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Donatella Alessandrini, *WTO at a Crossroads: The Crisis Of Multilateral Trade And The Political Economy Of The Flexibility Debate*  
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## WTO AT A CROSSROADS: THE CRISIS OF MULTILATERAL TRADE AND THE POLITICAL ECONOMY OF THE FLEXIBILITY DEBATE

DONATELLA ALESSANDRINI\*

*This article has a two-fold purpose: first, to problematize the WTO's official response to the crisis, particularly its insistence on trade liberalisation as the universally desirable means for stimulating growth; secondly, to reflect on the political economic assumptions underlying calls for greater flexibility to be built in the WTO system. Although the article considers the flexibility debate to be of crucial importance in thinking about the future of the multilateral trading system, it evaluates the stakes in arguing for policy autonomy or 'developmental legal capacity' in the context of international trade relations. In this respect, it shows that flexibility arguments share an understanding of multilateral trade relations as governed by competition. While recognising that the role of competition, as opposed to comparative advantage, is important to challenge the assumption about the universal beneficial role of trade liberalisation, the argument this article makes is that accepting competition as the sole or prevalent modality informing multilateral trade relations is problematic from both a normative and a positive perspective. By reflecting on the limitations of an approach that accepts the need 'to prosper in conditions of global competition' as its necessary starting point, this article emphasizes the importance of rethinking international trade relations, particularly under conditions of global recession characterised by high levels of inequality.*

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**I. INTRODUCTION**

This article is prompted by two arguments concerning the relationship between the current economic crisis and the multilateral trading regime: the first is concerned with the WTO's attempt to push the case for trade liberalisation further by claiming that the multilateral trading system is in a precarious condition as trade is slowing down at a faster pace than GDP. The call is for member states to conclude the Doha Round and extend the remit of the WTO to non-tariff barriers (NTBs), including competition policy and investment rules, so as to stimulate growth.<sup>1</sup> A pragmatic variant of this approach can be found in the so-called 'critical mass' or 'global recovery ground' arguments which suggest that achieving liberalisation in some, as opposed to all, sectors at Doha is preferable to an outright failure of the Round.<sup>2</sup> These are different manifestations of the belief that liberalising trade, whether to a greater or lesser extent, will serve as a 'stimulus package' for a world economy which is struggling to recover from the present crisis.

The second argument is different: it regards the persistent stalemate at Doha as opening up the possibility for WTO developing country members, and fast-growing economies in particular, to inaugurate a new chapter in world trade history. This is a chapter that rejects the assumptions about the universal beneficial role of trade liberalisation and consequently demands

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<sup>1</sup> *Lamy reports slowdown in G-20 trade restrictions but warns trade frictions on the rise* WORLD TRADE ORGANIZATION (Oct. 31, 2012), [http://www.wto.org/english/news\\_e/news12\\_e/igo\\_31oct12\\_e.htm](http://www.wto.org/english/news_e/news12_e/igo_31oct12_e.htm) [hereinafter WTO - Lamy].

<sup>2</sup> See Andrew Stoler, Exec. Dir., Inst. for Int'l Trade, U. of Adelaide, Speech at the Centre for Public Policy Symposium on the Future of the Multilateral Trade System: Breaking the Impasse: A Critical Mass Approach to Multilateral Trade Negotiations, (Apr. 7, 2008), available at [http://www.iit.adelaide.edu.au/docs/critical\\_mass\\_speech\\_final.pdf](http://www.iit.adelaide.edu.au/docs/critical_mass_speech_final.pdf) [hereinafter Stoler]; see also *Goodbye Doha, hello Bali*, THE ECONOMIST, Sept. 8, 2012, 1, <http://www.economist.com/node/21562196>.

more flexibility and regulatory autonomy for WTO member states (hereinafter collectively referred to as ‘flexibility arguments’). This position finds support in what can be broadly referred to as the critical ‘trade and development’ literature which emphasizes the importance of policy autonomy, although scholars have different understandings of the scope and reach of WTO law.<sup>3</sup> Thus, while some highlight the rigidity of WTO’s legal norms and argue that more flexibility needs to be actively sought, particularly through legislative change;<sup>4</sup> other scholars view WTO’s law as inherently indeterminate and show how countries with ‘developmental legal capacity’ are already carving out policy autonomy, for instance through litigation.<sup>5</sup>

This article begins by problematizing the WTO’s official response to the crisis, particularly, its insistence on trade liberalisation as the universally desirable means for stimulating growth. It then moves on to explore the potential that flexibility arguments hold for the future of the multilateral trade system. Part I considers the call for greater liberalization in the context of the insights provided by the ‘inequality’ explanation of the crisis; it considers how demands for more flexibility from WTO’s legal rules are likely to emerge as member states attempt to stimulate demand in the future. Part II takes this possibility as its starting point and asks what is at stake in arguing for policy autonomy in the context of international trade relations. To be sure, I consider the flexibility debate to be of crucial importance in thinking about the future of the multilateral trading system and indeed my intervention aims to contribute to such a debate. This article intends to show that flexibility arguments share an understanding of multilateral trade relations as necessarily governed by competition (in classical political economic terms, rather than in the neo-classical sense).

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<sup>3</sup> See for example, Michael Ming Do, *The Rise of National Regulatory Autonomy in the GATT/WTO Regime*, 14(3) J. INT’L ECON. L. 639 (2011).

<sup>4</sup> See for example, Robert Hunter Wade, *What strategies are viable for developing countries today? The WTO and the shrinking of ‘development space’*, 10 REV. INT’L POL. ECON. 621 (2003); DANI RODRIK, ONE ECONOMICS, MANY RECIPES: GLOBALIZATION, INSTITUTIONS AND ECONOMIC GROWTH 213 (2008); HA-JOON CHANG, KICKING AWAY THE LADDER: DEVELOPMENT STRATEGY IN HISTORICAL PERSPECTIVE (2002) [hereinafter CHANG, DEVELOPMENT STRATEGY]; HA-JOON CHANG, BAD SAMARITANS: THE MYTH OF FREE TRADE AND THE SECRET HISTORY OF CAPITALISM 203 (2007) [hereinafter CHANG, FREE TRADE].

<sup>5</sup> See Alvaro Santos, *Carving Out Policy Autonomy for Developing Countries in the World Trade Organization: the Experience of Brazil and Mexico*, 52(3) VA. J. INT’L L. 551, 577 (2012) [hereinafter Santos].

Whilst recognising the role of competition, as opposed to comparative advantage, is important in order to challenge the assumption about the universal beneficial role of trade liberalisation, the argument this article makes is that accepting competition as the sole or prevalent modality informing multilateral trade relations is problematic from both a normative and a positive perspective. Reflecting on the limitations of an approach that accepts the need ‘to prosper in conditions of global competition’<sup>6</sup> serves to illustrate the importance of rethinking international trade relations, particularly under conditions of global recession characterised by high levels of inequality. The central question asked is the following: to what extent can states which accept such a need as indisputable, experiment with development strategies that depart from the policies which have led to the increase of inequality on a global scale?

## II. DOHA AT A CROSSROADS

The decline of world trade has attracted a lot of attention in the past four years. After an initial recovery in 2010, majorly due to rising import and exports in developing and fast-growing economies, the WTO has revised downwards the prospects of world trade in October 2011 and again in December 2012.<sup>7</sup> Former Deputy Director-General Ruhwabiza warned that ‘we have now moved from a financial to a growth crisis’ and that ‘multilateralism is in a precarious position’. He called upon WTO members to successfully conclude the Doha Round and extend the remit of the WTO to NTBs, and more generally to the regulatory environment of trade, including technical standards, competition policy and investment rules.<sup>8</sup> The Doha ‘Development’ Round was launched in 2001 in order to address the

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<sup>6</sup> David M. Trubek, *Law and the “New Developmentalism”*, in LAW, STATE AND DEVELOPMENT IN LATIN AMERICA CASE STUDIES (Trubek et al., eds.) (manuscript at 10) (forthcoming 2013), available at [http://www.law.wisc.edu/gls/documents/trubekupdates/lands\\_book\\_intro\\_final.pdf](http://www.law.wisc.edu/gls/documents/trubekupdates/lands_book_intro_final.pdf) [hereinafter Trubek et al.].

<sup>7</sup>As Pascal Lamy has confirmed: “[T]he WTO has recently revised its forecasts for 2012, putting trade growth in volume at 2.5 per cent — a substantially lower rate than the earlier forecast of 3.7 per cent. This gloomy economic backdrop makes it even more urgent that we strive to identify solid deliverables for 2013’. *Lamy urges “credible” results at Bali Ministerial*, WORLD TRADE ORGANIZATION (Dec. 7, 2012), [http://www.wto.org/english/news\\_e/news12\\_e/tnc\\_stat\\_07dec12\\_e.htm](http://www.wto.org/english/news_e/news12_e/tnc_stat_07dec12_e.htm).

