

# THE SWEEP OF ASYMMETRIC TRADE NEGOTIATIONS:

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## Introduction and Overview

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## **Introduction**

Trade always raises the old question of who gets what. Despite pretensions to 'global' scope and relevance, the multilateral trade system covered a highly specific and asymmetric set of rules which served the interests of global business. The extent of 'global' applicability of its central rules and the fairness of processes was always open to considerable question. The evolution of global trade regulation must be seen as the result of a history of political bargains among states of differing power capabilities in which each bargain struck put in place a new layer of regulation in which economic opportunities were created for global interests (in industrial countries) while narrowing or offering less opportunities for others (in developing countries). The system was composed of rules and institutions which reflect the broader US-led system of strategic alliances in a permanent tension with the East West and North-South binary axis. The United States (US), with its willing quasi-hegemonic allies in Western Europe, promoted and supported the General Agreement on Tariffs and Trade (GATT) because under the GATT's consensus rule its own power was maximised. GATT members operated on the basis of a negative consensus rule, meaning that unless a given member objected to a decision consensus was assumed. Powerful players like the US or the European Union (EU) could better absorb the costs of denying consensus, more credibly threaten objecting to a consensus and find more ways to exert pressure in order to reach consensus. When the World Trade Organisation (WTO) was born, a new era of rule of law was believed to have come into being. Yet the growing coverage and rule orientation of the WTO also meant that cohesion was lost. Consensus became harder to reach amongst the ever growing number of entrants with less

accepting views and interests of their own. The diversity of goals and interests currently at stake and the resulting newly forged crisscrossing alliances changed the character of the institution,<sup>2</sup> especially after the Cancun Ministerial in 2003 when the South showed that collectively they could muster the power to block consensus endangering the underlying structure of power in the WTO. To be sure, negotiations were de-railed and continue to go on seemingly forever without result; but the process of creating norms continued. A period of slow motion was opened in which developed countries found new ways for extending some rules and evading others; a network of bilateralism agreements spread swiftly; new binary distinctions were construed.<sup>3</sup> With the world's major trading power playing a trade game based on securing preferences, other trading nations saw little option but to follow suit and secure preferential deals for themselves. The upshot was a dramatic rise in the number of North-South regional trade agreements which we assert to be asymmetrical in nature.

The Oxford English Dictionary defines asymmetry as a state in which there is a disproportionate correspondence between parts. Asymmetries are rampant, of course. Which matter? While there may be degrees of asymmetry between forces, we apply the term to the circumstances in which there is a significant disparity between contending parties, no consideration of such disparity and no fair chance of matching up forces in the process. By using the concept of asymmetry we assume that there is more than a mere high level of

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<sup>2</sup> The character of small and large number systems is a classic research area in both economics and international relations (Baumol 1952, Russett 1968, Waltz 1979).

<sup>3</sup> Robert Zoellig, then United States Trade Representative, ushered in a binary distinction between can do and won't do countries. The first group was offered terms of competitive liberalisation for access to the US market.

interdependence in these relations. A mere interdependence may be relatively asymmetrical from time to time; in these circumstances the interactions and the outcome of such processes have a chance of being equally distributed, at least from time to time, and that both parties are more or less equally vulnerable to positive and negative effects or threats of discontinuations. In contrast, the nature of asymmetry in the cases we study is such that not only the threat of discontinuation is disproportionate but that such discontinuation can cut lifelines. We are hence concerned with absolute rather than relative asymmetry. As a result of such asymmetry these agreements not only cover the reduction or elimination of tariffs and other non-tariff barriers on the trade of goods and services, but they also cover broader elements of interest to developed countries such as investment rules, intellectual property rights and so on, that had become difficult to obtain in the WTO game. Far from being the confused 'spaghetti bowl' described by some observers, free trade agreements (FTAs) are the manifestation of coherent geopolitical strategies on the part of the major trading countries.

