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OF HAVES AND HAVE-NOTS

A Review of Donatella Alessandrini, Developing Countries and the Multilateral Trade Regime: The Failure and Promise of the WTO's Development Mission *(Hart Publishing 2010)*

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I. INTRODUCTION

It is no exaggeration to say that the rapid growth in international trade is both one of the great achievements and great bones of contention of our age. To some observers and participants, international trade is a panacea for multiple ills—a source of prosperity and opportunity, a moderator of political extremism, and an expander of markets. "Peace through trade" is a modern (at least *western* and modern) mantra. For those who subscribe to it, international trade—like Gordon Gekko's greed—is good.[1] Others view international trade more warily, both appreciative of its benefits and cautious of the disequilibria it can cause between countries and within countries, as greater competition enables some industries to flourish and causes others to wither. Still others view international trade largely as a means for exploitation of the disadvantaged by the advantaged.[2]

Underlying these debates about international trade are questions about what the rules of international trade should be, who should write those rules, and who gets to enforce those rules. In fact, these very questions—and the disagreements between developed countries and developing countries about how to answer them—are why the World Trade Organization's Doha Round is currently bogged down, with little resolution in sight. It is, in a very literal sense, a question about global governance, and it is striking (and I think not accidental) that the questions about rule formation, interpretation, and enforcement track the tripartite elements of most legal systems.[3]

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[1] *Wall Street* (20th Century Fox 1987). In the movie, Michael Douglas's character, Gordon Gekko, states at a shareholder's meeting that "I am not a destroyer of companies. I am a liberator of them! The point is . . . that greed—for lack of a better word—is good. Greed is right. Greed works. Greed clarifies, cuts through, and captures the essence of the evolutionary spirit. . . . [Greed] has marked the upward surge of mankind . . . ."

[2] *See*, *e.g.*, Ilan Benshalom, *The New Poor at Our Gates: Global Justice Implications for International Trade and Tax Law*, 85 N.Y.U. L. REV. 1, 37 (2010) ("Although the process of globalisation may not have brought peoples to a state of interdependence that justifies cosmopolitan impartial-justice claims, international trade is a type of relationship that in certain cases gives rise to distributive moral duties. Although participation in this enterprise is mostly voluntary—and therefore presumably beneficial to all parties—the allocation of benefits arising from the interaction between the advantaged and the disadvantaged is morally contestable."); Thomas Pogge, *Priorities of Global Justice*, 32 METAPHILOSOPHY 6, 6 (2001) (arguing that the "new global economic order we impose aggravates global inequality and reproduces severe poverty on a massive scale"); Ethan B. Kapstein, *Distributive Justice and International Trade*, 13 ETHICS & INT'L AFF. 175, 191-99 (1999) (asserting that international trade arrangements often have been biased against developing countries).

[3] I say "most" instead of "some" because, even though legal systems may not have three *branche*s of government, the functions of a government can be divided into these three *powers*—regardless of who exercises them.

It is not surprising, then, that there is a vast body of literature on the subject of international trade in general, and on the WTO in particular. It is also not surprising that the role of developing countries should be a central focus of much of this literature.[4] Dr Donatella Alessandrini's book, *Developing Countries and the Multilateral Trade Regime: The Failure and Promise of the WTO's Development Mission*, is one such book. As the title to her work suggests, Alessandrini is generally critical of the WTO and its development efforts, and her focus is heavily structural. Her book traces international development efforts through the early twentieth century mandate system, the mid-century Cold War GATT efforts, the late-century formation of the WTO, and the current Doha Round. In the process, she analyses, with admirable detail, how the focus on developing countries has changed from the paternalistic mandate system of the Progressive Era to the modern-day neo-liberal approach to development (allowing developing countries some flexibility and special treatment within the multilateral trading system)—and she asserts that at each step along the way, the playing field has been an uneven one that has favoured developed countries at the expense of developing countries. In fact, her book is quintessentially a critical work that seeks to reveal and clarify patterns of inequality.[5] The result is a text that offers a coherent and thoughtful narrative about the ongoing challenge of developing countries within the WTO.

The book is therefore a commendable contribution to the literature on development and the WTO. International trade regulation is a highly technical and hyper-specialised area of the law, and in my experience there can be a scholarly

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[4] *See*, *e.g.*, J.M. Migai Akech, *Developing Countries at Crossroads: Aid, Public Participation, and the Regulation of Trade in Genetically Modified Foods*, 29 FORDHAM INT'L L. J. 265 (2006) (exploring how regulatory uncertainty at the international level in the realm of genetically modified foods facilitates exploitation of developing countries); Frank J. Garcia, *Trade and Inequality: Economic Justice and the Developing World*, 21 MICH. J. INT'L L. 975 (2000) (arguing that special and differential treatment is vital to satisfying the moral obligation that rich states owe to poorer states as a matter of distributive justice); Gillian Moon, *Trade and Equality: A Relationship to Discover*, 12 J. INT'L ECON. L. 617 (2010) (analysing commonly identified flaws in special and differential treatment from the perspective of human rights equality law).

[5] For example, in discussing the League of Nations' mandate system, Alessandrini states that "the League of Nations was presented as a neutral institution fostering development on the basis of economic expertise. However, the promotion of the so-called wellbeing of the natives was accompanied by another objective, that is, the utilisation by the mandatories of the economic resources of the mandate territories." DONATELLA ALESSANDRINI, DEVELOPING COUNTRIES AND THE MULTILATERAL TRADE REGIME: THE FAILURE AND PROMISE OF THE WTO'S DEVELOPMENT MISSION 15 (Hart Publishing 2010) (hereinafter ALESSANDRINI).

tendency in the discipline to focus on technical matters at the expense of larger themes. This is not to say that technical scholarship is not valuable: indeed it is, because it explains and discusses the law in a field that is rapidly changing and characterised by high learning curves. Yet the result of such focus on current issues and complex workings of the law is that larger, historical themes can be missed. It also means that we may lose sight of how particular subjects are framed, and why, and by whom. Why, for example, are trade preferences for developing countries thought to be beneficial? Are they beneficial, and if so, are they the most effective way to achieve their stated goals? Who decided that trade preferences are the best approach to assisting developing countries?

As discussed in Section II.A below, Alessandrini's book addresses these and other developing country issues from a Marxist perspective, and she solidly defends her thesis. What her book does not do, however, is consider whether other possible narratives might be relevant. The fact that a single narrative *can* explain results does not mean it is the *only* way to explain the results or the best way to explain the results. I therefore would have liked to have seen Alessandrini reflect, even if briefly, on other possible narratives. I would have also liked to have seen some discussion in the book of what corrective actions might be taken to address the problems faced by developing countries in the multilateral trading system. To her credit, Alessandrini expressly states that corrective actions are "beyond the scope of this book".[6] Yet I was left wanting some analysis along those lines.

