

DEVELOPMENT AND REGIONAL TRADE AGREEMENTS: ENTRENCING STRUCTURAL INEQUITIES

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I. INTRODUCTION

Multilateralism has the power to engender positive economic benefits through international trade, both for countries that participate in the system and for individuals that may benefit from lowered costs. Nevertheless, as any student of introductory trade theory knows, with economic gains from trade come economic losses. How multilateral rulemaking institutions and individual countries address those losses will shape the outcomes for individual participants in the system.

Regionalism and the plurilateral trade agreements arising from the consequent fragmentation of international trade, in contrast to multilateral agreements, are unlikely to result in improvements in living standards on a global level. Particularly where developing country issues are at stake, regional trade agreements, at least as currently being negotiated, will stand to increase the divide between developed and developing countries—between the Global North and the Global South. This Article offers a critique of the trend toward regionalism and challenges the idea that continued trade liberalization is either necessary or desirable, at least at this juncture. Rather than negotiating regional trade agreements, the focus should be on shoring up multilateralism by refocusing the World Trade Organization (WTO) on the goals in its Preamble, especially the goals related to sustainable development.

Regionalism marginalizes developing countries in several ways. In particular, developing countries are marginalized because they lack the ability to join many of the regional trade agreements being negotiated, either because the agreements are closed to additional membership, like the Transatlantic Trade and Investment Partnership (TTIP), or because, like the Trans-Pacific Partnership (TPP) and its rebranded successor, the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), they contain capacity-building-related hurdles that make it extremely difficult, if not impossible, for developing countries to join.

With the current backlash against trade liberalization and globalization, which has impacted not only multilateral negotiations but also the negotiation of regional trade agreements, it seems that additional trade liberalization will be unlikely to add anything to the global landscape.¹ One

¹ See, e.g., Zach Carter & Ryan Grim, *Noam Chomsky: Obama Trade Deal A 'Neoliberal Assault' To Further Corporate 'Domination,'* HUFFINGTON POST (Jan. 13, 2014), https://www.huffingtonpost.com/2014/01/13/noam-chomsky-obama-trans-pacific-partnership_n_4577495.html (Noam Chomsky's critique of TPP as a "neoliberal project to maximize profit and domination"); Joseph Stiglitz, *On the Wrong Side of Globalization*, N.Y. TIMES (Mar. 16, 2014),

has only to look at the response to TPP from constituents in the United States and elsewhere to see how further liberalization is likely to play out. In the United States, some Democrats, like Chuck Schumer, have taken a very hostile position toward the North American Free Trade Agreement (NAFTA) renegotiations and other trade issues, while Republicans have pivoted away from a historically pro-trade position to adopt an isolationist approach predicated on the threat of trade wars to achieve American economic domination.² In such an environment, additional agreements seem not only superfluous, but arguably dangerous to the effectiveness of existing multilateral trade rules.

Reimagining a new multilateral trading system that would position the Global South on equal footing with the Global North is a necessary endeavor, for it is clear that what exists is inadequate. However, such an endeavor is far beyond the scope of this Essay, which is firmly rooted in the realities of the existing structures. Such a focus should not be viewed as an ideological commitment to the current institution but, rather, as a pragmatic awareness that it is better to operate within a framework of multilateral rules, however flawed, than to have a breakdown of global trade rules and a dissolution of the WTO's dispute settlement system.³

II. STRUCTURAL INEQUITIES IN BILATERAL AND REGIONAL TRADE AGREEMENTS

Whatever profound flaws the multilateral trading system may have, the members of the WTO are, on paper at least, equal participants. In the past few years, Global South members have had greater success in shaping the WTO's agenda than in the early years of the General Agreement on Tariffs and Trade (GATT) and the WTO. In the successful negotiation of the Trade Facilitation Agreement, which concluded in 2013, the Global South members took an active role in ensuring that somewhat fairer special and differential

<https://opinionator.blogs.nytimes.com/2014/03/15/on-the-wrong-side-of-globalization/> (scathing criticism of TPP as an example of the gross mismanagement of globalization and its reflection of societal inequality).