Taking clear issue with a number of the assumptions about the GATT-era *belle époque* rule of law, this paper discusses the place of power asymmetries in current multilateral and bilateral trade regimes. Differences of national strength, capabilities and competence are what the study and practice of international relations are almost entirely about. But circumstances are not fixed and as they change, we need to see how the range of alternative strategies

is available for developing countries affected.<sup>4</sup> How can developing countries manage the terms of integration into the global economy? How do different sets of external pressures place constraints on national development strategies? What offsetting mechanisms have emerged? These questions are the centre of current challenges of the trade system with deep implications for global order and future development prospects.

*Asymmetry is unavoidable. But its more destructive outcomes need not be.*

The underpinning of this essay is the simple thought that asymmetry must not be viewed as static. Form and nature suffer tortuous twists and remain in constant flux. In the first part we discuss the dynamics of trade negotiation processes in multilateral and bilateral fora to show to what extent they reflect and reproduce entrenched power asymmetries. These asymmetries are revealed in the unequal conditions affecting the participation and representation of countries' interests in trade negotiations; the prevalence of reciprocity over dispensations of special and differential treatment; the recurrent bias of the agenda-setting; and in the choice of trade fora.

The second section explores the opportunities and constraints available for developing country governments to offset the unequal power structure that characterise international trade negotiation processes. To do so it identifies some of the main elements which countries can seize on to increase bargaining power in a creative process that can affect the outcome of a process of permanent and constant negotiations. To this end, we have to revert to a micropolitical approach in order to examine the conditions of asymmetry,

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<sup>4</sup> In this paper, developing countries are treated as a group that includes the sub-group of least developed countries (LDCs).

whereby the loss of power to do certain things is compensated by seeking power with kindred spirits, collective forces and alternative partners.<sup>5</sup> Victims act; but balancing cannot take place without mustering power and increased bargaining competence. Two broad strategies to confront power asymmetry are open confrontation and strategic influence. The essay leaves aside defection, opt out strategies and open confrontation to concentrate on how countries act in alliances of convenience to address vulnerabilities and strategically influence the process in which they have chosen to persist.

### **Asymmetries in processes**

#### *Participation and representation*

For a good 40 years after World War II, most developing countries did not perceive the GATT as a friendly or fruitful institution in which to promote their interests. Inward-oriented industrialisation and nationalist ideologies of development prevailed, turning trade relations into the crux of the North-South debate. Involvement in the GATT reflected these preferences: developing countries adopted a 'passive' or 'defensive' attitude, refraining from significantly engaging in the exchange of reciprocal concessions. Moreover, many developing countries were not members, and among those that were, many failed to maintain official representation in Geneva. The result was a situation in which developing countries had negligible obligations and liberalisation in sectors of export interest to them was disproportionately small (Tussie, 1987).

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<sup>5</sup> The difference between power *to* and power *with* is drawn from feminist frameworks of power. Power to refers to the capacity to take action. Power with refers to cooperation with others to solve problems and attain goals. It addresses capacity building, social networks and organisational strength. The underlying notion is that of 'I cannot, but we can' (Wong 2003).

The passage from the GATT to the WTO represented a major turning point in the participation and representation of developing countries, clearly showing at the time a new willingness to take on full-fledged commitments, come out of the fringes and shed their mostly defensive pre-Uruguay Round position. Their strategic dilemma turned from expanding their rights to free themselves from prevailing rules to choosing an appropriate strategy of participation, focusing on what commitments to make and on how to micromanage a bloated trade agenda. The challenges of inclusion soon proved to be highly demanding. Developing countries learned that greater participation did not translate automatically into leverage, as they found it difficult to decisively influence the process of agenda setting and to shape the final outcome of negotiations.