Still, one must start somewhere—and books cannot cover everything. What Alessandrini has done in this book is a commendable job of developing, explaining, and defending a historical narrative of a multilateral trading system that tends to devalue and (at least partially) disenfranchise developing countries. It is

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[6] *Id.* at 220-221. Specifically, Alessandrini states as follows:

> [I]t is evident that redressing the "asymmetry" in trade rules does not question the normative assumptions on which the WTO and its development mission rests. Any attempt at challenging this framework should take into consideration all three elements, namely the way in which the dichotomy operates to order hierarchically different societal organisations, the linear and consequent reading of history that posits the desirability for countries at the lower end of the development spectrum to abide by the economic rationality of those at the top and the necessary guidance and assistance of the developed members of the international community to achieve development. *It is beyond the scope of this book to provide such an agenda.* However, I suggest that one way to start articulating a critique of the trade-development relationship within the WTO is to question the universality and desirability of the current economic rationality . . . .

(emphasis added).

well researched and well thought out, and it usefully places its subject in historical perspective. The book also offers a useful point of departure for further scholarship along various lines; I discuss some of these possible avenues of inquiry in Section III of this book review. The timing of her book is also auspicious: with the Doha Round negotiations continuing to be at an impasse, with no end in sight,[7] one might hope that Alessandrini's account, and any future scholarship motivated by it, will contribute to WTO dialogue by providing for greater historical and critical perspective on developing countries in the multilateral trading system.

This book review consists of two main parts. First, Section II provides an overview of the book and its central thesis. Second, Section III considers several directions for additional analysis that might complement the book's critical descriptive examination of international trade and developing countries. The ideas discussed in Section III are by no means an exhaustive list; rather, the intent is to suggest ways in which this book might serve as a foundation for further analysis and exploration. Section IV provides some concluding thoughts.

II. OVERVIEW OF THE BOOK

A. Marx, International Trade, and Critical Analysis

The main purpose of Alessandrini's book is best expressed in her own words: "The aim of this book is . . . to expose the development assumptions of the international trading regime and its trade disciplines as political rather than rational, neutral or objective".[8] In particular, she seeks to rebut the "mainstream trade literature that views the shift from the GATT's so-called flexible approach to development to the WTO's neo-liberal development model in terms of a natural and inevitable historic process".[9] The argument, in other words, is that trade rules pertaining to development are normative, not objective, and that the objective-sounding "science of development" rhetoric of developed countries obscures what actually occurs. "[T]here is a profound contradiction," Alessandrini maintains, "between the development rhetoric and the actual practice of the major trading partners".[10]

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[7] *See generally Dead man talking*, THE ECONOMIST (Apr. 28, 2011), *available at:* http://www.economist.com/node/18620814 (hereinafter *Dead man talking*).

[8] *Id.* at 10.

[9] *Id.*

[10] *Id.* at 5. One might even say (although Alessandrini does not) that if war is diplomacy by other means, then trade can be diplomacy by other means. *See* CARL VON CLAUSWITZ, ON WAR 119 (Anatol Rapoport ed., J.J. Graham trans.) (Penguin Books 1968) ("War is a mere continuation of policy by other means."). I discussed the use of trade policy as political leverage in the context of regional trade agreements in Gregory W.

These statements in her book are based on, or have been heavily influenced by, critical Marxist trade theory.[11] They are also hard statements to completely disagree with.[12] Regardless of one's opinion of Marx, does anyone think that developed countries are entirely altruistic, or that their rhetoric concerning developing countries always (or even usually) matches their actions? Not really—or at least not when it is in their self-interest to deviate. Does anyone think that developed countries do not look first to their own interests, perhaps sometimes at the expense of the global trading system and other countries? Again, not really. Self-interest, after all, is a central theme in international law (including international trade law).

A key premise of Alessandrini's book is therefore solid, and various examples from outside her book reinforce her conclusion. The United States, for example, officially advocates for liberalised trade, even as it takes trade remedy actions that restrict trade in the face of growing international competition[13]—and the United States is certainly not alone among developed countries in that regard. To be fair, the use of national trade remedies within the WTO structure—to combat

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Bowman, *The Domestic and International Policy Implications of "Deep" Versus "Broad" Preferential Trade Agreements*, 19 IND. INT'L & COMP. L. REV. 497 (2009) (hereinafter Bowman).

[11] Alessandrini does rely on the work of noted Marxist trade scholar E. Meiksins Wood. *See* ALESSANDRINI, *supra* note 5, at 5, *citing* E. MEIKSINS WOOD, EMPIRE OF CAPITAL 5 (Verso 2005).

[12] For an interesting defense of Marx's critique of international capitalism from an unexpected source, see Niall Ferguson, *Full Marx*, FINANCIAL TIMES, Aug. 17-18 (2002), at Weekend I, quoted in RAJ BHALA, INTERNATIONAL TRADE LAW: INTERDISCIPLINARY THEORY AND PRACTICE 244-245 (LexisNexis, 3d ed. 2007) ("Forget Marx's utopian prophesy that capitalism would be succeeded by socialism . . . . The real point is that many of the defects he identified in 19th century capitalism are again evident today".). *See also* David L. Prychitko, *The Nature and Significance of Marx's CAPITAL: A CRITIQUE OF POLITICAL ECONOMY*, Library of Economics and Liberty, Sept. 6, 2004, *available at:* http://www.econlib.org/library/Columns/y2004/PrychitkoMarx.html (noting that Marx "sought to expose what he saw as the inherent contradictions of capitalism, and demonstrate that the classical economists confused ideological presuppositions for universal economic principles. His effort was not only an attack on free market capitalism, but also a radical critique of the emerging discipline of economic theory, a discipline that he rejected as being faulty at its core".).

[13] *See* GREGORY W. BOWMAN, NICK COVELLI, DAVID A. GANTZ & IHN HO UHM, TRADE REMEDIES IN NORTH AMERICA 41 *et seq.* (Kluwer Law Int'l 2010) (hereinafter BOWMAN ET AL.) (describing US antidumping and countervailing duty trade remedy laws as "frequently employed"). Raj Bhala reports that "Trade negotiators, including (reputedly) the United States Trade Representative (USTR), confess (privately) the hypocrisy that they are free traders until they get to the negotiating table, at which point they become mercantilists". RAJ BHALA, INTERNATIONAL TRADE LAW: INTERDISCIPLINARY THEORY AND PRACTICE 207-208 (LexisNexis, 3d ed. 2007) (hereinafter BHALA).

dumping, countervailable subsidies, and even to safeguard domestic industries that are under duress from lawful foreign competition—is couched in terms of preventing *unfair* or *injurious* trade,[14] but these trade remedy mechanisms also can be used to restrict inbound foreign competition that perhaps should not be hindered.[15]

Self-interest also drives other kinds of foreign policy and international trade initiatives. It is no coincidence that US trade policy focused heavily on Europe after the Cold War, and subsequently on Asia, and more recently on the Middle East—all the while largely ignoring Africa.[16] Yet another example is the Marshall Plan, which was a great success in post-World War II American foreign policy and helped rebuild an industrial Western Europe. That initiative was beneficial to Western Europe, but it was not solely altruistic: it jibed perfectly with US foreign policy and national security interests at the time.[17] The point is that self-interest has long driven the trade policy decisions of the United States and other countries, including decisions concerning development, and it will continue to do so.

