reform in the WTO*, Oxford: Oxford University Press, 2010, p. 169.

regulation within states. They include, for example, technical barriers to trade (TBT) and sanitary and phytosanitary regulations (SPS), both of which were subjects of agreements included in the Treaty of Marrakech. Since then, environmental and labour regulation have risen in visibility as they have come to be identified in more states as trade issues. If the WTO adopts additional regulatory harmonization measures, judicialization means that more decisions about regulatory harmonization will be taken by dispute settlement panels and by the Appellate Body. Hence continued debate over what should constitute a trade issue, and thus what falls under the ambit of trade diplomacy, will remain central.

The question of what constitutes a trade issue is important amongst other reasons because, in large part owing to the success of the GATT, trade issues today are regarded by many policy makers as more amenable to diplomatic negotiation and management than a number of other international issues. Hence 'issue entrepreneurs' engaged in forum shopping to globalize their particular issue agenda and preferences are enticed by the opportunity to redefine an issue as a trade issue. For example, the distribution of global health care costs could become the next candidate for recasting as a trade-related issue, thus making it subject to diplomatic negotiation under WTO auspices. Thus a form of de facto global governance, the idea of regulation through diplomacy, becomes possible by a sort of *legerdemain* of political entrepreneurship. Contrary to Wilkinson's naturalization of supranational governance over trade issues, international trade and related issues remain subjects for diplomacy between essentially sovereign, and still in many ways estranged, powers. Trade diplomacy succeeds if it makes two or more negotiating parties better off. Governance of international trade, be it regional or global in nature, can really only be understood as a result or product of successful and ongoing trade diplomacy. The only way that this arrangement could change would be if at some point in the (probably distant) future states decided that it was in their interest to pool enough of their sovereignty in cross-border matters that it would change fundamentally the nature of state sovereignty.

A broader philosophical question around the future of trade diplomacy, transformed as it has been most recently by judicialization, concerns the relationships between democratic accountability and sovereignty and the incentives for pooling sovereignty. Functioning international trade institutions like the WTO and regional trade bodies require agreements to be negotiated between sovereign actors and then implemented. But once such institutions are in operation, it becomes exponentially more difficult to maintain democratic accountability.

Judicial mechanisms for enforcing the agreed rules become the norm. Negotiating changes to the rules to reflect popular will becomes exceedingly difficult, so change tends to be legislated from the (judicial) bench. The WTO and its dispute settlement system have come to be seen as a proxy for supranational governance of trade issues. They have created a new mode of diplomacy in the process, because the dispute settlement system is working even as traditional GATT/WTO multilateral trade negotiations falter. The DSU's success masks criticisms of lack of accountability, but that may not last forever. The lack of accountability embodied in judicialized diplomacy is a profound cause for concern, given the increasing demands of the global public to be consulted on the making and implementation of policies that affect them. These demands are unlikely to be assuaged solely by more effective one-way public communication by the WTO and other trade institutions. Today the global public expect a more participatory, bi-directional second generation public diplomacy that gives them more direct access to policy making and diplomatic processes. Hence public demands for greater participation in trade diplomacy gain more traction every day.

38 The next transformation? Learning from Europe

Judicialization, the third transformation in trade diplomacy, after only two decades has arguably still barely just begun. Hence it is in some senses too early to imagine what sort of future transformation of trade diplomacy might be on the horizon. Yet as this book has argued, the limitations and weaknesses of the international trading system as shaped by each transformation in trade diplomacy have framed the need for the transformation to follow. The weaknesses and limitations of judicialized trade diplomacy, as noted in Part Four and above, are already in evidence. There may be ways to move toward a resolution of the lack of transparency and legitimacy that diplomacy by dispute resolution engenders and, in the process, to address at the same time the shortcomings in the international trading system that prior transformations generated. One such way is to imagine the construction of a better diplomatic process for formulating, negotiating and adopting new global trade policies and rules than the current system of GATT/WTO multilateral rounds and dispute resolution offer. An improved diplomatic-legislative process would permit the diplomatic-judicial functions of trade dispute settlement to take place without expecting them to legislate rule changes in the process.



The Berlaymont, headquarters of the European Union's European Commission, opened in 1967

Photo: John M. Bell.