As in most earlier rounds, decision-making in the Uruguay Round negotiations was 'pyramidal' in structure in the sense that the major trading partners (US, EU and Japan) had implicit, yet effective, veto power over the negotiation's overall outcome (Winham 1998). Formal equality in the WTO, in which every country has an equal vote, does not translate in a democratic decision-making process. Decisions over key issues of the agenda are decided exclusively by the few major industrial countries in the so-called Green Room process at and before WTO Ministerial Conferences. The 'green room' is the name given to the traditional method used in the GATT/WTO to expedite consultations; it involves the Director General and a small group of members, numbering between 25 and 30 and including the major trading countries, both industrial and developing, as well as a number of other countries that are deemed to be representative. Once a narrowed down consensus is obtained,

agreements have been passed on to exclude governments for their approval or rejection, thus legitimating negative 'consent' (Helleiner 2002, Kumar 2007: 5, UNDP 2001: 13–14, 77–78, Smythe 2007) . The composition of the green room tended to vary by issue, but there is no objective basis for participation. This procedure worked when most developing countries were quiet bystanders. After the significant concessions made in the Uruguay Round, developing countries felt entitled to be included in the green-room process, and on several occasions they submitted declarations stating that they would not adhere to any consensus reached without their effective participation. The subsequent ministerial meetings, especially Doha in 2001 and Hong Kong in 2005 were more inclusive and open to all members.

The democratic deficit has begun to be firmly resisted since the Cancun ministerial meeting in 2003 with the emergence of a number of issue-based coalitions. It may be too early to conclude that the influence gained by developing country coalitions is enough to remedy the undemocratic practices in the WTO. However, it certainly suggests that the leading position of industrial states in the international trade system is being contested by a group of emerging economies from the South. The broadening of participation and interest representation has reduced northern domination of the multilateral agenda and hence reduced the value of the new WTO to older established interests.

Constraints to participation and representation in trade negotiations are also derived from limited capacity of some state bureaucracies to follow complex negotiations with often limited financial resources. With the incorporation of the 'new issues' (services, intellectual property rights and investment measures)

at the Uruguay Round, trade negotiations shifted the policy focus from border barriers – as it had been under the GATT – to domestic regulatory and legal systems. This introduced great complexity and technical sophistication to the negotiations, making knowledge a strategic and highly valuable asset. Poor countries with limited access to this kind of technical information became invariably disadvantaged in comparison to industrial countries with sufficient resources to produce information to assist negotiators. Countries with insufficient resources fell into a ‘knowledge trap’ (Ostry 2007: 28) which, in turn, further reinforced existing asymmetries in the trading system.

This limitation is even worse in cases of countries that do not have a Mission in Geneva where the WTO is headquartered, or others that are understaffed or unable to adequately follow the discussions and the negotiations (Tussie and Lengyel 2002). This invariably affects their capacity to participate effectively in the WTO system – to take advantage of their rights, defend their interests and even meet their obligations. In this regard, the Uruguay Round imbued the multilateral trading system with a structural asymmetry that served to disadvantage poor developing states (Ostry 2007).

Weak bureaucracies and limited resources is also an impediment for poor countries to use the WTO Dispute Settlement System (DSS). This mechanism was introduced to constrain power and so protect weak states from the bullying and arbitrariness of the strong. At least in principle, this creates incentives for developing countries to participate in the multilateral trade system. It also increases their bargaining power in multilateral negotiations, allowing them to obtain greater concessions from more powerful states than in bilateral negotiations (Davis 2006). However, in practice developing countries are

restricted in their use of the dispute settlement mechanism due to the high costs involved in taking retaliatory action against an erring country (UNDP 2001: 12). The 'juridification' of the trade process has made access to expensive legal services, which in most cases poor countries cannot afford. This creates an asymmetric situation, since when large countries 'breach the agreed rules at the expense of the small and ill-endowed, the cost of a legal challenge may exceed the financial capacities of the latter (or, in some cases, even the relevant trade losses)' (Helleiner 2002: 327).