To restate the point in more vernacular, and less academic terms, it seems to me that Alessandrini asserts that the WTO, and developed countries acting through it, either actively engage in subterfuge by "talking the talk but not walking the walk", as the saying goes, or that the WTO and developed countries have bought into their own hype about trade and development without fully realising it.[18] Either way, Alessandrini's point is that the WTO is misguided in its development efforts, and that this current misguidedness is built upon decades of previous misguidedness.

B. A "Six Decades-Long Failure"

Alessandrini's book traces the developed country-developing country dynamic

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[14] BOWMAN ET AL., *supra* note 13, at 2-3, 325-326; Chad P. Bown, *Trade Remedies and WTO Dispute Settlement: Why are So Few Challenged?*, 34 J. LEGAL STUD. 515, 515-517 (2005) (hereinafter Bown).

[15] *See* Bown, *supra* note 14, at 515-517.

[16] Bowman, *supra* note 10, at 523-527.

[17] *See* RICHARD T. CUPITT, RELUCTANT CHAMPIONS: U.S. PRESIDENTIAL POLICY AND STRATEGIC EXPORT CONTROLS 60-61 (Routledge 2000).

[18] *See*, *e.g.*, World Trade Organization, *10 common misunderstandings of the WTO* (2008); World Trade Organization, *10 benefits of the WTO trading system* (2008). Both brochures are available on the WTO's website at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm.
These views of the WTO as possibly misguided are also supported by my own experiences in the graduate law classroom: each time I teach a course on international trade, I watch my students instinctively cut through the public relations language in the WTO's own literature to identify serious underlying problems such as development issues.

through the twentieth century to the current day. In doing so, she offers two perspectives on the "six decades-long 'failure' of the development enterprise of the multilateral trading regime".[19] First, she analyses the multilateral trade regime's development efforts by "taking the development rationales of both the GATT and the WTO at their face value".[20] That is, she considers their success without challenging any of the underlying assumptions about the benefits of trade for developing countries. She concludes that the practices of the GATT, and now the WTO, "ha[ve] violated the development principles they have purported to promote".[21] An "obvious conclusion" she draws from this historical view is that the approaches taken thus far have not worked and continue to disadvantage developing countries. She continues by noting that "indeed, this [failure to date] is the premise that underlies the current market access argument, according to which the WTO will deliver its development promise *provided* that its developed-country members open up their markets to developing countries' competitive exports".[22] She acknowledges that there is discussion of the problem within the WTO, particularly within the Doha Round over the past decade, but she contends that the WTO's analysis of the problem, and the solutions proffered to date, all suffer from the same basic flaw—namely, that they do not challenge the underlying assumption of the multilateral trading system: that greater trade liberalisation is *per se* good. In other words, Alessandrini contends that greater market access, or fine-tuning the nature of market access (with various favourable treatment provisions for developing countries), cannot solve the underlying problem. To her, the problem goes deeper than implementation: the problem is the foundational principles upon which the WTO system rests.

In other words, Alessandrini takes the view that the trade liberalisation rules of the WTO (and its predecessor the GATT) are not objective, but rather normative. From this critical (Marxist) perspective, she asserts that the WTO's trade liberalisation goal or mission masks what is essentially an unlevel playing field that

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[19] ALESSANDRINI, *supra* note 5, at 3, 207-224.

[20] *Id.* at 3.

[21] *Id.*

[22] *Id.* (emphasis added). This point is in fact consistent with "the importance of being unimportant" in international trade—namely, the idea that smaller states obtain far larger benefits from increased international trade than do larger states, because trade causes a far greater shift outward in the smaller economies' indifference curves. Harvey W. Armstrong & Robert Read, *The Importance of Being Unimportant: The Political Economy of Trade and Growth in Small States*, *in* ISSUES IN POSITIVE POLITICAL ECONOMY 71 (S. Mansoob Murshed ed.) (Routledge 2002). *See also* JAGDISH N. BHAGWATI, ARVIND PANAGARIYA, & T.N. SRINIVASAN, LECTURES ON INTERNATIONAL TRADE 16 (2d ed., MIT Press 1998) (hereinafter BHAGWATI ET AL.) (providing general discussion of indifference curves and consumption in the traditional Ricardian model of international trade).

places developed nations at an advantage, at the expense of developing nations.[23] In particular, she states that "[o]nce the development rationales of the GATT and the WTO are no longer taken for granted and their *inherent normative assumptions* are called into question, the focus shifts away from attempts at reconciling liberalisation theory and practice" by modifying or fine-tuning the rules of market access.[24] In place of this question, other questions then come to the fore, such as: "how was the relationship between trade liberalisation and development made possible in the first place?; what has sustained it in the past six decades?; and how does it continue to hold such an authority today?"[25]

Her point is that over the past six decades and more, developing countries have been repeatedly set up to fail and then blamed for their own failure. In her view, even the modern WTO approach—which involves emphasis on good governance, institution-building, and anti-corruption efforts as a means to promote development and reap the rewards of greater trade and economic growth[26]—still places developing countries on an unlevel playing field, where their relative lack of expertise, their limited resources, and their desire to be part of the mainstream trade community doom them to suboptimal results at best, and to disastrous results at worst.

This point is an important one, and it bears repeating in greater detail: the assertion is that throughout the progressive League of Nations era, as well as the GATT and the WTO eras, imbalances that harm developing countries always have existed. In the time of the League of Nations and the colonial and territorial mandates, these imbalances were expressly paternalistic. They then transformed into a preference for free trade that disadvantaged the smaller, developing countries and their more fragile economies. More recently, the imbalance has become in large part a matter of the highest level of technicality involved in negotiating for any agreed-upon trade liberalisation measures, including but not limited to accession,[27] as well as a matter of the transaction costs of satisfying conditions imposed by developed countries.[28] These costs impose a significant burden on smaller countries, which often have far fewer discretionary governmental resources, and lower levels of government technical expertise in international trade law, than their developed country WTO counterparts.[29]

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[23] ALESSANDRINI, *supra* note 5, at 3.

[24] *Id.* (emphasis added).

[25] *Id.*

[26] *Id.* at 13.

[27] For a compelling account of just such an accession to the WTO by Saudi Arabia, *see* Raj Bhala, *Saudi Arabia, the WTO, and American Trade Law and Policy*, 38 INT'L LAW. 741 (2004).

[28] ALESSANDRINI, *supra* note 5, at 166.

[29] *Id.*

Alessandrini also contends that the disadvantage of developing countries is further exacerbated by the fact that in the GATT—as well as in the General Agreement on Trade in Services (GATS), the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), and other WTO agreements—liberalisation is a one-way street: once liberalisation measures have been put in place, it is quite difficult to undo them. One might say (modifying a term from economics) that liberalisation is "sticky upwards".[30] The concern is that developing countries may concede too much in the rush to liberalise or obtain concessions in other areas, and come to rue them later on. Moreover, Alessandrini's assertion is that even when market access problems and other imbalances are recognised and acknowledged, the erstwhile fixes do not correct the erroneous assumptions concerning development on which the entire multilateral trading system is based.