A possible model for a reformed diplomatic process can be seen already in how the European Union makes and enforces trade policy for itself collectively and trade relations amongst its member states. Crucially, the EU remains diplomatic, in the sense that it mediates relations of separateness, using Sharp's terms, between member states that retain their sovereignty and choose to continue to do so. The European Union does not presuppose the transfer and surrender of state sovereignty to organs of global governance. Rather, it is founded upon state sovereignty, making the process of coöperation and integration essentially diplomatic in nature rather than a supranational governance mechanism that resembles domestic politics within a state. The relationships between EU member states are expressly and intentionally both intergovernmental and supranational. In the numerous treaties of European Union signed and implemented since the 1950s, member states and their publics decided to pool their sovereignty regarding international trade and to participate in supranational legislative and judicial mechanisms that would collectively make and enforce trade policy.

The EU trade policy process is balanced between inter-governmental negotiation, legislation and judicial enforcement. EU trade policy is negotiated and approved through the EU's legislative organs, the Commission, the Council and the Parliament. Major changes to the EU's institutional structure and thus to the diplomatic processes that the structure facilitates, are negotiated and agreed at Inter-governmental Conferences (IGCs), the EU's equivalent of major diplomatic summits. Legal challenges by member states as well as by non-state actors, including firms, CSOs and individuals, are heard by the ECJ. The EU's legislative process, and the trade policies that it produces and implements, is often fiercely contested, both inside and outside of the process. Decades-long disagreements over the Common Agricultural Policy are particularly illustrative of that. And yet the process has continued to work, perhaps better with respect to international trade than in various other areas of EU legislation. This has been the case notwithstanding the EU's steady enlargement over more than a half century to embrace a group of member states that have been increasingly diverse economically. Messerlin contends that the EU has been able to continue to develop better tools for trade negotiation, as it has done with regulatory competition as an approach to services and TBT, because it has a better designed and balanced legislative-judicial apparatus than the WTO.[5]

Without question, the EU's institutional design, the extent of European integration, and the EU's set of policies remain subject to contestation by numerous political interests and groupings within its member states. How much sovereignty EU member states should pool in the EU is more hotly contested than ever. This argument in no way seeks to gainsay that debate. But at the time that the original GATT was founded, no institutional structure for diplomacy between sovereign states of the sort that the EU has developed yet existed. This argument contends that the EU's accomplishments in the area of trade diplomacy speak for themselves and that the rest of the world might benefit from approaching trade diplomacy more like the EU does. The EU, imperfect though its institutional structure and policy outcomes may be, could offer a prescriptive model for a different approach to WTO reform.

A transformation from a WTO-based institutional design and a WTO DSU-based judicialized trade diplomacy to a newer, EU-inspired process would have to involve WTO member countries taking decisions to

[5] Messerlin, 'The Influence of the EU in the World Trade System'.

pool sovereignty on trade issues using structures similar to that of EU member states. Governments would need to adopt a legislative, but still essentially diplomatic, process that could successfully mediate different positions in order to produce trade policies that member states could live with. This reformed process would have to transcend the WTO's own notion of itself as a 'member-driven organization' to the extent that it would grant greater diplomatic capacities to the institution itself (see below) and to the extent that it would need to encompass more than just member state governments as actors in its diplomatic processes. Representation in the process would need to be even more comprehensive than the representative mechanisms of both the WTO and the EU as they are today. Transnational business and civil society, e.g. transnational labour unions and environmental organizations, would need an institutionalized mechanism for representation that go beyond representation via nation-state delegations. Such new forms of diplomatic representation would reflect the reality that the nation-states are not disappearing, but that they now inhabit a much more diverse landscape of diplomatic actors on the global stage.

The European Union's institutional structure itself offers a plausible model for how global trade issues could be managed diplomatically through a combination of legislative and judicial approaches going forward. The EU's hybrid structure as it has evolved essentially functions, with a reasonable degree of success, as a platform for often difficult diplomacy between sovereign actors that have chosen voluntarily to pool elements of their sovereignty. Global trade diplomacy, like the European Union, requires some type of technocratic body, something akin to the European Commission. Such a body would address difficult policy questions, calculate tradeoffs and propose policies, undertake the most challenging of high level negotiations, and monitor and facilitate compliance. A Global Trade Commission would be a natural evolution from the WTO Secretariat but would need to be granted additional leadership powers and legitimacy beyond that of the WTO Secretary General. Some number of Global Trade Commissioners could be selected, perhaps proposed by members grouped by region, possibly with a mechanism to ensure representation of Least Developed Countries and global civil society interests. Commissioners, like the existing Secretary General, would act on behalf of the membership as a whole rather than representing a particular state or constituency. They might take responsibility for major briefs within trade diplomacy, such as trade and development, trade and investment, trade in services, trade and regulation, and relations with regional trading bodies. Like the