In addition to financial limitations of developing countries to use the dispute settlement system, there are also political costs which can often act as effective deterrents. The mere threat of anti-dumping action, for instance, is enough to discourage small exporters without the wherewithal to launch a legal defence. Pressure used to deter countries from dissonant behaviour includes threats to withdraw food aid or market access benefits under the Generalised System of Preferences (GSP) or, as in the case of Bolivia and Ecuador, from the Andean Trade Promotion (ATP) and Drug Eradication Act (DEA).

Unequal conditions are even greater in bilateral or inter-regional trade processes than in multilateral processes. The lack of technical capacity has been a key factor in weakening the positions of governments in the negotiations of preferential free trade agreements with the US or the EU – particularly in relation to negotiations of intellectual property rights (Díaz 2008: 102). From the US and EU perspective, the opportunity of obtaining a WTO-Plus regulatory setting for intellectual property rights, investments and services provision holds out obvious advantages to push special interests. In this regard, bilateral trade

agreements are not even subject to a minimal degree of international consensus to smooth problems of governance and compliance.

*Reciprocity vs. Special and Differential treatment*

In international trade negotiations asymmetries are also evidenced in the predominance of the principles of reciprocity and the single undertaking at the expense of the use of the special and differential (S&D) treatment principle. The Most Favoured Nation (MFN) principle was originally introduced in the GATT in order to prevent strong countries from exercising undue power against smaller countries through trade discrimination. However, equal treatment among unequal partners constitutes a form of discrimination in itself, since this assumes that all countries have the same economic conditions to be able to participate and benefit from international trade. The principle of S&D was incorporated in the GATT in recognition that the multilateral trading system consists of countries at markedly different levels of development.

Broadly reflecting these concerns, S&D provisions are designed to accomplish two objectives: to enhance the market access conditions facing the beneficiary countries, and to exempt them from certain multilateral trade disciplines and thus give them some flexibility in the use of various trade and trade-related measures. In operational terms, enhanced market access has been implemented through trade preferences offered by the industrial countries on an individual basis to specific countries. The right of the developing and least-developed countries to regulate access to their own markets is operationalised through substantial exemption from several GATT/WTO disciplines. The exemptions enable them to use quantitative import restrictions for both infant industry protection and balance of payment reasons; to establish preferential

regional trading arrangements among themselves; and to benefit from tariff reductions achieved in the process of multilateral trade negotiations, in accordance with the most-favoured-nation (MFN) principle, but without reciprocity.<sup>6</sup>

After reaching a climax at the GATT Tokyo Round, S&D treatment became increasingly less important in multilateral trade negotiations to the point of being ultimately displaced by the demand for reciprocity in the course of Uruguay Round (Sai-wing 1998). The reason for this was the lack of interest among industrial powers to negotiate a system of trade rules with developing countries if they could not open new markets for their exports in the developing world. S&D represented an obstacle to their commercial ambitions of industrial countries. Industrial countries started to see the engagement through new lenses. The minimal size of markets in developing countries had previously been perceived as not being worth the effort of pressing for greater access. But as competition among the major trading players intensified, the opening and greater contestability of markets in developing countries became a more highly valued goal. The United States was firmly determined to extend the GATT into services and other new areas and was no longer willing to accept free-riding of developing countries on such issues as intellectual property.

As these interests pressed on, the issue of economic asymmetries was addressed by granting developing countries longer periods to adjust to standard liberalisation commitments. Market convergence became the ultimate goal that

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<sup>6</sup> Part 4, Trade and Development, Article XXXVI.

could be reached at different times depending on the different characteristics of economies. In this regard, the Uruguay Round reduced S&D treatment for developing countries to extended transition periods (Oyejide 2002). The incorporation of the Single Undertaking – emerging out of the Uruguay Round – meant that all member countries were required to agree on, and abide by, an entire set of rules that were multilaterally negotiated within the WTO. More flexible arrangements used in GATT for joining and/or opting out of particular sub-agreements within the overall package were all but eliminated. Hoekman and Kostecki (2001) point out that most of the 97 S&D provisions in the agreements are nonbinding, ‘best endeavor’ commitments (392–93). This move showed the changed world view that would eventually dominate the WTO, in contrast to the somewhat more Keynesian approach in which S&D treatment was a legitimate and technically admissible instrument of ‘embedded liberalism’.<sup>7</sup> All countries had to take ‘normal’ responsibilities and bargain as equals.