² Binyamin Appelbaum, *Senate Democrats Seek to Outdo Trump on Trade*, N.Y. TIMES (Aug. 2, 2017), <https://www.nytimes.com/2017/08/02/us/politics/senate-democrats-seek-to-outdo-trump-on-trade.html>.

³ The WTO dispute settlement system is currently under threat as the United States actively works to undermine the effectiveness of the WTO's Appellate Body. See, e.g., Shawn Donnan, *WTO Faces an Identity Crisis as Trump Weighs Going it Alone*, FIN. TIMES (Dec. 5, 2017), <https://www.ft.com/content/38c56f52-d9a5-11e7-a039-c64b1c09b482>.

treatment (S&DT) terms be included in the agreement.⁴ These S&DT provisions go beyond those found in the other WTO agreements, recognizing the necessity of providing assistance and support for capacity building to developing countries through a mechanism whereby developing countries may opt into obligations arising from certain provisions of the agreement if and when they feel ready.⁵ The Trade Facilitation Agreement also provides for developed countries to act as donors in supporting developing and least developed country members to build capacity to implement the provisions of the Agreement.⁶ Although the impact of these measures remains to be seen, the S&DT provisions in the Trade Facilitation Agreement provide an example of an effort to help balance economic power and benefits between the Global North and the Global South through multilateralism, driven by greater participation of members from the Global South in the negotiation process.

India has been a strong voice for the Global South in the WTO. In particular, it has pushed for the inclusion of a food stockpiling exception to the general WTO rules, which is of particular concern to Global South countries.⁷ India has also been critical of plurilateral initiatives in the WTO, including those on environmental goods and e-commerce, viewing these as a way for the Global North to push an agenda for which consensus is lacking.⁸ Most recently, in January 2017, a protocol amending the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) to allow countries to export generic medicines produced under a compulsory license to the least developed countries finally came into effect. This was the first amendment to the multilateral WTO agreements.⁹ In contrast, bilateral and regional trade agreements offer little room for Global South countries to have their voices heard. The structural inequities in the negotiation process,

⁴ See Antonia Eliason, *The Trade Facilitation Agreement: A New Hope for the World Trade Organization*, WORLD TRADE REV. 643, 659–62 (Oct. 2015).

⁵ *Id.* at 659.

⁶ *Id.*

⁷ *Id.* at 643–44.

⁸ Int'l Ctr. for Trade and Sustainable Dev., *India, Argentina Table New Proposal on Environmental Goods in Doha Negotiation* (June 22, 2007), <https://www.ictsd.org/bridges-news/biores/news/india-argentina-table-new-proposal-on-environmental-goods-in-doha>; Amiti Sen, *India for Status Quo on E-commerce Negotiations at WTO*, THE HINDU BUS. LINE (Nov. 28, 2017), <http://www.thehindubusinessline.com/economy/india-for-status-quo-on-ecommerce-talks-at-wto/article9975601.ece>.

⁹ General Council, *Amendment of the TRIPS Agreement*, WTO Doc. WT/L/641 (Dec. 6, 2005); see also William New, *WTO Members Celebrate Treaty Amendment on Medicines Access, Look Ahead*, INTELL. PROP. WATCH (Jan. 1, 2017), <https://www.ip-watch.org/2017/01/30/wto-members-celebrate-treaty-amendment-medicines-access-look-ahead/>.

as well as in the final agreements, further marginalize these developing nations.