European Commission, a Global Trade Commission would take the lead in drafting, proposing and negotiating legislative changes to WTO rules, which would then be subject to consideration, approval and legitimation by a reformed WTO's other institutions.

Out of the WTO's General Council would need to emerge a deliberative body that, like the European Council, would represent member states and would be empowered to approve changes to the rules of the global trading system. A reformed WTO Council could be empowered to take decisions upon Global Trade Commission proposals covering a much greater range of trade issues and rules than those under the purview of the existing General Council. Suitably advised by a WTO World Trade Congress (see below), the reformed Council would have the popular legitimacy to empower its diplomatic representatives of sovereign member states to act on behalf of the WTO membership in taking decisions on many types of non-systemic changes to WTO rules. Many of these rule changes today still must be addressed in multilateral rounds, which mean that they get held hostage to the principle of 'nothing is decided until everything is decided.' Diplomats in the Council would be much better positioned to consider a rule modification that would involve a tradeoff involving a non-trade issue. For example, the USA and Japan might agree to allow expanded market access in products like sugar and textiles to imports from LDCs in return for LDC commitments to adhere to particular greenhouse gas reduction timetables.

Like the European Council, a reformed WTO Council would require a carefully constructed voting mechanism that would need to address in some way the disparities in relative size, wealth, and differential needs of member states. Neither 'one state, one vote' nor some basic supermajority voting rule would be likely to be acceptable to a preponderance of WTO members today. Without doubt, negotiating such a mechanism, and subsequently fine tuning it, would be one of the greatest challenges in WTO reform. It has proven one of the thorniest issues for the European Union already, and contention there shows no sign of diminishing. The EU has experimented with systems of 'qualified majority voting' (QMV), in which the relative sizes of different states is recognized as important but is not permitted to supervene entirely over other key distinctions. In the world at large, the population size differential between elephants such as China and India and mice such as Monaco and Vanuatu is many times the order of magnitude of the size differential between the largest and smallest EU members. Likewise the difference in relative wealth and trade volumes between the US or the EU on the one hand and Haïti or the Central African Republic

on the other is vastly greater than intra-EU wealth and trade volume differentials. Hence constructing and securing approval of a voting mechanism for a reformed WTO Council would be perhaps the most formidable diplomatic challenge of the reform process.[6]

The reformed WTO diplomatic process would be strengthened by the addition of a mechanism for transmitting legitimacy directly from the global publics, those who inhabit WTO member states and buy and sell traded goods and services every day. Such a body, which could be structurally and functionally equivalent to the European Parliament, might take the form of a World Trade Congress. Such a Congress would need to be composed of members either elected by or otherwise chosen by the citizenry of member states, according to the political and cultural practices of each. In recognition that diplomacy proceeds from the sovereign equality of nation-states and their respective political systems, the selection process for members need not conform to any externally set norms of democratic accountability. However, for nation-states whose populations elect legislative assemblies, it might make sense for their representatives to the World Trade Congress to be selected through to a mechanism that replicates the party or political balance prevailing in their domestic legislatures. This could overcome a crucial shortcoming of the European Parliament, in which the European public tend to use European Parliament as by-elections to protest policies of the sitting domestic governments that they have elected. Hence often the electoral makeup of the European Parliament the collective inverse of the aggregation of political forces in power in the EU's domestic legislature.