The restoration of the reciprocity rule in trade negotiations had profound implications for developing countries in their aspiration to reduce asymmetric conditions in the trade system. First, the application of the reciprocity rule in negotiations benefits the (stronger) less trade-dependent countries at the expense of the (weaker) more trade-dependent countries (Epifani and Vitaloni 2006). Secondly, it reduces the policy space of states in which keeping an active role of public institutions is key to advance growth and development policies.

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<sup>7</sup> The concept of ‘embedded liberalism’ refers to the social regulation of capitalism through Keynesian macroeconomic policies, full employment, public investment and the welfare state. The classic work is Ruggie (1982).

Thirdly, the emphasis on reciprocity has added a previously absent domestic dimension. With the need to offer reciprocal concessions, every international negotiation has necessarily turned into a parallel domestic negotiation whereby the gains of one sector abroad require another sector to adjust to heightened import competition. Trade issues have acquired a salience in domestic politics that is without precedent in the postcolonial era. Single issue lobbies mean that the government must contemplate sacrificing one issue to gain in another in a bargain where economic and political calculus becomes mixed. To be sure, the raw nerve of domestic politics today is not the same as half a century ago. In the era of globalised markets, segments of production chains that used to function within national boundaries are now internationally integrated. The pace of international integration is, naturally, uneven, leading to tensions within sectors as different patterns of supply and investment emerge. Although the pattern may vary from sector to sector and from country to country, there is widespread awareness that residual protection or trade relief measures for one product add an additional cost to the next link in the production chain. The bid to have access to inputs at international prices in order to improve competitiveness coexists uneasily with the quest to retain domestic market shares.

As is discussed in more detail in the second part of the essay, since the WTO Cancún Ministerial a group of developing countries have stepped up their demands for S&D treatment as a prerequisite for progress in the negotiation round. In particular, they demand greater clarity and specificity of S&D

(Charlton 2005: 4). In particular a group of 12 developing countries<sup>8</sup> demanded a framework agreement on S&D that: makes S&D legally binding and enforceable before the Dispute Settlement Body; allows for an evaluation of the development dimension according to verifiable goals (such as the United Nations (UN) Millennium Development Goals); links transition periods to objective economic criteria (debt level, industrial development, Human Development Index, etc.) and social criteria (literacy level, life expectancy, etc.); incorporates cost estimates for financial and technical assistance; established that trade policy measures in developing countries must not be prohibited unless there is a clear proof of trade-distorting effects; and that the principle of ‘Single Undertaking’ is not automatically to be applied to developing countries (Fritz 2005: 36). The Group of 33 subsequently worked hard to provide a higher degree of clarity and specificity, especially in relation to agricultural liberalisation. The most visible achievement in this regard has been the right to identify special agricultural products on which there would be no tariff reduction commitment and no new tariff rate quote commitments (Mably 2009).<sup>9</sup>

While S&D may have been ‘a historic relic, surely it is essential to confront the issue of trade and development in analytic terms and aim for a new approach termed policy space (or whatever)’ (Ostry 2007: 32–33). As coalitions of developing countries joined forces to make these claims more operational and these moves gained ascendancy in the WTO, the remains of S&D were wiped out

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<sup>8</sup> India, Dominican Republic, Cuba, Honduras, Indonesia, Kenya, Malaysia, Pakistan, Sri Lanka, Tanzania, Uganda and Zimbabwe.