Bilateral trade and investment agreements are generally negotiated between large economic powerhouses—the Transatlantic Trade and Investment Partnership (TTIP), between the European Union and the United States,¹⁰ for instance, or the Comprehensive Economic and Trade Agreement (CETA), between Canada and the European Union.¹¹ With these bilateral agreements, the exclusion of other participants is understandable. These are closely negotiated agreements and include the liberalization of bilateral trade and investment rules with a focus on specific areas that would provide a mutual advantage for both parties. Where these bilateral agreements are meant to move beyond and develop upon the trade rules in the WTO to advance trade liberalization and to cover areas that are not otherwise covered in existing trade agreements, it seems fundamentally misguided to ignore some of the goals enshrined in the preamble to the WTO Agreement, particularly those relating to sustainable development, the environment, and developing countries. Since the WTO has yet to fully realize these goals, incorporating provisions that go beyond the WTO agreements in these areas would seem a *sine qua non* for bilateral Free Trade Agreements (FTAs). Otherwise, by allowing the largest economic powers to dictate the evolution of trade and investment rules through norm-setting in their own agreements, Global South countries will yet again find themselves accepting rules that fail to address their concerns and instead impose onerous conditions on participation in what should be a global system of trade. Repeating the conditions that arose with the creation of the WTO after the Uruguay Round and gave rise to the consequent imposition upon Global South countries of controversial rules such as TRIPS as a condition for continued participation in the GATT is unacceptable.

Even more problematic are the megaregional agreements, such as CPTPP and the Regional Comprehensive Economic Partnership (RCEP), where the parties include a diversity of nations and the agreements are intended to be open to additional membership, even once the agreements come into effect. If we are to view these agreements as potential models for the future, as advocates for such megaregional agreements have ably argued in the context of norm-setting, then the treatment of developing countries in such

¹⁰ See OFF. OF U.S. TRADE REPRESENTATIVE, *Fact Sheet: United States to Negotiate Transatlantic Trade and Investment Partnership with European Union* (Feb. 13, 2013), <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2013/February/US-EU-TTIP>.

¹¹ *EU-Canada Comprehensive Economic and Trade Agreement: CETA Overview*, EUROPEAN COMM'N, http://trade.ec.europa.eu/doclib/docs/2017/September/traoc_156056.pdf (last visited Apr. 5, 2018).

agreements is particularly important.¹² TPP, for example, which despite the withdrawal of the United States will continue as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) amongst the remaining eleven parties, provides for accession by other countries in its final text.¹³

Since one of the goals of TPP that has continued to be reflected in CPTPP is to act as a geopolitical counterweight to the economic power of China,¹⁴ the idea that it would remain open for other interested parties in the region to join makes considerable economic sense. What the agreement fails to do, however, is to offer support for countries that might want to accede to CPTPP. This raises concerns regarding the ability of countries in the region to join CPTPP, since most of the CPTPP countries have fairly developed or advanced developing economies. While accession requires domestic regulatory changes for some of the less developed parties involved in CPTPP, having been part of the negotiating process from the beginning means that these countries have had the opportunity to negotiate a quid pro quo. For other developing countries that might want to join CPTPP, the hurdles to accession may be unreasonably high. Unlike the WTO, there are no S&DT provisions built into the agreement.¹⁵ Without these provisions, developing countries will lack opportunities to receive support to capacity-build and reach the regulatory standards required for membership.¹⁶ Such a

¹² See, e.g., Richard B. Stewart, *State Regulatory Capacity and Administrative Law and Governance Under Globalization* (Inst. for Int'l Law and Justice, Working Paper No. 2016/1, 2016), <https://www.iilj.org/publications/state-regulatory-capacity-and-administrative-law-and-governance-under-globalization/>.

¹³ Trans-Pacific Partnership Agreement, *opened for signature* Feb. 4, 2016, <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text> [hereinafter TPP]. Article 30.4(1) provided that TPP shall be open to accession by either any APEC member state or any other state as the Parties may agree. *Id.* art. 30.4. Article 5 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Preamble replaces Article 30.4 of TPP, providing that “any State or separate customs territory may accede to this Agreement, subject to such terms and conditions as may be agreed between the Parties and that State or separate customs territory.” Comprehensive and Progressive Agreement for Trans-Pacific Partnership, *opened for signature* Mar. 8, 2018, <https://www.mfat.govt.nz/assets/CPTPP/Comprehensive-and-Progressive-Agreement-for-Trans-Pacific-Partnership-CPTPP-English.pdf> [hereinafter CPTPP].