<sup>8</sup> *DDG Ruhwabiza warns protectionism will hurt global growth*, WORLD TRADE ORGANIZATION (Nov. 4, 2011), [http://www.wto.org/english/news\\_e/news11\\_e/ddg\\_04nov11\\_e.htm](http://www.wto.org/english/news_e/news11_e/ddg_04nov11_e.htm) [hereinafter WTO - *DDG Ruhwabizā*].

concerns of WTO's developing country members: twelve years on, however, its conclusion is still a long way off. Agreement still lacks on the agriculture, services, and non-agricultural market access (NAMA) legs of the so-called Single Undertaking Approach (SUA) to WTO negotiations. This is still the case despite the renewed sense of urgency that the crisis seems to have conferred upon the negotiations. For instance, there are pragmatic calls for achieving agreement on a more selective basis at the next ministerial meeting in Bali, by focusing on sectors where agreement is more feasible.<sup>9</sup>

Whether these responses are adequate to deal with the current challenges, including the growth crisis and the decline of world trade, depends on how one understands the processes that have contributed to the crisis. Previous financial crises such as the ones in Mexico, South East Asia, Russia and Argentina were thought to be limited to certain regions in terms of both their effects and causes. The cause was often attributed to the improper implementation on the part of these countries of policies, the rationale of which was hardly ever called into question.<sup>10</sup> This crisis, however, strikes at the heart of the Anglo-American and European systems, which have been promoted as examples of progress and stability throughout the world.<sup>11</sup> Consequently, at least at the outset, alongside calls for reforming the international financial system, serious questions began to be raised about the international economic system. Particularly, its role in promoting the process of financialization of the economy (i.e. the exponential increase of investment and financial assets) and the impact this has had on the real economy (i.e. the realm within which goods and services are produced).<sup>12</sup> In this context, inequality has provided an important lens through which the relationship between the so-called financial and real spheres of the economy

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<sup>9</sup> WTO - *Lamy*, *supra* note 2.

<sup>10</sup> See for example, Anoop Singh, *Introductory Remarks on the role of the IMF Mission in Argentina*, INTERNATIONAL MONETARY FUND (Apr. 10, 2002), <http://www.imf.org/external/np/tr/2002/tr020410.htm>.

<sup>11</sup> Peter Gowan, *Crisis in the Heartland: Consequences of the New Wall Street System*, 55 NEW LEFT REV. 5 (2009).

<sup>12</sup> See for example, Till van Treek, *The Political Economy Debate on Financialization – a macroeconomic perspective*, 16(5) REV. INT'L POL. ECON. 907 (2009); CHRISTIAN MARAZZI, *THE VIOLENCE OF FINANCIAL CAPITALISM* 9 (2010) [hereinafter MARAZZI]; Costas Lapavistas, *Financialized Capitalism: Crisis and Financial Expropriation*, 17(2) HIST. MATERIALISM 114 (2009).



can be examined, in light of which one can assess WTO's attempts to re-start growth through greater liberalisation.

The inequality explanation has brought to light the interconnections between three interrelated processes.<sup>13</sup> First, the rise of unequal income distribution which has led, since the 1990s, to insufficient demand at the global level: while profits have been increasing, the share of national income going to workers in the USA, Europe, sub-Saharan Africa, the Middle East, Latin America and the Caribbean has decreased.<sup>14</sup> Secondly, as a result of the wage compression that has led to insufficient demand, household debt in the US and UK has increased to support otherwise unsustainable standards of living. Hence, recourse to debt has become a mechanism through which demand has been kept up. Further, this was actively supported by governments until the subprime crisis erupted in 2007. Finally, investments in financial assets have increased noticeably and research on the demand side of the securitisation process has shown how the wealth amassed by hedge funds, in particular by their 'net worth' investors, has been the driving force behind the proliferation of these risky financial instruments.<sup>15</sup> Therefore, the inequality lens has made clear that the situation not only requires proper regulation of the international financial system, but also (and importantly) redressing the unequal and unsustainable

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<sup>13</sup> The inequality explanation can be found not only in critical economic and legal scholarship but also in international policy making reports until 2010. *See for example*, DIANE PERRONS & ANIA PLOMIEN, WHY SOCIO-ECONOMIC INEQUALITIES INCREASE? FACTS AND POLICY RESPONSES IN EUROPE 7 (2010), *available at* [http://ec.europa.eu/research/social-sciences/pdf/policy-review-inequalities\\_en.pdf](http://ec.europa.eu/research/social-sciences/pdf/policy-review-inequalities_en.pdf). The relationship between inequality and finance has come to be more closely scrutinized as researchers have started to focus on the link between stagnant wages and households' recourse to debt on the one hand; and the connection between raising profits and increasing demand for risky financial instruments. *See* Photis Lysandrou, *Global Inequality and the Financial Crisis*, 40(3) *ECON. & SOC'Y* 344 (2011) [hereinafter Lysandrou].

<sup>14</sup> Stephanie Seguino, *The Global Economic Crisis, its gender and ethnic implications, and policy responses*, 18(2) *GENDER & DEV.* 186 (2010) [hereinafter Seguino]. Seguino refers to the important study published by the International Labour Organisation: International Institute of Labour Studies, *World of Work Report 2008: Income inequalities in the age of financial globalization*, INT'L LAB. ORG. (2008), [http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_100354.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_100354.pdf).

<sup>15</sup> *See* Lysandrou, *supra* note 14. As Lysandrou notes, net worth investors are individuals whose combined wealth in 2006 totalled \$37 trillion, half of which was held in securities. They were the most important suppliers of finance to hedge funds which in turn were buying Collateralized Debt Obligations (CDOs).

international economic system of production and distribution to which the former is linked.

To be sure, many developing and middle income countries have been hit less hard than the US and Europe despite the decline in the demand for manufactured and commodity exports (particularly for countries less reliant on export earnings) and a likely drop in tourist expenditures and remittances.<sup>16</sup> This is not to say that these transmission channels between the developed and developing countries are not important. Indeed, the crisis has brought to light the degree of interconnectedness of the international economy. However, when thinking of desirable responses to the current state of affairs, it must be kept in mind that the crisis is a consequence of a particular model of growth and development fostered by the countries of the so-called North. Simultaneously, the complex connections that have resulted from thirty years of policies based on such model need to be carefully traced. One such connection derives from the complex international web of demand, trade and finance. This consists of the flow of demand from countries in structural deficit, such as the US, to countries in structural surplus, such as China and Japan. This process has been mirrored by the investment of the latter's surpluses in the purchase of treasury bills issued by the countries in deficit. These reciprocal flows are today threatened by the fact that US consumers are saving much more than they did in the past when recourse to debt was actively supported and encouraged. The collapse of private spending, and therefore demand, is likely to occur in Europe too as a result of austerity measures that will generate job losses and a consequent drop of income.<sup>17</sup>

From this perspective, it is not obvious how the removal of NTBs and the promotion of a more efficient environment for trade will stimulate demand without recourse to debt. Indeed, the fact that the decline of trade is outpacing that of GDP is less worrying than the fact that consumers in the US and Europe are not spending and consequently not generating demand. The fact that trade is declining 'faster than at any time since the Great Depression', as a Report by *The International Economy* has put it, is

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<sup>16</sup> Seguino, *supra* note 14.

<sup>17</sup> Lorraine Woellert, *Consumer Spending in US Stagnates*, BLOOMBERG (Sept. 28, 2012), <http://www.bloomberg.com/news/2012-09-28/consumer-spending-in-u-s-stagnates.html>; *Eurozone Crisis Drying up Credit to Households*, HURRIYET DAILY NEWS (Jan. 29, 2013), <http://www.hurriyetdailynews.com/Default.aspx?pageID=238&nid=40018>.

attributable to many factors but an important one is the role played by global supply chains.<sup>18</sup> The intra-firm trade that started at the end of the 1970s (when the shift away from the Keynesian consensus towards neo-liberal policies of privatisation, liberalisation and de-regulation took place in the US and Europe) created new market opportunities for private actors to invest around the world, also contributed to by technological innovations which facilitated companies' horizontal as well as vertical integration.<sup>19</sup> This shift meant that trade no longer involved simple transactions between two countries, as companies had created global supply chains making use of facilities in different countries for different stages of the production process. The implication is that, while GDP is counted on a value added basis, intra firm trade is counted several times as it crosses borders.