<sup>9</sup> This is the G 33 which is discussed in a subsequent section on coalitions.

in bilateral and inter-regional preferential agreements which led to ‘one-sided reciprocity’.

In the agreements involving a northern and a southern party, the latter generally starts at a lower initial point and takes larger steps than the northern counterpart. This has been particularly clear even in the cases that have not come to fruition even if efforts to resuscitate do happen from time to time. However, there have been exceptions. Concessions are much more even in the EU-Chile agreement and in the EFTA-Mexico FTA. The reason for this relatively more level playing field in these cases was that the southern partner in both cases already had an encompassing and tight agreement with the US. So in such cases the drive for the second agreement (the EU) is meant to reduce trade diversion. We need to see if this is applicable to the cases with the reverse direction, when the first push came from the EU, i.e. South Africa, Russia and the African Caribbean Pacific group (ACP), and then in an agreement with the US

*Agenda-setting, issue selection and selective liberalisation*

Asymmetries are most evident in the capacity of industrial countries to select issues and turn them into negotiable propositions. Knowledge governance represents a paradigmatic example. Since the inception of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), intellectual property has been harmonised and protected in almost every WTO Member State. The rationale for regulating intellectual property at the WTO was made to look plausible: only *trade-related* aspects of intellectual property would be regulated under the aegis of the WTO. Still, determining what is trade-related has proven to be a Pandora box (Maskus and Penubarti 1995).

Some authors even question whether intellectual property is a good that can be linked to market freedom, because, paradoxically, the very essence of intellectual property is a state-granted monopoly right that excludes competition albeit for a limited period of time. As Stiglitz points out:

Intellectual property does not really belong in a trade agreement. Trade agreements are supposed to liberalise the movements of goods and services across borders. The TRIPs ... was concerned with *restricting* the movement of knowledge across borders (2006:16).

Crucially, regulating intellectual property at the WTO level has had a major impact, not only on external transfers to holders of patents, fiscal outlays to implement national patent regulations,<sup>10</sup> but also on important public policy sectors dealing with education, freedom of expression, cultural rights, access to medicines, food safety and so on and so forth.

Telling evidence is also found with regard to the selectivity of agricultural trade. Freer trade in a greater number of areas would have a beneficial impact not only on markets but also on rural livelihoods and export earnings. Cotton, for one, employs more than ten million people in West Africa. It plays an important role in alleviating poverty involving more than thirty countries. The United States not only make access selective but also deploy subsidies that drive world prices down. Cotton subsidies in the United States countries have damaged several developing and least developed countries, which find it next to impossible to penetrate the American market and compete with American cotton in third markets. In this regard, Burkina Faso, Mali, Chad and Benin

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<sup>10</sup> Lengyel (2005) has calculated that in the case of Argentina the costs of implementing TRIPs over the period 1996–2000 reached US \$70 million.

launched the so-called Cotton Initiative at the WTO, calling for the subsidies to be eliminated and for compensation to be paid to damaged countries while the subsidies remain.

The more general point, however, is that developed countries are allowed to continue to spend large amounts on export subsidies, while developing countries shed tariff layer after tariff layer. One type of protection is a central concern while the other plagued by conceptual and procedural loopholes, not to mention implementation problems. The agreement on subsidies, for example, allows the use of subsidies that are most widespread in and available in rich countries, subsidies for research and development, fiscal transfers to backward areas, for the protection of the environment and for labour retraining, but deems other subsidies which may be necessary in developing country conditions as out of bounds. Perhaps the most controversial of these is the one related to export financing which is carried over to the WTO from a long standing agreement at the Organisation for Economic Cooperation and Development (OECD). The OECD oversees an arrangement among its member countries that governs the conditions and rates under which export financing may be offered. The agreement sets minimum premium rates (also called exposure fees) for country and sovereign risks. The WTO list of prohibited export credit subsidies tracks the OECD Arrangement; under the single undertaking package of the Uruguay Round these commitments were extended to all WTO members, which had not taken part of the OECD negotiation and, moreover, faced quite different credit markets – and hence interest rates for public financing. Within the WTO subsidies agreement, an illustrative list of export subsidies makes reference to the OECD Arrangement, indicating that ‘...if in practice a Member applies the