¹⁴ Stewart, *supra* note 12, at 5.

¹⁵ See generally TPP, *supra* note 13 (lacking in S&DT provisions).

¹⁶ A glimmer of hope can perhaps be found in TPP Chapter 23, which discussed development, and particularly in articles 23.6 and 23.7, which envisioned joint development activities as well as the creation of a Committee on Development. The wording of the chapter was, however, vague, and the joint development activities seemed to consist of little more than parties ‘when mutually agreed’ discussing, considering, and facilitating measures that would help foster goals of raising living standards and reducing poverty.

burden would affect a range of trade and investment measures, from trade facilitation provisions to intellectual property rules.

RCEP represents a different approach to megaregionalism than TPP/CPTPP. Pasha Hsieh has argued that RCEP is a more significant agreement than TPP, representing the new regional economic order based on FTAs between Global South countries, “which will prompt paradigm shifts in Asian regionalism and construct a normative foundation for the Global South in international economic law.”¹⁷ The negotiators of RCEP have certainly been more proactive, recognizing the need for S&DT mechanisms to assist least developed country members that are part of the negotiations (in particular, Cambodia, Laos and Myanmar, which are all members of the Association of Southeast Asian Nations (ASEAN)).¹⁸ The secrecy shrouding the negotiations, however, suggests that whatever the final agreement, it is unlikely to be as progressive in terms of S&DT as possible.

As B.S. Chimni has aptly argued, the third world state “has seceded, through ‘voluntary’ undertaken obligations, national sovereign economic space . . . to international institutions that enforce the relevant rules.”¹⁹ In the context of dispute settlement, Chimni further notes that “[i]t is not the greater internationalisation of interpretation and enforcement of rules that is problematic but its differential meaning for, and impact on, third world States and people.”²⁰ In practice, while the WTO dispute settlement system was viewed as protecting the interests of WTO members from the Global South, Chimni suggests that this has failed to occur, since “the substantive rules themselves are biased in favour of the first world, and have therefore not yielded the expected gains in terms of market access.”²¹

In the context of megaregional agreements like CPTPP and RCEP, developing country members will have further ceded national sovereign economic space to regional institutions that lack even the veneer of multilateralism that international institutions may have in support of their broader legitimacy. If the substantive rules of the WTO agreements are biased in favor of the Global North, then the rules of megaregional

¹⁷ Pasha L. Hsieh, *The RCEP, New Asian Regionalism and the Global South* 5–6 (Inst. for Int’l Law and Justice, Working Paper No. 2017/4, 2017).

¹⁸ Peter K. Yu, *The RCEP and Intellectual Property Normsetting in the Asia-Pacific*, in CURRENT ALLIANCES IN INTERNATIONAL INTELLECTUAL PROPERTY LAWMAKING: THE EMERGENCE AND IMPACT OF MEGA-REGIONALS 89, 99 (CEIPI/ICTSD Publications Series, Issue 4, 2017), http://www.ceipi.edu/fileadmin/upload/DUN/CEIPI/Documents/Publications_CEIPI_ICTSD/CEIPI-ICTSD_no_4.pdf.

¹⁹ B.S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INT’L COMMUNITY L. REV. 3, 8 (2006).

²⁰ *Id.* at 12.

²¹ *Id.* at 12–13.

agreements, focused on privatization and regulatory harmonization (or at least regulatory streamlining) amongst its members, are doubly so. As long as the normative framework used to negotiate such agreements continues to be based on traditional FTAs, even megaregionals with substantial participation from the Global South like RCEP will fail to result in dramatic improvements to the economies of the least developed members of these agreements. Just because Global South countries participate in such agreements and abide by their rules does not mean that the rules are legitimate or just.²²