This is not to negate the decline in trade, but to say that its movements are magnified in comparison to movements in output. Hence, since the latter is much more significant than the former, the question is whether and to what extent it is possible to stimulate demand and therefore production of output, rather than how to remove NTBs and extend the remit of the WTO as argued by former Deputy Director-General Ruhwabiza.<sup>20</sup> Taking the growth argument at its face value, the question therefore becomes: how can demand be stimulated without recourse to debt? Two speculations can be made in this respect: first, it is unlikely that the inequality argument will be seriously considered in Europe and the US unless the current emphasis on austerity and deficit reduction is abandoned and the trend towards inequality resulting from further wage compression is reversed. Unless such reversal takes place, demand can only increase through recourse to debt and the crisis has clearly demonstrated how the growth fuelled by such demands is unsustainable. However, this requires a political will and plan, of which there is no sign at the moment. It is fair to assume that the repercussions of this drop in demand, in the meantime, will be felt more severely by export oriented emerging economies and developing countries, particularly when exports have been oriented towards European and North American markets.<sup>21</sup> As it stands now, it seems unlikely that these countries will be

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<sup>18</sup> *Collapse in World Trade: A Symposium of Views*, THE INT'L ECON. 32 (Spring 2009), [http://www.international-economy.com/TIE\\_Sp09\\_WorldTrade.pdf](http://www.international-economy.com/TIE_Sp09_WorldTrade.pdf).

<sup>19</sup> See Samuel J Palmisano, *The Globally Integrated Enterprise*, 85(3) FOREIGN AFF. 127 (2006).

<sup>20</sup> WTO – DDG Ruhwabiza, *supra* note 8.

<sup>21</sup> *China Trade Data Raises fear of Economic Slowdown*, BBC NEWS (Sept. 10, 2012), <http://www.bbc.co.uk/news/business-19540359>.

able to compensate for the drop in demand. However, and this is the second speculation, a different chapter in the history of multilateral trade could be written by taking into account the increasing relevance of Southern trade, as evidenced by the fact that of the total exports of emerging countries, which amounted to 35% of global GDP over the last 5 years, only 20% were made to developed countries, while 15% resulted from South-South trade i.e. trade between emerging and fast-growing economies.<sup>22</sup>

South-South trade did indeed temporarily account for faster growth in the first half of 2010 according to the WTO, even though this recovery has been challenged in the second half.<sup>23</sup> As Marazzi observes, for these countries (China, India, Russia and South American countries in particular) to be able to stimulate global demand, they would need to raise internal wages and make greater investments in the local economy so as to create a vibrant domestic market. This, however, implies that their savings would no longer be directed towards Northern countries but towards internal demand, which would consequently deprive the international monetary and financial system of the mechanism that has allowed the global economy to function the way it has until now. The present power geometry would certainly be altered by such a shift, although how this may play out remains to be seen. However, given the current situation, such a scenario cannot be easily discarded. Therefore, the remainder of this article is concerned with the significance of such a shift for the multilateral trading regime.

Should the conditions for such transformation emerge, the WTO will be confronted with demands for more policy autonomy than currently allowed by its rules in order for states to enact industrial policies.<sup>24</sup> This is the crucial challenge the WTO will face: it can either hold on to the narrative of ‘free trade versus protectionism’ and continue to uphold the normative case for uniform trade liberalisation or, alternately, it can recognise that states and

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<sup>22</sup> See MARAZZI, *supra* note 12, at 14.

<sup>23</sup> *Trade Growth to Ease in 2011 But Despite 2010 Surge, Crisis Hangover Persists*, WORLD TRADE ORGANIZATION (Apr. 7, 2011), [http://www.wto.org/english/news\\_e/pres11\\_e/pr628\\_e.htm](http://www.wto.org/english/news_e/pres11_e/pr628_e.htm).

<sup>24</sup> One could argue that this is already happening with the current stalemate at Doha being an indication of the new strength acquired not only by fast growing economies but also least developed countries; see Donna Lee, *Global Trade Governance and the Challenges of African Activism in the Doha Development Agenda Negotiations*, 26(1) GLOBAL SOC'Y, 83 (2012) [hereinafter Lee].

markets are always in dynamic interaction, embodying different combinations of liberalisation and intervention at different times, and support the case for greater flexibility, thereby rejecting the ‘one-size-fits-all’ liberalisation model. This can take place in a number of ways: members could proceed with piecemeal negotiations;<sup>25</sup> make Special and Differential (SDT) provisions more ‘effective and operational’ as required by the Doha Declaration, and carve out greater autonomy to pursue industrial policy through litigation. This is the challenge that the WTO will have to face if it is not to become redundant.<sup>26</sup>

However, the significance of this issue goes beyond multilateral trade negotiations, as one has to wonder whether and to what extent flexibility from WTO rules will provide a platform for redressing the unequal and unsustainable system of production and distribution revealed by the inequality lens of the crisis. To be sure, flexibility from WTO rules may be the starting point for thinking of alternatives to the uniform trade liberalisation mindset that has prevailed in the last three decades. The WTO, and its law, reflects the neo-liberal consensus that prevailed at the time of its establishment, a consensus based on the belief in the supremacy of free, unregulated markets which the crisis has called into question. It however remains to be seen what kind of political economic consensus will emerge as a result of this contestation. Thus, in the following part, the political economic assumptions underlying the various flexibility arguments are investigated, so as to enquire into their significance for the well-being and development that flexibility is supposed to enable, in the context of the complex connections of the global economy revealed by the inequality lens. In a nutshell, the following questions are asked: what is flexibility for? What kind of multilateral trade practices does it enable?

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<sup>25</sup> This is the substance of the ‘critical mass’ argument, which might well mean a return to the Principal Supplier Rule of GATT times; see Stoler, *supra* note 2.

<sup>26</sup> Indeed with multilateral negotiations stagnating, deals are being conducted at the bilateral level. As Lee observes, African resistance operating at the level of multilateral talks creates a dilemma: Lee, *supra* note 24, at 83 (“[w]hile resistance to existing power processes means that African member states can no longer be ignored in WTO negotiations, it also means that the WTO as a forum for global governance is less effective since consensus-based agreement becomes more difficult to achieve. And the less effective the WTO is in multilateral trade governance, the more member states—and in particular dominant states—ignore the WTO and seek bilateral and regional alternatives in order to secure market opening”).

### III. THE POLITICAL ECONOMY OF THE FLEXIBILITY DEBATE

The case for flexibility underlies much of the critical trade and development literature. Flexibility is understood as a relative ability, that is, an ability within constraints, to achieve domestic goals, often framed in terms of industrial policy and development.<sup>27</sup> Therefore, it is in relation to both legal and economic arguments that critical trade and development scholars debate flexibility. Broadly speaking, this literature finds that the combined effect of the WTO agreements, especially the GATS, TRIMs and TRIPS, together with the rules on subsidies, has been that of restricting the regulatory autonomy of its members, particularly its developing country members.<sup>28</sup> This is in comparison to the WTO's predecessor, the GATT, which limited in its reach to trade in goods and reflected the post-war Keynesian consensus that trade liberalisation was beneficial to growth and development when coupled with appropriate state intervention. To this end it allowed for several exceptions to its rules, including the infant industry exception, the safeguard clause, non-reciprocity and SDT provisions. However, the WTO has come to embody the neo-liberal norm of self-regulating markets and the consequent belief that countries stand to uniformly gain from promoting the unhindered movement of goods and services on the one hand, whilst protecting intellectual property rights (IPR), on the other. Although SDT is still formally part of the WTO apparatus, it has been reconceptualised so as to allow for longer transitional periods and technical assistance to support countries in the implementation of the various agreements. Therefore, substantial reciprocity has been

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<sup>27</sup> I am not going to dwell on how contested the concept and meaning of development is. I have previously focused on the way in which development has operated like a scientific discourse within the multilateral trading system since de-colonisation; see DONATELLA ALESSANDRINI, *DEVELOPING COUNTRIES AND THE MULTILATERAL TRADE REGIME: THE FAILURE AND PROMISE OF THE WTO'S DEVELOPMENT MISSION* (2010) [hereinafter ALESSANDRINI]; see also ARTURO ESCOBAR, *ENCOUNTERING DEVELOPMENT: THE MAKING AND UNMAKING OF THE THIRD WORLD* (1995). I consider development to be a very fraught concept meaning different things to different people in different parts of the world: see Bhupinder Singh Chimni, *The World Trade Organisation, Democracy and Development: A View from the South*, 40(1) J. WORLD TRADE 5 (2006). I use 'development' in this article to refer to the struggles over 'well-being' broadly conceived, including the attempts states make to improve that of their populations.