The purpose of a World Trade Congress, at least in the first instance, would be to confer greater legitimation upon WTO decisions by rendering advice to the Global Trade Commission and the Council. Hence a World Trade Congress would begin its existence as an advisory body, much as the European Parliament did. Member states could decide to confer additional powers upon the Congress at a later date. This is the reformed WTO institution into which it would make most sense for members to agree to build in a consociational element, a mechanism for formal representation of non-state actors such as CSOs, other multilateral institutions and transnational business. Representation of non-state actors would recognize the reality that the diplomatic landscape has expanded beyond nation-state actors without diminishing the voting

[6] Memory Dube, 'The Way Forward for the WTO: Reforming the Decision-Making Process', South African Institute of International Affairs, Occasional Paper No. 118, Economic Diplomacy Programme, July 2012.

power of governments. In bringing together representatives of state and non-state actors to generate trade policy advice, the World Trade Congress could learn from the successes of the World Economic Forum as a platform for public-private policy research and problem solving.[7]

Beyond recognizing non-state actors, the World Trade Congress would work differently in another crucial way. In order to reach agreement on advisory opinions to be rendered to the Global Trade Commission and WTO Council, members of the World Trade Congress would have to form political and diplomatic coalitions with like minded members from other states and non-state delegations. For example, members of the Congress from political parties representing electronics manufacturers in the Chinese and Taiwanese delegations might join forces with members from European political parties with strong consumer backing to convince the Congress to advise the Council to pass a rule change harmonizing behind the border consumer electronics safety regulations. A World Trade Congress advisory opinion would provide legitimacy, and thus political cover, for Council representatives deciding whether they are able to support the proposal in a Council vote. Cross-border coalitions that include non-state actors would also help to break down the current diplomatic standoff between industrial and developing country delegations in the WTO.

A reformed WTO diplomatic process would need a suitable diplomatic instrument through which member states could reach agreement upon major, systemic changes to the institutional structure and diplomacy of the international trading system. Here again the European Union's model of the holding of inter-governmental conferences (IGCs), major summits of member states, is instructive. The purpose of WTO IGCs would be to conclude negotiations and sign major treaties embodying some of degree systemic change rather than more incremental or issue-specific rule changes. Such a transformation already has its roots in the conferences that have concluded major multilateral trade rounds, such as the Marrakech conference of 1994 that concluded the Uruguay Round with the signing of the Treaty of Marrakech. However, IGCs would occur only as a result of the decision by members that a major negotiation is within reach of conclusion. A reformed institutional and diplomatic framework for trade diplomacy would not create the structural pressure to complete negotiations on the kind of timetables that have affected each multilateral round more severely than its predecessor.

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[7] Geoffrey Allen Pigman, *The World Economic Forum; A Multi-stakeholder Approach to Global Governance*, London: Routledge, 2006.

A reformed WTO would need to address specifically the shortcomings of judicialized diplomacy. The judicial process in a reformed WTO would not need to be a quantum leap from the WTO's DSB with its highly professional Appellate Body and rapidly evolving corpus of jurisprudence. However, its relationship to the legislative component of WTO diplomacy would be significantly different. As the primary locus of negotiation of policy and rule changes would shift to the Commission, Council, Congress and IGCs, the WTO judiciary would be able to refocus its attention on its originally conceived function of adjudicating disputes between rules that are clearer and less contested. In this respect it would resemble the European Court of Justice, professionalized and at the same time charged with the responsibility of not legislating from the bench except in rare cases when circumstances demanded it. The WTO DSB could also follow the ECJ in not being a judicial body solely for member states but for all of the publics therein. The judiciary offers another clear avenue for greater participation of CSOs and transnational business in WTO diplomacy at a level beyond the filing of *amicus curiae* briefs. The WTO could grant standing to accredited non-state diplomatic actors, if not initially to initiate trade disputes, then at least to join disputes as interested parties.

One of the main challenges for a reformed WTO judiciary is to address the relationship between the WTO DSM and dispute settlement mechanisms that are part of regional or bilateral trade agreements. The end point should be to integrate regional judiciaries into WTO jurisprudence. In the European Union, ECJ decisions supervene over those of member state courts, much as the treaty commitments of WTO members supervene over contrary provisions of their domestic law. However, the WTO's relationship with regional DSMs is more ambiguous, as the trade liberalization disciplines to which members of PTAs may commit themselves may be more extensive than those to which they have committed themselves in the WTO. This could be a place to leverage the success of WTO jurisprudence. One way to begin a process of harmonization of WTO and regional dispute settlement processes would not be to abolish forum choice for regional PTAs, but rather to permit WTO members to appeal adverse decisions under regional DSMs to appeal to the WTO Appellate Body. This step would enable the WTO Appellate Body to integrate regional DSM jurisprudence into its own body of case law and would embrace the multispeed process of trade liberalization that in effect already exists.