It may be argued that developing countries are not forced to be a part of these agreements, and that if they wish to join, they can devote the necessary resources to do so. By protecting the most economically vulnerable countries at the expense of countries motivated to make progress in developing new trade rules, trade liberalization would slow, which, some argue, would diminish global economic growth.²³ However, this line of reasoning is misplaced. Trade interests are not advanced by emphasizing unfettered trade liberalization for a small cadre of elites. After all, it was not in the interest of the United States to be the only major economic player in the world after World War II. This resulted in the surprisingly progressive vision enshrined in the Preamble to the 1947 General Agreement on Tariffs and Trade (GATT).²⁴ Similarly, in the long run, it is not in the interest of the large global economies to exclude the smaller developing economies. The greater the number of economically successful countries, whether developed or developing, the better the global economy will be.

Trade agreements between Global South countries may offer an alternative to regional trade agreements between Global North countries. South-South regional trade agreements have proliferated in recent years,

²² B.S. CHIMNI, *INTERNATIONAL LAW AND WORLD ORDER: A CRITIQUE OF CONTEMPORARY APPROACHES* 78 (2d ed. 2017) (Chimni writes “[T]hird world nations obey many of rule of international law not because of the legitimacy or justice of the rules but the lack of power or the inability to face the consequences brought upon them by global capital or the powerful nations that represent its interests.”) [hereinafter CHIMNI, *CRITIQUE*].

²³ See Kalim Siddiqui, *Trade Liberalization and Economic Development: A Critical Review*, 44 INT’L J. POL. ECON., 228, 228–47 (2015), for an overview of the literature on trade liberalization and economic development.

²⁴ General Agreement on Tariffs and Trade Preamble, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT]. The preamble to GATT 1947 states in part,

[r]ecognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods.

Id.

raising the question of whether such agreements result in trade creation or trade diversion.²⁵ The overall effects of regional trade agreements may be limited where agreements are between countries with similar exports and are of similar economic size. In Africa, the proliferation of regional trade agreements has resulted in greater cooperation and increased competitiveness amongst the member countries.²⁶ However, where such agreements are between smaller developing economies, as is usually the case with South-South regional trade agreements, their ability to shape multilateral negotiations or influence rulemaking in North-North or North-South regional trade agreements will be curtailed. South-South regional trade agreements play an important role in bringing the interests of Global South countries closer together, but alone they cannot replace the multilateral trading system.

III. SUSTAINABLE DEVELOPMENT AND THE WTO AGREEMENT PREAMBLE— GENUINE COMMITMENT OR LIP SERVICE?

If regionalism is not the answer, at least not as currently articulated in megaregional trade deals, then multilateralism must be the alternative. As previously suggested, the multilateral trading system is not without its flaws, however it contains the seeds of progressive economic development which heretofore may have played a supporting role. The Preamble to the WTO Agreement, with its focus on sustainable development and the environment as well as its emphasis on helping developing nations, provides a framework for addressing trade issues in an increasingly trade-skeptic global economy.²⁷

From the GATT Preamble to the Preamble to the WTO Agreement, the vision of the international trading system was originally to improve living standards and provide liberalized trade in the context of a social welfare

²⁵ GBADEBO ODULARU ET AL., *The Big Picture: South-South Regional Trade Agreements Within the Context of the Multilateral Trade Systems*, in NEGOTIATING SOUTH-SOUTH REGIONAL TRADE AGREEMENTS 9, 11 (G. Odularu & B. Adekunle eds., 2017).

²⁶ *Id.* at 19.

²⁷ Marrakesh Agreement Establishing the World Trade Organization Preamble, Apr. 15, 1994, 1876 U.N.T.S. 154. The Preamble states,

[r]ecognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development. . . .

Id.

compact.²⁸ The neoliberal approach to trade of the past few decades has largely lost sight of those goals, making it increasingly difficult to achieve positive outcomes through the international trading system. While multinational corporations see record-breaking profits, and cheap consumer goods penetrate every corner of the planet, individual wealth is stagnating and income inequality continues to rise.²⁹

The promised benefits of international trade have not accrued in the countries of the Global South, whose economies remain heavily agriculture dependent while facing continued barriers to trade in agricultural goods in the form of agricultural subsidies by Global North countries to protect their own agricultural sectors. The GATT's vision of liberalized trade with a robust social welfare system underpinning it was never meant to include the Global South. Instead, it reflected continued Western imperialism toward its colonies, both current and former.