<sup>28</sup> CHANG, *FREE TRADE*, *supra* note 4, at 65-83; see also ALESSANDRINI, *supra* note 27, 130-63.

reintroduced within the multilateral trade regime, with exceptions being available to depart from its rules.

While the critical trade and development scholars agree on this much, they have a different understanding about the stringency of WTO rules and the room for intervention allowed by these rules. At the risk of oversimplifying arguments of greater complexity, there are two broad manifestations of the flexibility debate. The first strand tends to focus on the fact that WTO law, and its emphasis on reciprocity, substantially restricts the developing country member's policy autonomy by preventing them from adopting industrial policies that were central to the industrialisation process of developed countries, thereby actively hindering development efforts. The Single Undertaking Approach to the WTO negotiations is considered to be one important manifestation of this practice. It extends the logic of reciprocity to industrial goods, services and agriculture, since it requires simultaneous agreement on these disparate areas in order for the round to be successfully concluded. For instance, the agreement already achieved on the elimination of agricultural export subsidies will not become effective unless the other two legs of the negotiations are also successfully negotiated. This has not only meant that the negotiations have progressed slowly: the important point is that in a round supposed to be about development, developing countries have been asked to further liberalise services under the GATS and accept greater commitments under Non Agricultural Market Access in order to benefit from substantial reduction of distortions in agricultural trade, the birth defect of the GATT which the WTO agreement has failed to adequately redress. In the meanwhile, the demand of developing countries that SDT provisions be revised and made more effective and operational, a demand which is part of the Doha Ministerial Declaration - has received little attention and made no significant progress after twelve years.

Scholars have therefore pointed to the fact that the Doha Development Round has ended up being much more about market access for Northern countries than about development. The global North, and the US and EU in particular, have continued the practice started under GATT of protecting their markets by pursuing selective trade liberalisation while preventing developing countries from adopting the means of industrial policies they

once used.<sup>29</sup> This is the practice that Ha-Joon Chang, drawing on the work of German economist Friedrich List, has famously referred to as ‘kicking away the ladder’.<sup>30</sup> To be sure, these scholars admit that such a practice has always been challenged by developing countries and argue that the ascendancy of fast-growing economies is in no small part attributable to the fact that trade liberalisation and market integration have always been accompanied by tailored government intervention. However, they see WTO law as being much more intrusive than GATT law and therefore, an impediment to the development process that countries have historically engaged in.<sup>31</sup> From this perspective, further liberalisation should be halted with more flexibility built in the WTO’s architecture, usually through legislative channels.

The second and more recent strand has complicated this reading, pointing to the inherently indeterminate nature of WTO law and emphasising the existence of much greater room for flexibility than usually assumed. Scholars within the “Law and New Developmental State” (LANDS) approach, for instance, do not dispute the restriction of policy autonomy that WTO law has introduced. However, they argue that ‘mainstream’ critical trade and development literature does not always acknowledge the active role states play in re-asserting their interests in the pursuit of development. This new role, which Trubek and Santos see materialising in several South American countries, is based on the acknowledgement that past policies, both developmentalist and neo-liberal, have failed to deliver prosperity for all.<sup>32</sup> As Trubek puts it,

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<sup>29</sup> See for example, Surendra Bhandari, *Doha Round Negotiations: Problems, Potential Outcomes and Possible Implications*, 4(2) TRADE, L. & DEV. 357, 367 (2012); see also ALESSANDRINI, *supra* note 27, at 165.

<sup>30</sup> See CHANG, DEVELOPMENT STRATEGY, *supra* note 4, at 4.

<sup>31</sup> I have argued elsewhere that the degree of intervention in the name of development commanded by the post-war international economic system, including the GATT, was no less intrusive than the WTO’s, although there are qualitative differences between the two; see Donatella Alessandrini, *The World Trade Organisation and Development: victory of rational choice?*, in EVENTS: THE FORCE OF INTERNATIONAL LAW (Johns, Joyce & Pahuja eds., 2011).

<sup>32</sup> See David Trubek & Alvaro Santos, *Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice in the New Law and Economic Development: A Critical Appraisal*, in THE NEW LAW AND ECONOMIC DEVELOPMENT: AN APPRAISAL (Trubek & Santos eds., 2006); Luiz Carlos Bresser-Pereira, *The New Developmentalism and Conventional Orthodoxy*, 20 SAO PAULO EMPERSPECTIVA (2006), available at:



The past looks like a battle field on which all sides lie defeated. We have lost faith in big ideas and universal solutions. Neither markets nor states seem like the panaceas they once were thought to be. We have confronted the complexity and embeddedness of legal systems, cultures and traditions and learned that one size does not fit all. We have seen that the developmental state can be a tyrant as well as an emancipator, the market a source of oppression as well as of energy and innovation, external assistance a tool of hegemony as well as a gesture of goodwill.<sup>33</sup>

The New Political Economy of Development (NPED) that has consequently emerged is premised on the reformulation of ‘development’ as learning and experimentation. It rejects the ‘one – size – fits – all’ model that has prevailed in the last three decades since “[t]here is no sure fire formula for development—the best that can be done is to proceed from a contextual and detailed analysis [and] experiment.”<sup>34</sup> Thus reformulated, ‘development’ requires much more policy autonomy to experiment with different strategies, even at the WTO. Although LANDS scholars are carefully monitoring these experiments and paying attention to the shifting role of domestic law, which they see oriented towards more hybrid forms,<sup>35</sup> they argue that the move towards greater flexibility is already observable in relation to WTO law. Therefore, they argue that the increasing scrutiny of neo-liberal economic orthodoxy leads to WTO law being much more indeterminate and flexible than many critical trade and development scholars recognise. Furthermore, states with a clear development strategy are able to influence its development. Santos, for instance, has

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[http://www.networkideas.org/featart/jul2006/Developmentalism\\_%20Orthodoxy.pdf](http://www.networkideas.org/featart/jul2006/Developmentalism_%20Orthodoxy.pdf);  
David M. Trubek, Voss-Bascom Professor of L. and Dean of Int’l Stud. Emeritus, Univ. of Wis.-Madison, Presentation at the European University Institute: Reversal of Fortune? International Economic Governance, Alternative Development Strategies and the Rise of the BRICS (June 2012), available at: [www.eui.eu/Events/download.jsp?FILE\\_ID=3062](http://www.eui.eu/Events/download.jsp?FILE_ID=3062);  
Trubek, *supra* note 6, at 2.

<sup>33</sup> David Trubek, *Developmental States and the Legal Order: Towards a New Political Economy of Development and Law*, 16 (U. Wis. Legal Stud. Research Paper No. 1075, 2008), available at: <http://ssrn.com/abstract=1349163>.

<sup>34</sup> Bridget Hauserman, *Exploring the New Frontiers of Law & Development. Reflections on Trubek/Santos eds., The New Law and Economic Development (2006)*, 8 GERMAN L.J. 533, 547 (2007), available at <http://www.germanlawjournal.com/article.php?id=834>.

<sup>35</sup> See Trubek (2008), *supra* note 33, at 24.

demonstrated how countries with ‘developmental legal capacity’ have been able to intervene at the level of litigation, thereby affecting the interpretation of WTO law.<sup>36</sup> This position highlights the limitations of an exclusive emphasis on the legislative struggles over the meaning of WTO law, and points to myriad of other avenues, such as litigation and trade expertise, which participate in meaning making processes.<sup>37</sup>

It is certainly crucial to look at the way in which each state interacts with WTO law so as to not make broad sweeping generalisation about its effects; to carefully examine the processes of knowledge production that have allowed previously unregulated practices to come to light, so as to appreciate how they become the object of national/international trade regulation.<sup>38</sup> However, it is also important to recognise that once practices have been made trade-related, they produce powerful and long lasting effects on member states. Indeed, the way we come to know and define practices as trade-related affects our understanding of ‘autonomy’ in the policy realm (however relative such ‘autonomy’ always is). Thus, while acknowledging the flexibility of WTO law (as the second strand invites us to do) the question of the significance of the extension of trade disciplines into more domains of life, and the way this constrains the possibilities which might be enabled by more creative interpretations of WTO law, remains an important one.