One of the great advantages of a reformed WTO that more resembles the EU in its institutional structure and operation is that, from the perspective of diplomacy, the reformed structure would permit WTO

business to take place in the real time of conventional diplomatic relations. Much of EU diplomacy on a day to day, week to week basis, is concerned with minor but essential business: consular affairs, the resolution of minor disputes through administrative and judicial means, drafting and negotiating agreement on legislation dealing with relatively minor matters. Occasionally, when political momentum amongst the member states is sufficient, more major rule-changing legislation is negotiated and passed. Even less frequently, major systemic changes are considered and adopted by treaty at an IGC. But importantly, periods of consolidation, relative inactivity and everyday business are regarded as normal in the EU. Notwithstanding the tom-toms of Neofederalist academics and Eurocrats perceived to be always driving European integration farther and deeper, EU diplomacy can actually accommodate long periods of 'normal operation' without the urgency of reform. In the WTO, by contrast, periods between multilateral rounds have tended to be feared for their potential to topple the trade liberalization bicycle. Rather than ongoing rounds being considered normal, in a reformed WTO the diplomatic everyday would be considered the new normal. The institution's essential ongoing activities of promoting trade through better observance of WTO rules and disciplines, such as the Trade Policy Review Process, would be accorded the central place in WTO diplomacy that they deserve. A reformed WTO would allow natural political dynamics between members to drive the pace of the diplomacy of legislating rule changes, as it does within the EU. This would go a long way toward replacing perceptions both within and outside the institution that the relative stalemate of the Doha Development Agenda is emblematic of stalemate in the WTO itself. It could also lift the perception that stalemate is an inevitable result of the increase in relative power of big emerging economies and the other developing countries for whom the big developing powers speak. Recognizing that ongoing WTO diplomacy being subject to continuing shifts in relative power between sovereign member states is a normal state of affairs should help to facilitate the negotiation of cross-issue deals (between trade and non-trade issues, such as security) between shifting combinations of interested parties in industrial and emerging economies alike.

39 Getting from here to there: the case for 'confederalization'

If, as Bismarck remarked, politics is the art of the possible, so much the more so for diplomacy. Reforms to the WTO and other international

trade institutions, which could enable a further transformation in trade diplomacy, will only happen if states decide it is in their interest to make reforms happen. In diplomacy, even a convergence or congruence of interests does not guarantee that actors will reach agreement, as noted above in Part One. Perhaps the easiest place to initiate debate over reforms to the trading system would be to focus on interests that should be shared by all the current system's participants, not to mention actors whose participation presently are limited (e.g. CSOs). For example, all should be able to agree upon seeking to make the system and the institutions that administer it more transparent, more legitimate and hopefully more workable than under the current system. Ambitious though it may be, this ought not to be proposing too much to start.

A tentative first step toward precipitating the next transformation might be to seek agreement amongst members to strengthen the powers of the WTO Secretariat, as Wilkinson and others have advocated already. That might or might not address the most difficult political challenge to overcome in advancing new systemic reform proposals, which would be fear in developing countries that any additional pooling of sovereignty through creation of EU-style institutional structures would constitute a Trojan horse for neo-colonial governance. The European Union started small, but from the beginning the pooling of sovereignty over tariffs and trade was at its core. The WTO, by contrast, is already large, so the route to change would likely be different. Yet lessons can still be learned. Developing the EU's legislative mechanisms as it has evolved and enlarged, e.g. creating the weighted voting system for the European Council, has been a huge challenge for diplomats. At the end of the day the only mechanism that can change how the EU operates at a systemic level is an inter-governmental conference (IGC). As an EU IGC is a diplomatic conference of sovereign states not utterly unlike a WTO ministerial conference, a procedural route to change in trade diplomacy (and the governance of the trading system that would flow from it) potentially already exists. Yet such a transformation in trade diplomacy at a global level may still be a long time in coming. Some significant degree of disruption to the international trading system, as has occurred around past transformations, may be necessary to act as a catalyst for enough participants again to recognize the need for transformative change. Only then might they become willing to charge their diplomats with the authority to do the sort of horse-trading required to birth a trading system transformed yet again.