In this context, it is important to clarify how sustainable development is to be interpreted. Sustainable development has long been used as a neoliberal pretext for improving living conditions for those in the Global South through the privatization and internationalization of property rights.³⁰ This construction of sustainable development is not inevitable. With sustainable development containing ecological, social and economic components, balancing the three elements in such a way not only benefits the Global North through economic growth but also results in inclusive development that prioritizes the Global South's concerns is of utmost importance.³¹

At the same time that multilateralism and the WTO are facing a legitimacy crisis, the world is facing its biggest challenge yet—climate change. In a future article, I will explore the mechanisms by which the WTO can be used to effectively combat climate change. Here, let it simply be said that climate change is an issue that cannot be addressed regionally. Climate change is a global problem requiring global solutions. As a multilateral institution, the WTO is well situated to adapt and help address these issues in a variety of ways. First, the negotiation of a new multilateral or plurilateral agreement could help to facilitate the Paris Agreement. Furthermore, the WTO's use of waivers could allow for exemptions to rules that may currently prevent the allocation of resources toward achieving sustainable

²⁸ *Id.*; see also GATT, *supra* note 24, at Preamble.

²⁹ THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY 64–71 (Arthur Goldhammer trans., 2014).

³⁰ Chimni, *supra* note 19, at 18.

³¹ Joyeeta Gupta & Courtney Vegelin, *Sustainable Development Goals and Inclusive Development*, 16 INT'L ENVTL. AGREEMENTS: POL., L. & ECON. 433, 434–35 (2016).

development in a way that does not only privilege the Global North. A climate change accord within the institutional framework of the WTO would need to include S&DT provisions to support developing countries in meeting their Paris Agreement targets, particularly with respect to the capacity building required to shift energy production to clean energy.

Some may argue that regional trade agreements are better suited to accomplish this task since they can push trade law to evolve faster than the multilateral system and, thus, effectively include climate change in this evolving mandate. Regional trade agreements, however, have so far failed to properly tackle climate change issues. There has been a fairly traditional focus in the negotiation of these agreements. For instance, advances are being made in relation to pharmaceuticals, IP rights, and labor protections, all traditional focuses, but advances are not being made with respect to environmental matters. Furthermore, the perimeter of any climate change measures agreed upon in the context of regional trade agreements would be defined by Global North countries.

Regional trade agreements are largely ineffective in addressing climate change and offer no support for the challenges that developing countries face in attempting to implement climate change mitigation and adaptation measures. Despite the challenges that exist in overcoming rules that were put in place with more narrowly economic and more hegemonically Western goals in mind, the WTO's original mandate included sustainable development. As such, adapting the WTO's institutions and rules to more directly address the challenges faced by Global South countries as a result of climate change while also working to address economic disparities between the Global South and the Global North seems a feasible reworking of existing multilateral structures.

IV. RECONCILING THE CONCERNS OF THE GLOBAL SOUTH AND GLOBAL NORTH

The concerns of the Global South and the Global North arising from trade are not dissimilar. In both regions, concerns about standards of living and employment are at the forefront of discussions of the benefits of international trade agreements, whether regional or multilateral. In the Global South, there are additional concerns relating to food security, access to pharmaceuticals, and exploitation by the Global North more generally. In the Global North, discussions that traditionally centered around concerns relating to outsourcing and the consequent job loss to the Global South are

beginning to shift to include conversations about the dangers automation poses to job security.³²

That the concerns of Global South and the Global North are not that removed from each other is not surprising. Globalization in today's world, as described by B.S. Chimni, is resulting in a "global social formation and a nascent world state" that is forming "under the guidance of a transnational capitalist class."³³ This is occurring because of "[a] network of global economic laws," the policing of which "have necessitated a greater role for international institutions to which sovereign functions of states have come to be ceded."³⁴ Using this framing, the division becomes not one between the Global South and the Global North, but one between the transnational capitalist class and those that do not benefit from the financial gains of late capitalism.