All in all, then, Alessandrini provides a well-researched historical narrative of the development of the current multilateral trading system, of inherent biases she believes the system contains, and of the system's resulting weaknesses in promoting development. The book's focus on the Doha Round is particularly useful, as the round is not yet completed (or anywhere near completion as of the time of this writing)".[31] As noted above, one might hope that Alessandrini's critical analysis could help foster further discussion and contribute to dialogue about the WTO's future course.

III. OTHER PERSPECTIVES

As discussed above, Alessandrini's book serves up an indictment of the WTO and the treatment of developing countries by developed countries, and its narrative is a useful contribution to the literature on international trade and development. It is only one of various possible narratives or perspectives, however, because the book is intentionally self-limited. It also does not consider any possible corrective actions that might be taken to address the WTO's development problems.

This section therefore offers some suggested additional narratives or perspectives, as well as some possible avenues for corrective action. As explained below, my point in this review is not to make value judgments as to what narratives or perspectives are preferable; rather, the point is to suggest competing and complementary approaches that could be more fully explored in future work.

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[30] Wages are often described as "sticky downward", meaning that they increase far more readily than they decrease. *See* N. GREGORY MANKIW & MARK P. TAYLOR, ECONOMICS 697-98 (11th ed. 2011).

[31] ALESSANDRINI, *supra* note 5, at 165.

Some of the approaches set forth below conflict, at least partially, with the chosen narrative of this book; others are complementary and reinforce Alessandrini's approach. The narratives or perspectives discussed below are (1) "peace through trade"; (2) the influence and limitations of economic modelling; (3) framing, cognitive bias theory, and heuristics; and (4) enlightened self-interest.

A. Alternative One: Peace Through (Not) Trading?

A major implication of Alessandrini's criticisms of the WTO is that perhaps trade that is less liberalised would be better. However, how much less liberalised should trade be? Assuming (for the sake of argument) that we accept the "peace through trade" mantra of modern international trade law,[32] how much less international trade are we willing to have? Like Goldilocks, how much trade is too much? How much trade is too little? How much is just right? What sectors should be given more protective treatment, if any? Should such favourable treatment vary from country to country, and if so, based on what standard(s)? And who gets to decide?

The notion of "peace through trade" tends to lead to absolutist thinking—that if we do not have more international trade, then we will have greater risk for war (or at least much less chance for stable peace). Anyone suggesting significant limits on international trade is in essence characterised as someone who wants less trade, and thus greater risk of war. That is the very epitome of being put on the defensive. Interestingly enough, the absolutist thinking in favour of liberalised trade is not matched by similarly absolutist thinking by those who are more wary of international trade. Few would suggest autarky as a path to peace. Rather, those not in favour of free trade are left in a state of non-consensus: some may favour very limited trade, while others may favour far more modest restrictions; some may wish for favourable treatment for certain industries or countries, while some favour other industries or countries; and so on. The point is that with no consensus on one side of the debate, and with at least powerful rhetorical unity on

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[32] *See* BHALA, *supra* note 13, at x (advancing the proposition that "[i]nternational trade law ought to advance the cause of 'peace through trade' "). This proposition is based on de Montesquieu's statement in *The Spirit of Laws* that "[t]he natural effect of commerce is to bring peace". BARON DE MONTESQUIEU, *On the Laws in their relation to commerce, considered in its nature and distinctions*, *in* The Spirit Of The Laws Vol. 2, Book XX 337 (Anne M. Cohler, Basia C. Miller & Harold S. Stone eds. & trans., Cambridge Univ. Press 1989). This is a particularly interesting statement in light of the fact that Montesquieu, both in time and in perspective, bridged the gap between mercantilism's wholly political, zero-sum game view of trade and liberalism's view of trade as mutually beneficial. Catherine Larrère, *Montesquieu on Economics and Commerce*, *in* MONTESQUIEU'S SCIENCE OF POLITICS: ESSAYS ON *THE SPIRIT OF LAWS* 335, 336 (David W. Carruthers, Michael A. Mosher & Paul A. Rahe eds., Rowman & Littlefield 2001).

the other, "peace through trade" becomes a powerful force that compels further liberalisation of trade, or at the very least acts as a strong general deterrent to trade-restrictive activities.

"Peace through trade" rhetoric is also powerful because there are compelling examples of trade being a promoting factor in peace, or the absence of trade being a hindrance to peace. For example, the West has little leverage over North Korea and very little trade with that hermit kingdom.[33] China, by contrast, has significant trade with North Korea and more political influence over it (and far less chance of military conflict with it).[34] Another example is the current economic and political relationship between the United States and China: despite longstanding differences concerning Taiwan, China's human rights record, and other issues, these two countries have not come to blows (at least not directly), and this is unlikely to change any time in the near future.[35]

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[33] US trade with North Korea, for example, is miniscule, and almost all of it consists of exports from the United States to Korea (because of US trade restrictions regarding imports from North Korea). In 2010, US trade in goods with Korea totaled only US$1.9 million, and in 2009 the figure was only US$900,000. In 2008, the amount of US trade in goods with North Korea was substantially higher at US$52.2 million, but in 2007 the level was only US$1.7 million. US Census Bureau, Foreign Trade, *Trade in Goods with Korea, North*, *available at:* http://www.census.gov/foreign-trade/balance/c5790.html (all figures are nominal US dollar amounts not adjusted for inflation). *See also* Barack Obama, Executive Order 13570, 76 FED. REG. 22291, Apr. 18, 2011 (restricting US imports from North Korea).
Given that the US Central Intelligence Agency estimated North Korea's Gross Domestic Product in 2008 and 2009 to be US$40 billion (this GDP estimate is based on North Korea's estimated purchasing power), even the 2008 figure of US$52.2 million does not provide for much economic leverage. *See* US Central Intelligence Agency, *The World Factbook: Korea, North*, *available at*: https://www.cia.gov/library/publications/ the-world-factbook/geos/kn.html# (last updated May 17, 2011) (hereinafter CIA – *North Korea Factbook*).

[34] According to the US Central Intelligence Agency, North Korea's exports in 2008 and 2009 were approximately US$2 billion annually, and its imports were between US$3 billion and US$4 billion. *See* CIA – *North Korea Factbook*, *supra* note 33. China is North Korea's largest source of imports (approximately 60% of total imports) and its second-largest export market (approximately 40% of total exports). South Korea is North Korea's largest export market at approximately 47% of total exports, although more recent figures are probably lower. *See* CIA – *North Korea Factbook*, *supra* note 33; Christian Oliver & Song Jung-a, *Seoul cuts North Korean lifeline*, FIN. TIMES, Mar, 18, 2010, *available at:* http://www.ft.com/intl/cms/s/0/978514f0-327a-11df-bf20-00144feabdc0.html#axzz1NnMvzgQe. *See also*, Jayshree Bajoria, *Backgrounder: The China-North Korea Relationship*, COUNCIL ON FOREIGN RELATIONS, *available at:* http://www.cfr.org/china/china-north-korea-relationship/p11097 (last updated Oct. 7, 2010).