Advocates of WTO reform have criticized regional and bilateral PTAs for their potential to undermine the process of multilateral trade liberalization.[8] Critics of regional and bilateral pacts are analogous to supporters of European integration who have long decried the emergence of a 'multi-speed Europe', in which some member states of the EU integrate faster and more deeply than others in different issue areas. Yet a multi-speed Europe, like multi-speed trade liberalization, has been a reality for many decades already, as the continued growth of the Euro zone within the EU illustrates. The best way to address this reality is to bring regional trading bodies into some sort of more fully recognised relationship with a reformed WTO, as the discussion of dispute settlement above suggests. The plurilateral sectoral codes of the GATT Tokyo Round, which members could choose to join, serve as an early model of variable speed multilateral trade liberalization.[9] The agreement reached by WTO members on trade facilitation, the streamlining of customs procedures, at the 2013 Bali ministerial conference, is a further indicator that sectoral agreements driven by subsets of the WTO membership are viable means for expanding trade.[10] If TPP and TTIP are concluded successfully, it should be recognized that states constituting a measurable majority of global trade will have moved to a significantly higher level of trade liberalization than the WTO at large. TPP and TTIP could be incorporated into the WTO as new plurilateral codes open to additional signatories. A multi-speed international trading system, provided it conforms to principles of transparency in negotiations and openness to participation, needs to be understood and accepted from a diplomatic perspective as a good in itself.[11] In trade diplomacy no less than on security issues, governments need and naturally seek multiple configurations of alliances and relationships, in part to serve as a safety net in the event that one major relationship or another should break down.

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[8] Bhagwati, *Termites in the Trading System; How Preferential Agreements Undermine Free Trade*.

[9] Brendan Vickers, 'The Relationship Between Plurilateral Approaches and the Trade Round', International Centre for Trade and Sustainable Development, The E15 Initiative: Strengthening the Global Trading System, E15 Expert Group on Functioning of the WTO, December 2013.

[10] Uri Dadush, 'How can the World Trade Organization stay relevant?', World Economic Forum blog, 14 January 2014 http://forumblog.org, accessed 14 January 2014.

[11] Vickers, 'The Relationship Between Plurilateral Approaches and the Trade Round'.

The key is to ensure that regional and bilateral PTAs and the WTO do not work at cross purposes.

The transformation in trade diplomacy that would yield such a reformed international trading system could be thought of as 'confederalization', for want of a better moniker. It would be diplomacy that would resemble the workings of a confederal political system, in the sense that members would remain fully sovereign states that wish to remain so but are linked by a structure involving pooling aspects of sovereignty to achieve shared objectives. Hence their interactions would remain necessarily and essentially diplomatic in character. Confederalized trade diplomacy between sovereign states would produce a certain measure of global governance but that would be nothing like any form of 'world government.' Diplomatic relations would continue to take place between sovereign actors that themselves would be subject to accountability to their own citizenries, democratic or otherwise, according to the political system and culture of each.

Past transformations in trade diplomacy have occurred as a result of the combination of structural factors and actions by governments and individuals described in this volume. A decision to attempt consciously to precipitate another transformation will require a political and diplomatic strategy, one that benefits from the foregoing history and analysis. The greatest challenge for advocates of reforming the international trading system through a further transformation of trade diplomacy is how to sell its merits to governments and to non-state actors. Public sentiments in many countries are profoundly skeptical of measures that appear to cede political power, particularly in democracies, to any sort of supranational authority. Political leaders and parties in democratic and authoritarian states alike long ago discovered the effectiveness of using appeals to nationalist public sentiments directed against multilateral institutions to shore up their own political support at home, as evidenced by the success of Euroskeptic political parties in EU countries and opposition to the International Monetary Fund in countries such as Argentina. Yet voters often show themselves to be much more canny than their elected (or unelected) leaders in assessing real costs and benefits of pooling sovereignty to advance their interests, as the queue of at least nine countries waiting to join the European Union attests. The political calculus of voters is affected not least by their perceptions of the close and ongoing relationship between international trade and security. The ability of the 'peace through commerce' argument to resonate with voters, as Cobden recognized in the nineteenth century, continues to be acknowledged by political leaders of the most powerful

states today. For example, the diplomatic communiqués issued by the leaders of the G20 at the end of their annual summits routinely recommit G20 members to work for the conclusion of the WTO Doha round in the interests of global economic growth and stability.[12]