For those who are not part of the transnational capitalist class, regional trade agreements offer few benefits. Multilateral institutions, such as the WTO, are also problematic as instruments of the transnational capitalist class. As previously stated, however, it is not the purpose of this Article to reimagine the international trading system. Instead, I argue for repurposing existing institutions and, particularly, shifting the focus of the WTO to address concerns regarding sustainable development and the environment. Through exceptions to existing WTO agreements, similar to the Public Stockholding Exception or the 1979 Enabling Clause, more can be done to achieve clean and renewable energy while increasing the standard of living (as envisioned in the GATT Preamble as well as carried forward to the WTO Agreement Preamble) for both the Global South and the Global North.³⁵

Given the historical inequities built into the WTO as both an institution and as a system of rules, it may seem unlikely that any progress can be expected by the Global South even if these rules are coopted to achieve progressive goals that are meant to benefit both the Global South and the

³² See, e.g., Federica Cocco, *Most US Manufacturing Jobs Lost to Technology, Not Trade*, FIN. TIMES (Dec. 2, 2016), <https://www.ft.com/content/dec677c0-b7e6-11e6-ba85-95d1533d9a62>.

³³ CHIMNI, CRITIQUE, *supra* note 22, at 91.

³⁴ *Id.*

³⁵ Public Stockholding For Food Security Purposes, Draft Decision, Nov. 24, 2014 (WT/GC/W/688); Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, Nov. 28, 1979 (L/4903) (Both the Public Stockholding Exception and the Enabling Clause provide narrowly defined exceptions from the general obligations of WTO rules to allow developing countries additional protection. In the area of climate change, similar tailored exceptions to WTO rules could allow Global South as well as Global North countries greater leeway to develop clean energy and to reduce greenhouse gas emissions.).

Global North. Such skepticism is to be expected. However, in recent years the WTO has become less of an organ of Western powers and more of a platform for Global South countries to be heard. The failure of the Doha Round is in many ways only a failure when viewed from a Western neoliberal perspective, reflecting as it does the greater pressure being brought to bear on negotiations by Global South members. The WTO's consensus-based decision-making prevents Global North countries from entirely co-opting the negotiation process. Furthermore, increased transparency, as evidenced in the negotiation of the Trade Facilitation Agreement, for instance,³⁶ means that non-capitalist groups may be able to play a bigger role in pressuring members to negotiate with the interests of individuals rather than corporations in mind. In contrast, the secrecy with which regional trade agreements are negotiated means that stakeholders, other than corporations, with lobbying power have little or no say in how the agreements take shape.

Trade agreements should not be thought of purely as instruments of diplomacy and government. The backlash against globalization shows that individuals are increasingly vocal about economic concerns, which suggests that the system can no longer continue to operate with a small epistemic community of technocratic elites. Unfortunately, regional trade agreements very much seem to be continuing in the traditional neoliberal mold. If our concern is to be the status of individuals and their ability to flourish in changing economic landscapes, then our international institutions, regional agreements, and bilateral treaties are inadequate. To achieve the desired change, it is civil society that needs to globalize and come together forcefully to demand change.

Where the existing system has pitted individuals in the Global North against individuals in the Global South, by nature of the institutions and instruments of capitalism underpinning it all, however, such cooperation seems increasingly remote. It took World War II to achieve the institutions we currently have. We can only hope that it will not take another world conflict to achieve the transformation change necessary to carry us through the twenty-first century and beyond.

³⁶ Eliason, *supra* note 4, at 654 ("As the negotiations were ongoing, each draft of the TFA [Trade Facilitation Agreement] was posted onto the WTO website, allowing interested parties to follow the negotiations and understand what the major concerns were of the various country blocs as the negotiations progressed.").