It is beyond the scope of this article to fully explore this question. However, this article focuses on one important political economic assumption that both strands of the flexibility debate appear to share and indicates how this assumption may act as a constraint in re-thinking international trade theory and practice. When examining the conditions that have made the extension of the WTO remit possible, both strands point to the problematic acceptance of the universally beneficial role of trade liberalisation; despite

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<sup>36</sup> See in particular, Santos, *supra* note 5, at 577; see also Michelle Ratton Sanchez Badin, Professor at FGV São Paulo Sch. of Law, Presentation at the LANDS Meeting, São Paulo: Developmental Responses to the International Trade Legal Game: Examples of Intellectual Property and Export Credit Law Reforms in Brazil, (May 12-13, 2011), available at [http://www.law.wisc.edu/gls/documents/developmental\\_responses\\_to\\_international\\_trade\\_michelle\\_badin.pdf](http://www.law.wisc.edu/gls/documents/developmental_responses_to_international_trade_michelle_badin.pdf).

<sup>37</sup> See for example, Andrew T.F. Lang, *Legal Regimes and Regimes of Knowledge: Governing Global Services Trade*, 38 (LSE Legal Stud., Working Paper No. 15/2009, July 2009), available at <http://ssrn.com/abstract=1423538>.

<sup>38</sup> See ANDREW T.F. LANG, WORLD TRADE LAW AFTER NEO-LIBERALISM: RE-IMAGINING THE GLOBAL ECONOMIC ORDER 221 (2011).

their important differences, they share a commitment to questioning the logic of comparative advantage on which the case for uniform liberalisation rests. In the following part, this article shows that the acceptance of the inevitability of global competitiveness seems to be replacing the troubling comparative advantage logic. This poses serious questions about the way in which we conceptualise and conduct international trade relations, particularly under conditions of global recession characterised by high levels of inequality and consequently, about the extent to which states can experiment with development strategies that depart from the policies which have led to the increase of inequality on a global scale.

#### *A. Comparative v. Competitive advantage*

Both manifestations of the flexibility debate question the universal validity of the political economic logic that has allowed the WTO to extend its reach into more areas of policy-making. This logic is that of ‘comparative advantage’, on which the case for the universally beneficial role of trade liberalisation is built. The standard theory of free trade, the Heckscher-Ohlin-Samuelson theory, posits that countries benefit from trading with one another by specialising in the production of the goods in which they have a comparative advantage.<sup>39</sup> These are the goods produced by utilising the most abundant, and therefore, the cheaper factors of production; the implication is that countries endowed with abundant capital/labour will gain from producing capital/labour intensive goods and services. As a result, international division of labour emerges which is deemed to benefit all trading partners, since trade is supposed to eventually equalise real wages and profits across countries (i.e. it will make all countries equally competitive). As Shaikh points out, for this theoretical apparatus to work, three assumptions need to hold true – ‘the terms of trade fall when a nation runs a trade deficit; the trade balance improves when the terms of trade fall; and finally there is no overall job loss generated by any of these adjustments’.<sup>40</sup> These assumptions have not only been challenged

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<sup>39</sup> For an overview of the classical and neo-classical theories of free trade, see MICHAEL TREBILCOCK, ROBERT HOWSE & ANTONIA ELIASON, *THE REGULATION OF INTERNATIONAL TRADE* 1 (2012).

<sup>40</sup> Anwar Shaikh, *Globalization and the Myth of Free Trade*, in *GLOBALIZATION AND THE MYTH OF FREE TRADE: HISTORY, THEORY AND EMPIRICAL EVIDENCE* 53 (Shaikh ed., 2007) [hereinafter Shaikh].

theoretically but also empirically: reality has neither conformed to the model of balanced trade nor known of any tendency towards full employment.<sup>41</sup>

There have been standard responses to these findings: for instance, neo-classical economists have argued that assumptions about exchange rates' movements are valid only in the long term,<sup>42</sup> and the New Trade Theory pioneered by Krugman has focused on imperfect competition and increasing returns to scale to argue that liberalisation is not always beneficial and states should at times intervene so as to support strategic sectors.<sup>43</sup> A more radical challenge, however, comes from economists who have critiqued the theory of comparative advantage on its own terms. Authors such as Shaikh and Millberg have argued that what matters is competitive (absolute) cost and advantage, not comparative advantage.<sup>44</sup> The point of departure for these analyses is the classical theory of competition, which is different from the neo-classical theory of 'perfect competition', and which points to the fact that companies operating at a transnational level, similar to those which operate at the domestic level, 'utilize strategies and tactics to gain and hold market share, and price cutting and cost reductions are major features in this constant struggle'. Shaikh continues, 'because a nation's international terms of trade are merely international common currency relative prices, they will be regulated in the same manner as any relative price: by real costs. However, the terms of trade will then not be free to automatically adjust to eliminate trade imbalances unless real costs themselves did so'.<sup>45</sup>

This means that free trade will always benefit countries which are stronger in terms of absolute costs. Hence, contrary to what both classical and neo-classical theories assume, free trade never works in the interest of all

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<sup>41</sup> *Id.* at 53-54.

<sup>42</sup> Kenneth Rogoff, *The Purchasing Power Parity Puzzle*, 34 J. ECON. LIT. 647 (1996).

<sup>43</sup> Paul Krugman, *Intraindustry Specialization and the Gains from Trade*, 89(5) J. POL. ECON. 959 (1981); Paul Krugman, *New Theories of Trade among Industrial Countries*, 73(2) AM. ECON. REV. 343 (1983).

<sup>44</sup> See Shaikh, *supra* note 40, at 56; William S. Milberg, *Is absolute Advantage Passé? Towards a Keynesian/Marxian theory of International Trade*, in COMPETITION, TECHNOLOGY AND MONEY, CLASSICAL AND POST-KEYNESIAN PERSPECTIVES (Glick ed., 1994).

<sup>45</sup> Shaikh, *supra* note 40, at 57.

countries.<sup>46</sup> This is confirmed by the international trade practices not only of Britain, the US and other Western countries, but also of Japan, South Korea and the Asian Tigers.<sup>47</sup> From this perspective, and in line with the first strand of the flexibility debate, the post-war life of the multilateral trade regime can be read as a history of selective trade liberalisation to promote particular trade interests. However, as the second strand points out, these interests are currently being challenged by the ascendancy of emerging economies in Asia and South America, through their faster growth and also by means of litigation through which they dispute orthodox interpretations of WTO law.<sup>48</sup>

Hence, if the comparative advantage axiom is accordingly rejected, the competitive advantage approach provides for a greater degree of state intervention, bringing to the centre of the debate industrial policy and managed trade, such that governments can 'consider trade liberalisation in a selective manner, [and] as individual countries become sufficiently competitive in the world market'<sup>49</sup> they can move up the development ladder. Although to a different extent, the role of competition underpins both flexibility arguments as the need to enhance one's competitiveness becomes ever more crucial. Hence, countries should compete in the international arena when they are ready, and in order to be ready, they need to actively intervene in the economy. A cursory look at the countries identified as adopting an interventionist approach clearly points to the central role, at least at the level of political economic discourse, which global competitiveness plays in the pursuit of such a strategy.<sup>50</sup> Hence, it seems plausible to argue that competitive advantage is taking the place of comparative advantage and that global competitiveness is increasingly providing the framework within which policy autonomy and development

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<sup>46</sup> Anwar Shaikh, *The Law of International Exchange*, in GROWTH, PROFIT AND PROPERTY (Nell ed., 1980); Anwar Shaikh, *Free Trade, Unemployment and Economic Policy*, in GLOBAL UNEMPLOYMENT: LOSS OF JOBS IN THE 90S (Eatwell ed., 1996).

<sup>47</sup> Shaikh, *supra* note 40, at 59.

<sup>48</sup> See Santos, *supra* note 5, 596-628; see also Henry Gao, *China on the World Stage: a Trade Law Perspective*, 104 AM. SOC'Y INT'L L. PROC. 532 (2010) at 534.

<sup>49</sup> Shaikh, *supra* note 40, at 64.