Some countries and constituencies will be more open to WTO reform than others, although a reasonable case can be made that most would stand to gain. A WTO reform project may be easiest to market to Europeans. Europe is likely to be most receptive to the proposal, as the proposed reforms make the WTO more akin to the political and diplomatic structures that already Europeans have already adopted in the EU. Selling the project in the United States may be the greatest challenge. As noted in Part III above, a coalition of anti-business, pro-labour and environment left Democrats and nationalist right Republicans is perennially arrayed in opposition to trade liberalization against a centre bipartisan pro-trade, pro-business coalition. This battle may have been fought and won decisively in the 1995 US Congressional debate over ratification of the Treaty of Marrakech that created the WTO. Arguably the lion's share of sovereignty over trade issues that needed to be pooled was done at that time in the form of accepting the jurisdiction of the WTO DSB and Appellate Body.[13] Yet opposition to the WTO from anti-trade constituencies has not diminished. Hence WTO reform should be presented to the American public and politicians not as the pooling of any additional sovereignty but rather as a better way to administer the sovereignties that have already been pooled in the Treaty of Marrakech. WTO institutional reforms would enable more efficient diplomacy to advance US interests, including facilitating easier tradeoffs between trade and non-trade issues, such as security. It would become easier for US negotiators to leverage security relationships for trade gains.

At least as great a challenge as convincing major industrial powers to adopt WTO reforms will be that of making the case to the big emerging powers such as Brazil, India, and China, which have assumed leadership rôles for many other developing and least developed economies. For developing countries, greater flexibility for coalition building, e.g. in a reformed WTO Council and World Trade Congress, offers the possibility

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[12] G20 Leaders' Communique, Brisbane Summit, 15–16 November 2014, section 16, https://g20.org/wp-content/uploads/2014/12/brisbane_g20_leaders_summit_communique1.pdf. accessed 1 May 2015.

[13] Geoffrey Allen Pigman, 'The Sovereignty Discourse and the U.S. Debate on Joining the World Trade Organization', *Global Society*, Vol. 12, No. 1, 1998, pp. 75–101.

of moving beyond stalemate to achieve positive objectives. China in particular should find a reformed WTO that relies less on judicialized diplomacy and more open to diplomatic bargaining across issues to be particularly advantageous, given China's cultural disfavour of litigation and the extent of trade and non-trade assets that they have to use as counters in trade negotiations. China might find a growing diplomatic niche in brokering between industrial country and developing country interests in reaching agreement on contentious issues such as agriculture. For example, as an increasingly large importer of agricultural goods, China could agree to accept larger quantities of shorter term agricultural imports from other developing countries in return for commitments from industrial countries to liberalize agricultural imports over a longer phase-in period than developing countries currently seek. In return, China might seek concessions from developing and industrial countries alike in negotiating a mutually agreeable formula for sharing access to contested resources beneath the South China and East China seabeds.

Ultimately the merits of reforming the WTO, and in so doing precipitating a new transformation in trade diplomacy toward confederalization, should sell themselves in political society across the range of countries that would need to agree to it. Increasingly powerful and globalized civil society organizations and transnational business associations, by being offered more formal and substantive representation in trade diplomacy for the first time, would have a powerful incentive to lobby in each country for support for a reform proposal. If the potential of a reformed WTO to offer greater legitimacy and transparency is articulated clearly and persuasively to the global public, it should engender support from everyone. The WTO DSM is arcane enough that many skeptics about trade are unaware that under the current system of judicialized diplomacy, trade legislation from the bench is neither transparent nor, for many, sufficiently legitimate in terms of public participation. A more effective WTO would also be likely to make members more likely to pursue their trade policy objectives diplomatically through the WTO rather than utilizing or building upon regional and bilateral PTAs (or even creating more new ones). A reformed, confederalized set of institutions for trade diplomacy offers the prospect not of global governance or an incipient world government in the making, but rather of greater inclusivity and more effective diplomacy aimed at mediating estrangements between sovereign powers and achieving common objectives. At the end of the day trade matters for global prosperity not only in the sense that global prosperity is about a global

aggregate measure of economic growth and wealth. It is about prosperity for every member of the global public. Better trade diplomacy is the only means by which each person's interests have a chance to be advanced and mediated in an otherwise chaotic global economy composed of many different state and non-state actors of very different size, power, and capabilities.

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