interest rates provisions ... an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.’ In other words, if a country complies with the interest rate provisions of the OECD Arrangement, (even if there is a subsidy element) it is given a safe haven in terms of being ‘WTO-proof’. This haven is available only to OECD participants. Suddenly 138 WTO members had obligations – item (k) – that had been agreed elsewhere. The WTO Secretariat, as a result, requested observer status at OECD Arrangement meetings to gain a greater insight into the implications of what had been signed in the WTO, but individual countries still came under the loop (Palacios, 2003). The Brazilian Foreign Minister, Celso Lafer, stated at the Doha Ministerial Conference of 2001:

It is easy to perceive that there is a large measure of special and differential treatment in favour of the developed countries. Such is the case, for instance, of the Agreement on Subsidies and Countervailing Duties which grants a special exemption to members of the OECD Consensus with regard to rules on export subsidies that other Members of the WTO must comply with.<sup>11</sup>

In short, the endogenous game was institutionalised, consolidated, and extended by the bargain struck during the Uruguay Round. The grievances of many developing countries with this system mounted. Sound levels went up several decibels. The Doha Round opened under new auspices, if only because considerable knowledge and experience had been gathered. The Ministerial Conference at Cancun in 2003 catalysed the emergence of at least four new coalitions – the G20, the G33, the Core Group on Singapore Issues, and the Cotton group – in addition to the activism of others that pre-dated the

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<sup>11</sup> 10 November, 2001, Statement by Ambassador Celso Lafer, WT/MIN(01)/ST/12, [www.wto.org](http://www.wto.org).

ministerial, including the ACP group, the LDC group, the Africa Group, the Small and Vulnerable Economies, and the Like Minded Group (LMG).

*Forum selection: free trade agreements as the institutionalisation of asymmetries*

The ritual of global negotiations provides a useful instrument in the global legitimisation struggle because it can be carried out in universalistic terms and in the language of common interests. When this fails, the upper hand will seek adherence or acquiescence by other means and move elsewhere in an encircling manner, zigzagging, dividing, apportioning. The deadlock of the Doha Round drove industrial countries to pursue the negotiation of bilateral and inter-regional integration projects with developing countries.<sup>12</sup> Most of the divisive issues of the trade agenda which have faced stiff opposition from developing countries are now being negotiated – and implemented – through bilateral tracks. These issues include greater levels of intellectual property protection than what has already been agreed multilaterally under TRIPs, rules in investment, services, liberalisation of government procurement, as well as labour and environmental protection rules. They all spearhead an agenda of ‘deep integration’ considering they entail the obligation of countries to harmonise domestic legislation in line with unilateral set benchmarks. In this respect, preferential agreements have served to open up new markets for industrial economies, to lock-in market liberalisation reforms that have already taken place in developing countries, as well as to cement new levels of regulation, i.e. one-sided reciprocity.

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<sup>12</sup> See e.g. Heydon and Woolcock (2010).

The set up of preferential agreements is more asymmetric than multilateral negotiations because smaller countries cannot compensate for their weaker capabilities through cooperation and alliance formation with other weak states. Accordingly, the outcomes of these negotiations have been considerably unbalanced, often in favour of the most competitive sectors in industrial countries, and in detriment of small producers and policy space in the developing world. By the same token they also pose strains on domestic governance. Negotiations are often conducted by the executive branches of government, in close contact with business, without participation of parliaments and civil society. Harmonisation of domestic legislation therefore often becomes a top-down process. The push towards global and/or international harmonisation is not followed with a push towards greater representation – mainly of those sectors and actors that will be the most affected by the distributive effects of the preferential agreements.