[35] *See*, *e.g.*, John Pomfret, *U.S.-China relations to face strains, experts say*, WASH. POST, Jan.

The point is not to suggest that completely unfettered trade is the end-all, be-all of international trade regulation. That is probably not the case, and in any event that would be quite a normative judgment, as I think Alessandrini would be quick to point out. Rather, the point is that if we are to reject the current approach to international trade regulation under the WTO, as Alessandrini argues we should, then have some future discussion of the resulting implications, and how her narrative is in tension with other narratives such as "peace through trade," would be useful.

B. Alternative Two: The Influence and Limitations of Economic Modelling

1. The Interplay of Economic Theory and Policymaking

A major thrust of Alessandrini's book is that free trade thinking dominates the WTO and that such thinking is normative, not objective. According to Alessandrini's narrative, developed countries consciously or unconsciously rely on free trade to achieve their desired ends, and they all too often do so at the expense of developing countries. That is a compelling narrative—and another narrative that would complement it concerns the misuse of economic thought in the formulation of multilateral trade policy.

The free trade mantra of the WTO is based on what is essentially Socratic logic: (1) all countries benefit from free trade; (2) all WTO members are countries;[36] (3) therefore all WTO members (developed and developing) benefit from free trade. The first point is based on Ricardian comparative advantage. Ricardo's elegant model, however, relies on strict assumptions that do not reflect real-world conditions, such as the immobility of capital and labour, the absence of

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3, 2010, *available at*: http://www.washingtonpost.com/wp-dyn/content/article/2010/01/02/AR2010010201751.html (describing possible short-term tensions between the United States and China over US military sales to Taiwan and meetings with Tibet's Dalai Lama; White House expectations that any resulting damage to US-China relations will be "limited"; and possible longer term implications for US-China relations—none of which involve military conflict). *See also* Ben Blanchard & Sui-Lee Wee, *China signals greater tact on rights disputes with U.S.*, REUTERS, May 11, 2011, *available at:* http://www.reuters.com/article/2011/05/11/us-china-usa-rights-idUSTRE74A1ZV20110511 (noting the Chinese press's avoidance of "angry rhetoric" concerning human rights talks between China and the United States).

[36] Technically speaking, not all WTO members are countries: there are special administrative regions that are WTO members, and the European Union is a member of the WTO as well—but that does not change the basic point made above. *See* World Trade Organization, *Understanding the WTO: The Organization—Members and Observers*, *available at*: http://www.wto.org/english/thewto_e/whatis_e/ tif_e/org6_e.htm.

transaction costs, and so on.[37] Relaxing the model's assumptions could lead to different results. His model should be, in other words, a starting point, not an end point.

If Ricardo's model is so stylised, why is it a central element of the multilateral trading system? Paul Krugman has observed that while "academics often prefer rigor to relevance, mathematical precision to the difficult task of coping with the messy problems of the real world"[38], policymakers nonetheless look to academic thinking for guidance. John Maynard Keynes stated that "the ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood".[39] The stage is thus set for harmful academic-to-policy disconnects, as scholarly works that are ill-suited for immediate practical implication get used for that very purpose. Moreover, the darling policy ideas of one era may well survive into the next era—even though the academic thinking on which those policy ideas were based has evolved. In other words, policymaking may get stuck in a past paradigm without the policymakers realising it.

Does this describe what has happened at the WTO? It certainly does appear to be a compelling narrative. Krugman's explanation suggests that the WTO's focus on free trade (a conclusion readily derived from Ricardo's model) was due to the longstanding ascendancy of Ricardo's model in international economics:

> Economics tends, understandably, to follow the line of least mathematical resistance. We [economists] like to explain the world in terms of forces that we know how to model, not in terms of those we don't. What this meant from [the time of] Ricardo [in the early nineteenth century] until the 1980s was an almost exclusive emphasis on comparative advantage . . . .[40]

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[37] *See* BHALA, *supra* note 13, at 207-216; *see also* BHAGWATI ET AL., *supra* note 22, at 9.

[38] Paul R. Krugman, *Introduction: New Thinking about International Trade*, *in* STRATEGIC TRADE POLICY AND THE NEW INTERNATIONAL ECONOMICS 1-2 (Paul R. Krugman ed., MIT Press 1986) (hereinafter Krugman – *New Thinking*).

[39] JOHN MAYNARD KEYNES, THE GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY 383 (First Harvest/Harcourt 1964), quoted in Krugman – *New Thinking*, at 2. "Krugman observes that the theoretical arguments of earlier time[s] . . . [can] become the common sense of ours . . . . " Krugman – *New Thinking*, *supra* note 38, at 2.

[40] PAUL KRUGMAN, GEOGRAPHY AND TRADE 6 (MIT Press 1991). Krugman, who is a pioneer in modelling international trade based on increasing returns (for which he received the Nobel Prize in Economics), has described elsewhere the resistance he encountered to his work along these lines, largely due to the entrenched and canonized status of comparative advantage in the field of international economics. *See* PAUL R.

The tools of economists, in other words, limited their world view. Or to restate this criticism, their single "narrative" limited their descriptive and explanatory horizons.

More recently, various economists, most notably Krugman, have proposed other models for international trade that are based on increasing returns and imperfect competition. These newer models, while also stylised and filled with assumptions (as they must be in order to be mathematically manageable), may be a better fit for explaining modern international trade, with its increasing returns to scale based on specialisation; technological advances; trade in services; and intra-industry trade and intra-industry foreign direct investment (phenomena that seem directly at odds with comparative advantage).[41] Yet it seems that current policymakers have failed to adapt their thinking to these newer developments in international economics. Or more to the point, they seem to have acknowledged such contributions, and then largely concluded that these new contributions do not require any change or adjustments in course.[42]

So, the influence and limitations of economic modelling offer an alternative narrative for what Alessandrini describes in her book. Moreover, such a narrative would allow us to explore what is arguably the most central and fundamental purpose of the multilateral trading system—to *help* countries, not hurt them. This is, I submit, an even deeper and more fundamentally central goal than even free trade or "peace through trade". And this, as a central and fundamental goal, is entirely consistent with Alessandrini's focus. Her two-fold point is (1) that *if* free trade is the proper goal, then that goal is not being met; and (2) even more fundamentally, that the free trade mantra of the WTO may not be the proper goal at all.[43] Underlying both points is her argument that the multilateral trading system is harming developing countries. Economic theory exists to support (at least partly) these contentions, and a discussion of how economic theory has been used (and misused) would complement the book's narrative.

KRUGMAN, RETHINKING INTERNATIONAL TRADE 3-4 (MIT Press, paperback ed. 1994) (hereinafter KRUGMAN – RETHINKING INT'L TRADE).