<sup>50</sup> This is particularly the case of Brazil. For a list of studies conducted to date by LANDS scholars, see *Law and the New Developmental State*, U. WIS. L. SCH., <http://www.law.wisc.edu/gls/lands.html>; see also Trubek, *supra* note 6, at 11.

strategies need to be pursued; as Trubek puts it, this is the “need to prosper in conditions of global competition”.<sup>51</sup>

To sum up, both strands of the flexibility debate share the demand for more policy autonomy, although there is disagreement as to the extent to which WTO law allows states to depart from its stringency. Let us remember that the aim of policy autonomy, which is prosperity, well-being or development, is conceived of as a process of learning and experimentation - this is certainly one of the greatest potentialities of the flexibility debate. The question is: what does it mean to say that flexibility needs to take place in conditions of global competition? Do these conditions end up constraining the extent to which states can experiment with well-being and development? In their comprehensive survey of the global competitiveness literature, Green, Nostafa and Preston point to the fact that although ‘competitiveness’ has achieved the status of global discourse and definitions by national and international institutions proliferate,<sup>52</sup> it remains quite a loose term. What they see as emerging from historical debates is the acknowledgement that economic competitiveness applies not only to the level of the firm but also at the level of national economies, and that these two levels are deeply interrelated. They however point out that although national economic competitiveness is “defined variously in terms of labour productivity, total value creation, economic growth and living standards... no single measure can capture all that is important in policy terms about economic competitiveness”.<sup>53</sup> More importantly, even if the final measure

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<sup>51</sup> Trubek, *supra* note 6, at 19.

<sup>52</sup> For instance, the WEF defines it – ‘...[a]s the set of institutions, policies, and factors that determine the level of productivity of a country. The level of productivity, in turn, sets the sustainable level of prosperity that can be earned by an economy. In other words, more competitive economies tend to be able to produce higher levels of income for their citizens. The productivity level also determines the rates of return obtained by investments in an economy. Because the rates of return are the fundamental drivers of the growth rates of the economy, a more competitive economy is one that is likely to grow faster over the medium to long run’. While for the IMD ‘Competitiveness of Nations is a field of economic theory which analyses the facts and policies that shape the ability of a nation to create and maintain an environment that sustains more value creation for its enterprises and more prosperity for its people’, Andy Green, Tarek Mostafa & John Preston, *The Chimera of Competitiveness: Varieties of Capitalism and the Economic Crisis*, CTR. FOR LEARNING & LIFE CHANCES IN KNOWLEDGE ECON. & SOCIETIES (LLAKES) (2010), <http://www.llakes.org/wp-content/uploads/2010/08/R.-Chimera-of-Competitiveness.pdf> [hereinafter Green, Mostafa & Preston].

<sup>53</sup> *Id.* at 5.

of competitiveness strategies is accounted for i.e. the extent to which they promote sustainable improvements in living standards in the long term, current indicators such as GDP per capita tell us nothing about 'how purchasing power is distributed'.<sup>54</sup> In other words, 'economic competitiveness' tells us very little about living standards and well-being. Considering that is the case, why it is necessary to emphasize global competition is a pertinent question.

Two lines of enquiry worth pursuing can be suggested. One takes the 'need to prosper in conditions of global competition' at its face value, which accepts the constraints dictated by the international economic system, and asks the purpose for which competitiveness is being pursued 'on the ground'. What we see in the countries surveyed by the LANDS literature so far is that re-distribution and social policies are being devised and implemented, albeit, in a contradictory and piecemeal fashion.<sup>55</sup> From this angle, we might conclude that the answer depends on what will be done with the GDP generated by competitive exports. This highlights the importance of carrying on with case studies, as LANDS scholars are currently doing, so as to assess the kind of reality generated by different policies in different countries. For the time being, it is not clear whether the aim of competitiveness policies is export-led growth or the promotion of growth with and, importantly, *through* re-distribution. Unlike the former, the latter strategy has the potential to affect the unequal model of growth that has dominated so far, and the benefits of addressing the inequality that has led to this crisis cannot be underestimated. As Green, Nostafa and Preston argue, "the best hope for economic growth in West and East alike lies in a sustainable increase in world demand. This may necessitate a substantial transfer of resources from the richer to the poorer nations, and fairer distribution of resources within countries".<sup>56</sup> It remains to be seen whether countries opting for a deliberate policy of growth *through* re-distribution can initiate a change in the political economic direction of the last three decades so as to start reversing the trend towards inequality on a global scale.

A complementary line of enquiry, asks what the acceptance of the competitive advantage logic, underlying the global competitiveness argument signifies at the normative and the positive level. This is an

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<sup>54</sup> *Id.* at 5.

<sup>55</sup> See Trubek, *supra* note 6, at 15.

<sup>56</sup> Green, Mostafa & Preston, *supra* note 52, at 62.

important question to address if two important levels of analysis are to be kept open. First, that of carefully tracing the material ground reality so as to avoid the risk of over-generalisations and second, that of attending to the need to always inquire into the loss of alternative ways of viewing the world (of trade) that derives from thinking within the confines of the prevailing conceptual framework. What is suggested is that while the flexibility debate has the theoretical means to challenge the case for uniform liberalisation, it needs to interrogate much more critically the competitive relationship which currently governs a good part of international trade relations. Foregoing such engagement significantly reduces the ability of states to experiment with alternative development models, preventing us from seeing how other values already inform trade relations and how these can be more actively promoted in re-thinking international trade strategies.

*B. Some preliminary thoughts on a future research agenda*

While the argument that states should be able to promote innovation and avail themselves of industrial policy before they are able to compete and liberalise trade is an important one, it accepts the inevitability of competition as the foundational modality of trade relations. As already mentioned, this article considers the rejection of the 'one size fits all' model of liberalisation promoted by the WTO till now, as the point of departure for experimenting with new trade practices which reject the logic of comparative advantage. However, the question is whether competition is the only framework for conceptualising international trade relations. It is clear that the intellectual and analytical apparatus for explaining international economic relations is premised on a zero sum, competitive model that cannot deliver well-being for all. In order to develop one has to climb a ladder; to trade, one has to become competitive; and to grow, one has to constantly accumulate. However, not all countries can specialise in high value added goods and services and the current international division of labour presupposes that there will always be countries producing lower value added products.

To be sure, the competitive advantage theory put forward by Shaikh acknowledges that international trade cannot benefit all countries: this is the consequence of taking competition as the driving force of capitalist relations seriously.<sup>57</sup> However, doing so does little to challenge the current

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<sup>57</sup> Shaikh, *supra* note 40, at 56.



international division of labour. Crudely put, it means acceptance of the inevitability that while states might change their position on the development ladder, the ladder itself will remain in place. Now, the thought of challenging a principle that is so integral to national/international capitalist relations might be seen as utopian, the likely objection being that unless there is a radical transformation, competition will continue to inform international trade practices. However, problematizing the primacy of competition is important from a *normative* as well as a *positive* angle because accepting it means that there will always be countries left at the bottom of the development ladder. Equally significant is the fact that it is not the only value that actually and potentially underlies trade relations. The remainder of this article will start from the normative angle and draw briefly on Smith's work as his reflections on the relationship between competition, trade and development question the inevitability of competition in economic relations. It also brings crucial insights into the debate about the possibility of affecting the international economic system, particularly in light of the strength acquired by fast growing economies.

Although Smith conceived of competitiveness mainly in terms of price competition between firms, his position on economic development and the role of the state is much more complex and nuanced than one would understand from his often cited argument that the state should intervene in the economy by removing barriers to domestic competition. As Arrighi points out,

[F]ar from theorizing a self-regulating market that would work best with a minimalist state or with no state at all, *The Wealth of Nations*, no less than the *Theory of Moral Sentiments* and the unpublished *Lectures on Jurisprudence*, presupposed the existence of a strong state that would create and reproduce the conditions for the existence of the market; that would use the market as an effective instrument of government; that would regulate its operation; and that would actively intervene to correct or counter its socially or politically undesirable outcomes.<sup>58</sup>

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<sup>58</sup> GIOVANNI ARRIGHI, ADAM SMITH IN BEIJING: LINEAGES OF THE TWENTY-FIRST CENTURY 43 (2009) [hereinafter ARRIGHI].

According to Arrighi, Smith regarded the development of European powers through foreign trade as following an ‘unnatural’ path when compared to the ‘natural’ one pursued by China.<sup>59</sup> The ‘natural’ path consisted of organic linkages between agriculture and industry that had to be actively cultivated, with trade entering the picture and increasing the size of the market only once these linkages had been consolidated so as to provide subsistence for the entire population.<sup>60</sup> Even for states following this path, however, there would be a point when the intensification of competition would lead to the reduction of the rate of profits leading to the achievement of a ‘stationary state’. This is, for instance, what had occurred in late imperial China.<sup>61</sup> Although, it is not clear to what extent Smith thought that states’ intervention could help overcome this barrier, his work points to the fact that endless growth and capital accumulation would, sooner or later, be called into question.<sup>62</sup> Both Marx and Keynes would later raise a similar point: Marx by arguing that competition on a global scale would eventually challenge the ability of capital to overcome barriers to its accumulation;<sup>63</sup> and Keynes by prefiguring “a world in which, when investment had been kept at the full employment level for thirty years or so, all needs for capital installations would have been met, property income would have been abolished, poverty would have disappeared and civilised life could begin”.<sup>64</sup> This speaks to the argument Harvey has made in relation to the ‘capital surplus absorption problem’ in the context of the present crisis, which is the problem of re-capitalising and re-investing a part of the surplus derived from profits in further expansion.<sup>65</sup> He refers to the data collected by British economist Maddison, who demonstrates that the actual rate of compound growth, since 1820, has been around 2.25 per cent per annum. Harvey’s argument, however, is that there are several barriers to this constant re-investment and expansion.