[41] *See* Krugman – *New Thinking*, *supra* note 38, at 2. For a discussion of intra-industry trade, see James A. Brander, *Intra-Industry Trade in Identical Commodities*, 11 J. INT'L ECON. 1 (1981). For a discussion of intra-industry foreign direct investment, *see* Laura Alfaro & Andrew Charlton, *Intra-Industry Foreign Direct Investment*, CEP Discussion Paper No. 825 (Oct. 2007), *available at:*
http://eprints.lse.ac.uk/19690/1/Intra-Industry_Foreign_ Direct_Investment.pdf.

[42] Pascal Lamy, "Facts and Fictions in International Trade Economics," April 12, 2010 *available at:* http://www.wto.org/english/news_e/sppl_e/sppl152_e.htm (speech at Paris School of Economics) (hereinafter Lamy). For a discussion of this speech, see text accompanying notes 54-58.

[43] ALESSANDRINI, *supra* note 5, at 3.

2. Policy Implications

An open question that is unanswered in the book is whether the developed countries' treatment of developing countries within the WTO is intentional, unintentional, or a combination of both. I realise that a central theme of much critical scholarship is that express intent may not really matter all that much: for example, the fact that gender or race discrimination is unconscious (and thus not expressly intentional) is, in a very important sense, irrelevant.[44] However, it is relevant for deciding how to address and rectify the discrimination. That is, there is a vast difference between trying to identify and describe a problem to intentional wrongdoers, versus trying to identify and describe a problem to good-faith but mistaken actors. Reasoning certainly is far less likely to work with the former, but it may work with the latter, at least to an extent.

Thus, if developed countries are not seeking to exploit developing countries intentionally through the WTO, reasoned discourse might actually produce some results. It certainly would be naïve to suggest that simply explaining the issue would lead developed countries to say "Good grief, that's not what we meant to do—let's fix it!" Nonetheless, a convincing demonstration that the WTO's free trade principles are outmoded and inaccurate might lead to some rethinking of the matter, and perhaps some change—which might allow some progress to be made in the long-stalled Doha Round negotiations.[45] Of course, it also might lead to new rationalisations for why developed country actions are acceptable—but there too, newer economic theory might be useful for countering such claims.

If the actions are intentional, by contrast, a potentially more serious problem exists. One would be hard pressed to imagine how an organisation like the WTO could continue if developed countries said the equivalent of, "So what if we are exploiting developing countries? We want to—it's good for us." It is far more likely that developed countries would have to back down, at least to an extent. It is also likely that additional rationales would be given for developed country behaviour. The future of the WTO would depend on whether satisfactory outcomes could be negotiated.

3. Final Thoughts on Economic Theory

My point in discussing economic theory is to emphasize that a narrative about the limits of economic modelling and the use of economic theory by policymakers

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[44] *See* Charles Lawrence, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

[45] For a brief discussion of the current Doha Round impasse, see *Dead man talking*, *supra* note 7.

actually complements Alessandrini's discussion. It helps to identify and explain *why* free trade is a foundational aspect of the WTO, as well as why and how the current WTO stance is outdated in important respects. In terms of addressing and trying to rectify the problem, this narrative also raises the question of intent—something Alessandrini's book does not expressly do.

Furthermore, any discussion of how to address and rectify such problems is an opportunity to ask important questions about whether the WTO has become so large, and so influential, that opting out is an option that is difficult at best, and perhaps only feasible for most developing countries if they do so in concert. If the WTO is indeed that large, and developing countries feel that they are indeed stuck without a meaningful opportunity for change or reform, then that is a serious problem indeed. And in fact, this line of thinking can help explain the North-South divide that has developed within the WTO between developed countries and developing countries, with developing countries closing ranks to gain strength through numbers in negotiations with developed countries.[46]

Finally, the use of newer economic theory could be a way to explore how, and why, certain countries such as South Korea and Japan have succeeded in the multilateral trading system, despite their small size and lack of natural resources. Their stories are not ones of resource exploitation (which is a theme in Alessandrini's book), but rather of rapid development and economic growth. How do those countries fit into the story of developing country exploitation told in this book—and if they do not cleanly fit, are they the exceptions that prove the rule? Or do they suggest that further reflection from additional perspectives is warranted?

C. Alternative Three: Framing, Cognitive Bias Theory, and Heuristics

Alessandrini's focus on normative judgments also invites analysis of the treatment of developing countries in the multilateral trading system through "framing" and the application of cognitive bias theory and heuristics. While these tools from the social sciences concern the decision-making of individuals and not of states, international trade regulation decisions are indeed made by individuals or

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[46] For a discussion of the North-South divide among WTO member states, *see* T.K. BAUMIK, THE WTO: A DISCORDANT ORCHESTRA 20 (Sage Publications 2006). For a discussion of relations between strong and weak states within regimes, *see* JANE FORD, A SOCIAL THEORY OF THE WTO 30-34 (Palgrave MacMillan 2003) (discussing traditional theoretical views of regimes, in which weak states are generally perceived as having limited ability to achieve regime change (including through coalitions), and proposing an alternative theoretical approach that accounts for greater developing country influence within the WTO regime).

groups of individuals. The application of framing, cognitive bias theory, and heuristics to the topic of developed country decision-making regarding developing countries is therefore appropriate.[47]

1. Framing

Framing has been defined as "principles of selection, emphasis, and presentation composed of little tacit theories about what exists, what happens, and what matters".[48] Framing principles thus can shape decision-making in ways that, while predictable, are not rational in the traditional sense of the word. Such principles can be derived from a number of sources, including cultural preferences, political views, and religious beliefs. Because rationality is such a central aspect of mainstream economic thought, an analysis of WTO and developed country decision-making that considers such normative frames could offer a useful perspective on the disconnect between developed countries' free trade, benefit-for-all rhetoric and actions they may take to the contrary. That is, a framing discussion of WTO and developed country decision-making and their treatment of developing countries could be developed to complement Alessandrini's narrative.

2. Cognitive Biases

In similar fashion, cognitive bias theory could be applied to construct a viable narrative of how developed countries have acted and continue to act at the expense of developing countries in the multilateral trading system. Various types of cognitive bias have been identified, but those most relevant here include "confirmation bias" and "self-serving bias" or "egocentric bias". "Confirmation bias" is the tendency of individuals to discount or ignore data that is inconsistent with their own beliefs.[49] Such discounting might be unconscious,[50] but under the related "self-serving" or "egocentric" biases, the interpretation and valuation of

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[47] For an example of the application of framing to state decision makers, *see* Alison Peck, *Leveling the Playing Field in GMO Risk Assessment: Importers, Exporters and the Limits of Science,* 28 B.U. INT'L L.J. 241, 249 (2010) (hereinafter Peck) (using framing to analyse and discuss risk assessment and international trade in genetically modified foods).

[48] TODD GITLIN, THE WHOLE WORLD IS WATCHING: MASS MEDIA IN THE MAKING & UNMAKING OF THE NEW LEFT 6 (University of California Press 1980), quoted in Peck, *supra* note 47, at 249.

[49] *See* Michael A. McCann, *It's Not About the Money: The Role of Preferences, Cognitive Biases, and Heuristics Among Professional Athletes*, 71 BROOK. L. REV. 1501, 1512 (2006) (hereinafter McCann) (discussing framing and cognitive bias in the decision-making of professional athletes). *See also* Jon D. Hanson & Douglas A. Kysar, *Taking Behavioralism Seriously: The Problem of Market Manipulation*, 74 N.Y.U. L. REV. 630, 641 at n.31 (1999) (hereinafter Hanson & Kysar).

[50] McCann, *supra* note 49, at 1512.

information "in a way that disproportionately favours [one's] own position" may well be intentional.[51] If developed countries (or more accurately, those with international trade decision-making authority in developed countries) observe how certain countries have benefitted significantly from free trade efforts under the multilateral trading system, that observation would likely reinforce and validate their support for the multilateral trading system as currently structured. The observation also might lead to a conclusion that those countries that have not benefitted must be doing something wrong, or else they too would benefit. Moreover, cognitive biases might lead decision makers to discount newer developments in the field of international economics, in favour of previous works that support their own views.

Several examples help drive home the point. First, examples of countries significantly benefiting from the current system (and thus supporting developed country views of the international trading system) might include all developed countries—including Japan and South Korea, which rapidly developed over the course of several decades and have become significant players in global trade. By the same token, the reluctance of developed countries to reach any conclusion other than that the current multilateral trading system works well for all countries might lead these developed countries to discount or entirely dismiss facts to the contrary. For example, developed countries might offer alternative reasons for why developing countries are not benefitting as they should under the WTO. Such reasons might include—as Alessandrini suggests—poor governance and graft within the developing countries in question.[52]

A second example is offered by the WTO Director-General himself. In a 2010 speech at the Paris School of Economics, WTO Director-General Pascal Lamy made statements that are quite consistent with a cognitive bias analysis of the WTO's preference for comparative advantage and liberalised international trade.[53] In that speech, Lamy acknowledged the work of leading (and Nobel prize-winning) international economists Paul Krugman and Paul Samuelson—Krugman for his work in scale economics,[54] and Samuelson for research near the end of his career concerning how international trade might not be mutually beneficial in all

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[51] Chris Guthrie, *Framing Frivolous Litigation: A Psychological Theory*, 67 U. CHI. L. REV. 163, 206 n.199 (2000) (discussing the influence of such biases in litigation); Linda Babcock & George Loewenstein, *Explaining Bargaining Impasse: The Role of Self-Serving Biases*, 11 J. ECON. PERSP. 109 (1997) (discussing the influence of such biases on the settlement of litigation).

[52] ALESSANDRINI, *supra* note 5, at 13.

[53] Lamy, *supra* note 42.

[54] *See*, *e.g.,* Krugman – *New Thinking, supra* note 38; KRUGMAN – RETHINKING INT'L TRADE, *supra* note 40.

circumstances.[55] Both scholars' contributions to the field thus fell outside the boundaries of Ricardo's comparative advantage model. Lamy described Krugman's contributions as generally consistent with trade based on comparative advantage, and he reserved most of his energy for a rebuttal of Samuelson's work. Specifically, Lamy described Samuelson's paper as "theoretically" presenting the possibility of losses through trade and characterised it as "*appear[ing]* to be a dramatic about face" on the subject of mutually beneficial international trade.[56] The word "theoretically" does appear to have been an attempt by Lamy to minimise the importance of Samuelson's paper, and Lamy even expressly stated that he used the word "appear" because other work by noted international economists Jagdish Bhagwati, Arvind Panagariya, and T. N. Srinivasan contradicted Samuelson's paper and thus supported the more traditional comparative advantage view of trade as mutually beneficial.[57] In other words, Lamy was emphasizing the importance and relevance of work that jibed with his views, and discounting the importance and relevance of work that did not—which is consistent with cognitive bias analysis.

Thus, it stands to reason that if developed countries give significant weight to facts consistent with their world view and discount or entirely dismiss inconsistent facts, the result of any decision-making by developed countries concerning international trade would be largely preordained. In the case of the WTO, that result would be—and indeed appears to have been—a continuation of the status quo, with perhaps modest adjustments at the margins.

3. Heuristics

Heuristics, also popularly known as "rules of thumb," are decision-making strategies used by people to facilitate decisions by allowing for streamlined reasoning. Instead of considering all relevant evidence, decision-making shortcuts are applied, based on previous experience and on predictive probability.[58] The use of such streamlined reasoning thus ignores or holds constant certain variables that are considered to be non-central to the decision-making process. New variables or data are also often excluded, because they fall outside the range of previous experience.

The effect of a heuristic device is to simplify the decision-making process. When a heuristic device works, it allows for improved decision-making capacity,

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[55] Paul A. Samuelson, *Where Ricardo and Mill Rebut and Confirm Arguments of Mainstream Economists Supporting Globalization*, 18 J. ECON. PERSP. 135-146 (2004).

[56] Lamy, *supra* note 42 (emphasis added).

[57] *Id.*

[58] McCann, *supra* note 49, at 1518.

with a relatively small reduction in the quality or accuracy of the decisions made. However, the risk exists that ignored factors may matter more than expected—and in some cases, the ignored factors may matter a great deal.[59] When that happens, the result achieved can be substantially out of line with the optimally desired results.

Heuristics also can have significantly adverse effects in negotiations, as certain relevant data gets discounted and relevant new information gets ignored. The effect is known as "belief perseverance,"[60] and it has been aptly described as "the tendency to cling to a viewpoint in the face of disconfirming evidence".[61] Heuristics, especially heuristics in the context of negotiations, thus, could be used to explain developed countries' positions in WTO negotiations, including their unwillingness to compromise with developing countries in certain respects despite evidence that aspects of the multilateral trading regime as currently structured are not mutually beneficial.

4. Final Thoughts on Framing, Cognitive Biases, and Heuristics

Framing the discussions in this book (as it were) in the context of frames, cognitive bias theory, and heuristics could help to explain why developed countries persist in making trade-related decisions that are so at odds with their own rhetoric. Perhaps it is intentional. Perhaps it is based on a skewed set of framing principles. Perhaps it is due to an unwillingness or widespread inability to see the disconnects between policy and outcome. The point is that these tools from the social sciences could be used to complement the narrative presented in this book—and provide additional explanation for how newly developed countries fit into the often tense relationship between developed countries and developing countries.

D. Alternative Four: Enlightened Self-Interest

As noted above in Section III.C, pointing out the error of the developed countries' ways may result in some change in developed country behaviour, but it is also just as likely (indeed, perhaps more likely) to lead to other rationalisations for why certain aspects of the WTO's structure are good, and why certain developed country behaviour is acceptable—even if that structure and that behaviour harm developing countries. This is a central conundrum of international law: the lack of a meaningful enforcement mechanism. The WTO has addressed the issue of enforcement through a formalised process of dispute settlement via

[59] *Id.*

[60] Hanson & Kysar, *supra* note 49, at 652-653.