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<sup>59</sup> *Id.* at 40.

<sup>60</sup> Indeed, the purpose of Smith’s political economy was as much “to supply the state ... with a revenue sufficient for the public services,” as it was “to provide a plentiful ... subsistence for the people, or more properly to enable them to provide such a ... subsistence for themselves.”; *id.* at 43.

<sup>61</sup> *Id.* at 69.

<sup>62</sup> *Id.* at 54.

<sup>63</sup> KARL MARX, *GRUNDRISSE: FOUNDATIONS OF THE CRITIQUE OF POLITICAL ECONOMY* 334 (1973).

<sup>64</sup> Joan Robinson, *The Second Crisis of Economic Theory*, 62(1/2) *AM. ECON. REV.* 6 (1972).

<sup>65</sup> DAVID HARVEY, *THE ENIGMA OF CAPITAL AND THE CRISES OF CAPITALISM* 26 (2010) [hereinafter HARVEY].

In the 1960s, for instance, capital faced the labour barrier - there were shortages of labour in both Europe and the US and the New Deal had given labour considerable power, not least by supporting the downward rigidity of wages. When this barrier was 'overcome', resulting in wage flexibility among other things, the problem became the lack of aggregate demand at home; if workers were experiencing falls in real wages, they could certainly not consume. To overcome this second barrier, the creation of a debt and credit card industry at home provided consumers with opportunities to increase spending while the creation of an investors' regime abroad gave investors opportunities to drive down costs. The establishment of the WTO, for instance, is an example of such legal framework.<sup>66</sup> However, Harvey notes, "as surplus capital went into production in China, competition between producers started to put pressure on prices".<sup>67</sup> Profits began to fall again after 1990 despite the abundance of low wage labour. This was the third barrier that capital encountered, and it is in this context that the rise of 'financialization' can be seen - more and more went into speculation on asset value to make profits. Thus, the turn to 'financialization' offered a way to deal with the capital surplus absorption problem on the part of companies and financial institutions. They could invest in financial assets, while for American and British households, debt became a central mechanism for keeping up demand for goods and services.

Seeing this crisis as deeply connected to inequality, as well as to the problem of competition generated by compound growth makes us return to the question posed earlier – can countries opting for a deliberate policy of growth through re-distribution start reversing the trend towards inequality on a global scale? Or, in Arrighi's words, the question is 'whether, and under what conditions, [their] ascent, with all its shortcoming and likely future setbacks, can be taken as the harbinger of that greater equality and mutual respect among peoples of European and non-European descent that Smith foresaw and advocated 230 years ago'.<sup>68</sup> The point this article makes is that if Smith's reflections on competition and the 'stationary' state are to be taken seriously, a future research agenda should ask how prosperity can be pursued in a way which is markedly different from the unequal system of

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<sup>66</sup> See ALESSANDRINI, *supra* note 27, at 142.

<sup>67</sup> HARVEY, *supra* note 65, at 26.

<sup>68</sup> ARRIGHI, *supra* note 58, at 379.

production and distribution that has characterised western models of growth so far.

Smith's work becomes important in interrogating competition from a positive angle too, that is, from a perspective that questions its role as the only, or even the most desirable, lens for looking at trade relations. His thinking about the multidimensional character of human interaction has been often subject to economic reductionism by scholars who have sought to rely on it, so as to either confer or deny intellectual validity to the free trade theory. Polanyi, for instance, has argued that because Smith posited 'human propensity to barter, track and exchange one thing for another' as the fundamental norm among others, for instance, reciprocity and redistribution, competition has acquired primacy in political economic analyses.<sup>69</sup> More recent interpretations of Smith's work, however, have drawn our attention to the complex relationship between the *Theory of Moral Sentiments* and the *Wealth of Nations* with respect to Smith's account of the many 'passions and interests' populating social relations. They have for instance shown how Smith's notion of 'sympathy' (i.e. the ability to place ourselves in the situation of other people), which he considered the source of all sentiments informing human activity, cannot be easily reconciled with accounts about the primacy of self-interest.<sup>70</sup> The problem, as Hirschman has noticed, is that scholarly and policy debate after Smith, has reduced his complex thinking to the proposition that "the general (material) welfare is best served by letting each member of society pursue his own (material) self-interest".<sup>71</sup>

It is because of this move that competition has acquired primacy as the norm guaranteeing an efficient market; at both the domestic and international level, the destructive force of competition could be accepted

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<sup>69</sup> Lourdes Beneria, *Gender and social construction of markets*, in GENDER AND THE SOCIAL CONSTRUCTION OF MARKETS 14 (Staveren ed., 2007) [hereinafter Beneria].

<sup>70</sup> "[W]hat are the advantages which we propose by that great purpose of human life which we call bettering our condition? To be observed, to be attended to, to be taken notice of with sympathy, complacency, and approbation, are all the advantages which we can propose to derive from it."; Adam Smith in Avner Offer, *Self-interest, Sympathy and the Invisible Hand: From Adam Smith to Market Liberalism*, OXFORD U. ECON. & SOC. HIST. SERIES, 3 (2012), <http://www.nuff.ox.ac.uk/economics/history/Paper101/offer101.pdf> [hereinafter Offer].

<sup>71</sup> ALBERT O. HIRSCHMAN, THE PASSIONS AND THE INTERESTS: POLITICAL ARGUMENTS FOR CAPITALISM BEFORE ITS TRIUMPH 112 (1997).

because of a belief in the invisible hand's ability to bring harmony to chaos. However, it was never asked what the consequence of competition would be in the absence of such a 'benevolent' force. Yet, as Shaikh points out, the reality of trade constantly shows the absence of equilibrating mechanisms, for instance, through the trade imbalances that States continuously experience contrary to what standard free trade theory posits. Smith's own reflection on the 'stationary' state to which competition eventually leads is a warning against its employment as a long-term development strategy. The point is that after Smith, "the field of inquiry over which social thought had ranged freely up to then", and which had looked at the complex interplay between the various sentiments animating social interaction, was considerably narrowed.<sup>72</sup> The market gradually came to be presented as an institution based on impersonal relations of exchange characterised exclusively by self-interest. Thus, during the 1976 Mont Pelerin Society's celebration of the bicentenary of the *Wealth of Nations*, Coase could argue that:

The great advantage of the market is that it is able to use the strength of self-interest to offset the weakness and partiality of benevolence ...[which] should not lead us to ignore the part which benevolence and moral sentiments do play in making possible a market system. Consider, for example, the care and training of the young, largely carried out within the family and sustained by parental devotion. If love were absent and the task of training the young was therefore placed on other institutions, run presumably by people following [their] own self-interest, it seems likely that this task, on which the successful working of human societies depends, would be worse performed.<sup>73</sup>

The separation this naturalizes between a non-market economy characterised by 'moral sentiments' and personal relationships on the one hand, and a market economy characterised by self-interest and impersonal relations on the other, is what feminist economists and relational economic sociologists have challenged.<sup>74</sup> They have rejected the presumption that

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<sup>72</sup> *Id.*

<sup>73</sup> Ronald Coase, *Adam Smith's View of Man*, 19(3) J. L. & ECON.544 (1976).

<sup>74</sup> See for example, Beneria, *supra* note 69, at 14; Viviana A. Zelizer, *How I became a Relational Economic Sociologist and what does that Mean?*, 5 (Ctr. for the Stud. of Soc. Org., Princeton

mainstream economics makes about beings who come onstage fully formed, before the social relations that constitute them; and at the same time showed how these relations have very little neutral, impersonal and law-like character. It is not a coincidence that, as Coase's quote illustrates, the realm of non-market, private, relations coincides with that of reproduction, which for the most part remains unpaid despite providing the very conditions for production. Thus, drawing on classical political economy, feminist economists have adopted the so-called social provisioning approach to the study of economics as an alternative methodology that looks at production and reproduction together.<sup>75</sup> From this perspective, economic analysis comes to encompass both the paid and unpaid economy and brings to light the fact that the question of the economy is always of how we organise social provisioning, our living together, and that this is informed by a myriad of values that exceed those recognised by mainstream economics (i.e. self-interest, competition, profit maximisation).

Similarly, relational economic sociologists have shown how economics has neglected the social context within which economic transactions take place. Granovetter, for instance, has insisted on the fact that "the economic action of individuals as well as larger economic patterns, like the determination of prices and economic institutions, are very importantly affected by networks of social relationships..."<sup>76</sup> Pushing the boundaries between the social and the economic further, Zelizer has argued that once we accept that all economic transactions are social interactions, 'the search is on for a better theory of social process to account for economic activity', so as to show how "in all areas of economic life, people are creating, maintaining, symbolizing, and transforming meaningful social relations".<sup>77</sup> In tracing and

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Univ., Working Paper No.5, 2011), *available at* <http://www.princeton.edu/csso/working-papers/WP5.pdf> [hereinafter Zelizer].

<sup>75</sup> See for example, Marilyn Power, *Social Provisioning as a Starting Point for Feminist Economics*, 10 (3) FEMINIST ECON. 3 (2004); ANTONELLA PICCHIO, SOCIAL REPRODUCTION: THE POLITICAL ECONOMY OF THE LABOR MARKET 7 (1992); Nancy Folbre & Julie Nelson, *For Love and Money – or Both?* 14(4) J. ECON.PERSPECTIVES 123 (2000).

<sup>76</sup> Mark Granovetter in RICHARD SWEDBERG, *ECONOMICS AND SOCIOLOGY: REDEFINING THEIR BOUNDARIES: CONVERSATIONS WITH ECONOMISTS AND SOCIOLOGISTS* 100 (1990); see also Mark Granovetter, *Coase Encounters and Formal Models: Taking Gibbons Seriously*, 44 ADMIN. SCIENCE Q. 161 (1999).

<sup>77</sup> Zelizer, *supra* note 74, at 5; see also VIVIANA A. ZELIZER, *THE SOCIAL MEANING OF MONEY* (1994); VIVIANA A. ZELIZER, *THE PURCHASE OF INTIMACY* (2005); VIVIANA A. ZELIZER, *ECONOMIC LIVES: HOW CULTURE SHAPES THE ECONOMY* (2010).

unpacking the complexity of human relations, such an approach brings to light the numerous exceptions to the competition rule.

Thus, Beneria has explored the various ‘passions and interests’ that motivate people to engage in creative and/or in poorly remunerated work: “Volunteer work, such as that carried out at the community level, might be motivated by a sense of collective well-being, empathy for others, or political commitment; and artistic work is often associated with the pursuit of beauty and creativity, irrespective of its market value.”<sup>78</sup> Levin has argued that investment decisions are always socially and emotionally constituted and, in her extensive work on American Trade Associations, Spillman has shown how values other than profit maximisation play a role in strategic decisions.<sup>79</sup> The objection that can be made is that, whereas it is easier to appreciate the importance of such work in the realm of interpersonal transactions; it is much more difficult to discern its relevance in the case of impersonal markets characterised by standardised production such as those with which multilateral trade is concerned. Certainly more work on the intertwining of economic and social values is needed at the macro-level. However, as Offer notices,

Even within [impersonal] markets, a good deal of exchange involves interpersonal interaction, e.g. in marketing, hospitality, and personal services. The share of services has come to dominate output in western developed societies, and services typically require interpersonal interactions and trust. Teachers, doctors, lawyers, waiters, hairdressers, salespeople and financial managers too, all owe the client a duty of care.<sup>80</sup>

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<sup>78</sup> Beneria, *supra* note 69, at 20.

<sup>79</sup> Lee B. Levin, *Towards a feminist, Post-Keynesian Theory of Investment*, in *OUT OF THE MARGIN FEMINIST PERSPECTIVES ON ECONOMICS* (Kuiper & Sap eds., 1995); LYN SPILLMAN, *SOLIDARITY IN STRATEGY: MAKING BUSINESS MEANINGFUL IN AMERICAN TRADE ASSOCIATIONS* 3 (2012).

<sup>80</sup> Offer, *supra* note 70, at 5.

#### IV. CONCLUSION

While competition should ideally be recognised as operating throughout the history of free trade, its practices and institutions, this does not make it the sole value and practice informing trade relations. Therefore, the point is to allow other values and practices, actually existing or not, to become visible and inform trade policies. The second point is that trade is only one part of a larger question about how to organise our social provisioning and this implies considering it together with the issue of production. This starts with the question of what to produce and how, which brings to the fore the question of the organisation of labour and finance: labour as the source of production and the means through which, in a capitalist system, we are able to get our subsistence and finance the means through which resources are allocated for productive investment. This requires a rethinking of the model of ‘growth, development and trade’ pursued so far and this rethinking is crucial if the policy autonomy that countries are struggling for, within and beyond the WTO, is to translate into a project that rejects the “Western success along the extroverted, Industrial Revolution path [which] was based upon the exclusion of the vast majority of the world’s population from access to the natural and human resources needed to benefit rather than bear the costs of global industrialisation”.<sup>81</sup>

This is not an easy task and certainly, the lines of enquiry suggested in this paper do not provide a concrete agenda. However, I want to conclude with a brief reflection on one important experiment going on in South America aimed at affecting the ‘productive matrix’ of the region. The Bolivarian Alternative for the Americas (ALBA) is a trade agreement built on the normative principles of complementarity, solidarity, cooperation, reciprocity and sustainability. Complementarity is loosely defined as “the commitment to identify and develop joint projects that permit the integration and/or synergies of the capacities in accordance with their potentialities and interests”.<sup>82</sup> This is the “recognition of the fact that each member nation ... has its own unique economic, social, and cultural strengths” on which to

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<sup>81</sup> ARRIGHI, *supra* note 58, at 386.

<sup>82</sup> See Thomas Muhr, *TINA go Home! Alba and re-theorizing resistance to global capitalism*, 6(2) COSMOS & HIST.: J. NAT. & SOC. PHIL. 27, 53 (2010), available at <http://cosmosandhistory.org/index.php/journal/article/viewFile/210/309>; see also Manuel M. Costoya, *Politics of Trade in Post-Neoliberal Latin America: the Case of Bolivia*, 30(1) BULL. LATIN AM. RES. 80 (2011); Sean W. Burges, *Building a Global Southern Coalition: The Competing Approaches of Brazil's Lula and Venezuela's Chávez*, 28(7) THIRD WORLD Q. 1343 (2007).



build common projects. Therefore, ALBA provides a framework for governments to negotiate planned exchanges of the goods and services that reflect their respective nation's strengths. For instance, Venezuela and Cuba exchange oil for doctors and teachers; have several projects concerning the production of soy beans, rice, poultry and dairy products as well as steel and nickel; and are also supporting Bolivia in her attempt to expand her natural gas industry in exchange for natural gas, mining, agriculture, agro-industrial and industrial products and indigenous knowledge and medicine.

Though exchange is still crucial here, ALBA is committed to a strategy that is designed to enhance the ability of participating governments to improve the well-being of the majority of the population, which is the ultimate aim of the alliance.<sup>83</sup> This is in contrast, for instance, with the East Asian strategy which is structured by “profit-making transnational corporations that have competitively linked economic activity across nations to form a regional production system aimed at exporting goods outside the region”.<sup>84</sup> There are numerous limits to the project that cannot be addressed here. These include the fact that the whole strategy is very much based on state-centred collaboration with small input from the Council for Social Movements; the fact that it continues to rely on extractive industries, with the increasingly problematic relationship with indigenous people and organisations; and the fact that national borders provide the confines within which such an experiment, with its focus on alternative principles such as complementarity, solidarity, cooperation and reciprocity, can operate. As Backer and Molina have put it: “borders, even the borders of trade and investment arrangement include those within it [sic] and those outside...”.<sup>85</sup> However, this is also an attempt to put the focus back on the production roots of trade, in short on the real economy. In this respect, it allows us to ask the question of what production (and not only trade) should be for, the active forgetting of which has underpinned the turn towards the financialization of the economy that has been revealed by the current crisis.

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<sup>83</sup> Martin Hart-Landsberg, *Learning from ALBA and the Bank of the South: Challenges and Possibilities*, MONTHLY REV. (2009), available at <http://monthlyreview.org/2009/09/01/learning-from-alba-and-the-bank-of-the-south-challenges-and-possibilities>.

<sup>84</sup> *Id.* at 5.

<sup>85</sup> Larry C. Backer & Augusto Molina, *Cuba and the Construction of Alternative Global Trade Systems: ALBA and free trade in the Americas*, 31 U. PA. J. INT'L L. 679, 750 (2010).