[61] McCann, *supra* note 49, at 1519.

WTO panels and the WTO Appellate Body,[62] but that may not be sufficient to protect developing countries from developed country actions, for at least three reasons. First, WTO dispute settlement focuses on adherence to WTO rules, but if the rules themselves are skewed in favour of developed countries that may not be of much help. Second, developed countries are likely to have more experience and expertise in such disputes, and thus may be more likely to prevail.[63] Third, WTO panel and Appellate Body decisions do not technically mandate that those decisions be adhered to; rather, there can be non-compliance, although the costs of non-compliance may well be steep (a withholding of preferential treatment).[64]

The solution, therefore, might be to align developing country needs and interests with developed country needs and interests. Or to state the point more precisely, the solution might be to point out more clearly how developing country and developed country needs and interests are in fact aligned in ways that have been under-appreciated. The interests of developed and developing countries may have been in alignment at the time of the GATT's creation or the birth of the WTO (or at least they might have been generally perceived as being in alignment); the challenge now is to find similar common ground. Self-interest is a powerful force, and in the international system it is almost always the best (and sometimes the only) means of meaningful enforcement. Alessandrini argues that developed countries take advantage of developing countries—and my point is that they will do so in many instances if developed countries conclude that such actions are in

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[62] BOWMAN ET AL., *supra* note 13, at 2; *see also* World Trade Organization, *The WTO … in Brief* 4 (2009), *available at:* http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr00_e.htm.

[63] There is evidence that "repeat players"—parties that frequently litigate—are more likely to be successful than non-repeat players ("one-shotters"). A leading article on this subject is Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95, 107 (1974). In the context of WTO dispute settlement, this suggests that developed countries, which tend to be involved in a large number of disputes and to have developed significant expertise in WTO litigation, may be more likely to prevail in disputes with developing countries. It also suggests that developing countries may be more likely to forgo WTO dispute settlement, out of expectation that they are less likely to prevail than developed countries. Empirical research supports the latter conclusion. *See* Chad P. Bown, *Participation in WTO Dispute Settlement: Complainants, Interested Parties, and Free Riders*, 19 WORLD BANK ECON. REV. 287 2005) (asserting, on the basis of empirical analysis, that the WTO dispute settlement system features an implicit institutional bias against developing countries).

[64] *See* Warren F. Schwartz & Alan O. Sykes, *The Economic Structure of Renegotiation and Dispute Resolution in the World Trade Organization*, 31 J. LEGAL STUD. S179, S180 (2002) (characterising the WTO's Dispute Settlement Understanding as a contract among political actors that may choose to abide by the agreed-upon rules or suffer agreed-upon sanctions for their non-compliance).

their self-interest. One answer to the problem Alessandrini identifies thus might be to try to change the self-interest equation of the developed countries.

One way to change the developed countries' self-interest equation might be to appeal to the protectionist tendencies of the developed countries themselves. The United States is an active user of trade remedy laws as a means to protect domestic industries from foreign competition.[65] It is also no accident that at the end of World War II, when the United States emerged as a superpower and stood virtually alone as a purveyor of high-end industrialised goods, its leaders in the executive branch generally favoured more international trade and supported multiple rounds of GATT trade liberalisation.[66] As the level of foreign competition grew, however, the United States became less enamoured of such free trade and unfettered competition. By the same token, in the 1980s, the United States championed the liberalisation of international trade in services, because the United States (a services-heavy economy) saw enormous economic potential in the global expansion of services markets.[67] Since that time, however, Americans have seen many US companies and jobs go overseas, and there is general public outcry over "offshoring".[68] As a result, globalisation and free trade are seen as less beneficial to the United States, and there is less general support for trade liberalisation.

Does this suggest a common ground between developed countries, with their concerns over foreign competition, and developing countries, with their concerns over exploitation and being required to play a game they cannot win by developed country rules? Might this be a basis for reaching greater consensus on "strategic trade" as an alternative to "free trade" within the WTO? Would developed

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[65] BOWMAN ET AL., *supra* note 13, at 41.

[66] *See* BHALA, *supra* note 13, at 6-9 ("The U.S. Department of State had conceived [by 1945] a design for a post-Second World War international economic order that included a multilateral trade body"). Members of Congress, however, were not always so enamoured of international trade, and indeed it was strong opposition in the U.S. Senate that ultimately doomed the International Trade Organization. *Id.* at 5-6.

[67] J. Michael Taylor, *Evaluating the Continuing GATS Negotiations Concerning International Maritime Transport Services*. 27 TUL. MAR. L.J. 129, 134 (2002), *citing* U.S. Congress, Office of Technology Assessment, *Trade in Services: Exports and Foreign Revenues--Special Report*, OTA-ITE-316, at 7 (1986) ("Recognizing the growing role of the services sector in trade relations, the United States ultimately became a driving force behind multilateral services negotiations").

[68] *See* Martin Neil Baily & Robert Z. Lawrence, *What Happened to the Great U.S. Job Machine? The Role of Trade and Electronic Offshoring*, 2004 BROOKINGS PAPERS ECON. ACTIVITY 211, 212-214 (2004) (arguing that US public sentiment against service sector offshoring and international trade as primary causes of job loss are misplaced). *See also* Alan S. Blinder, *Fear of Offshoring*, CEPS Working Paper No. 119 (Dec. 2005), *available at:* www.mainefairtrade.org/pdf/blinder_fearofoffshoring_2005.pdf.

countries be willing to sacrifice aspects of free trade at the altar of national security, in order to promote economic development in developing countries that are seen as potential hotbeds of extremism? Or are such efforts doomed by differing views on what levels and sorts of international trade (and protectionism) are desirable and undesirable? Are we left to loosely paraphrase Churchill by concluding that free trade is the worst possible form of international trade regulation, except for all other types that we can think of?[69]

To borrow a turn of phrase from Alessandrini, answering such questions is beyond the scope of this book review. But they are questions worth asking expressly, and enlightened self-interest is a potentially useful angle for pursuing possible answers to these questions.

IV. CONCLUDING THOUGHTS

The alternative perspectives suggested above are possible avenues for further exploration. Some complement Alessandrini's narrative and might enhance the richness of her narrative. Others are in tension with Alessandrini's narrative, but academic dialogue is derived largely from tension. This book could serve as a basis for further exploration along these (and other) lines, so that the tensions and complementarities among various narratives and perspectives can be more fully considered, and proposals for resolving the challenges faced by developing countries in the WTO can be advanced.

Developing Countries and the Multilateral Trade Regime: The Failure and Promise of the WTO's Development Mission is thus a useful contribution to the literature of international trade. It will be interesting to observe the direction of Alessandrini's future work and how this book might be used as a foundation for further work, both by other scholars and by Alessandrini herself.

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[69] In a speech in the House of Commons on November 11, 1947, Churchill stated as follows:

> Many forms of government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of Government except all those other forms that have been tried from time to time.

YALE BOOK OF QUOTATIONS 154 (Fred. R. Shapiro ed.) (Yale University Press 2006).