The investment rules contained in the recent preferential agreements also posed a challenge to democratic governance. The state-investor provisions contained in the investment protection chapters give rights to investors/corporations to take legal action against governments when they consider their interests have been affected by the adoption of new legislation that may modify the investors' return expectations. The North American Free Trade Agreement (NAFTA) Chapter 11 on investment rules and extended into a spate of many other preferential agreements, provides numerous examples of the limitations on democracy in cases where government had to compensate corporations financially in following the passing of legislation to protect public health or the environment.

Preferential agreements also introduce a greater reduction of policy space of developing countries. With the liberalisation of government procurements, states give away an important tool to favour the development of local industry and to generate growth and employment. Likewise, the prohibition of performance requirements on investment eliminates the possibility of nudging firms to perform socially or economically desirable goals, such as employment creation, establishment of local research and development, creation of value chains. The liberalisation of services also represents the signing away of the role of states in the provision of basic public services that are key for development in societies with deep social asymmetries, such as education, health and others.

Bilateral, inter-regional and multilateral processes become inter-twined in a spiral of precedents. The agendas that are negotiated and implemented in preferential agreements become the floor from multilateral negotiations eventually begin in the WTO. In other words, preferential agreements are used to change the balance of power which is currently preventing the completion of the Doha Round due to the resistance of developing countries to accept issues of the agenda that undermine their development policy space. They are also more readily used for issue-linkage in areas such as military security or migration. This assertion still begs the question of why do developing countries resist commitments in the WTO which they gladly accept in free trade agreements with their northern counterparts (Shadlen 2008). Three reasons can account for this. The first is that the most reluctant countries are not the ones with major FTAs with northern countries. The second is that resistance in the WTO creates the space for FTAs of interest to exporters in the North for their markets. The

third is that even in conditions of asymmetry where gains are divided there is ample room for relative gains.

So far we have identified some of the main challenges introduced by power asymmetries in trade negotiation processes. Such power asymmetries show that the majors have rights of tutelage; they can ensure the direction of policy and shape a number of outcomes in minor countries, driven by specific interest group pressures or broader political calculations to maximise their states' power.

Yet even within such institutional constraints, a rank of countries can enjoy certain degrees of freedom in setting parts of the agenda and influencing outcomes. These degrees of freedom depend on the prevalent epistemic consensus, but also on strategies that are born out of adaptation and learning, framing/re-framing the issue to fit into the dominant norm, and building supportive inter-state and transnational coalitions. A reflection on balancing behaviour is particularly relevant at a time when the rise of emerging economic powers such as India, China, Brazil and South Africa is creating new political opportunities to redefine existing global and regional structures and practices. The conditions under which the increased influence of these countries can effectively translate in the overcoming of power asymmetries in trade processes are addressed in the second part of the essay.

### **Addressing vulnerabilities? The pursuit of sources of leverage**

It is as well to concede one obvious truism, the problem of confronting massively disproportionate power in economic diplomacy. But a methodology that considers a situation asymmetrically offers a way not only to analyse situations, but to look at these as arenas for power contests. Such contests

involve efforts by the historically weak or under-represented to coalesce in order to trim and reshape rules and reduce pressures to accept policies they wish to evade or delay, or resist in order to reduce costs and change their fates. Understanding the contest results in thinking in a paradigm of contestation.

In this part of the essay we argue that the bargaining power of states in trade negotiations relies on at least four dimensions: (1) the relative size of the market in each country, (2) the type of intergovernmental coalition created as part of negotiation processes, (3) the alliances governments establish with business organisations and labour/social organisations in civil society, and (4) the particularities of domestic institutions. These conditions represent sources of state power that affect the capacity of government to increase their bargaining power in trade negotiations (Drahos 2003). To see how these are used to improve conditions and sell proposals, we now turn.

*Market power: size matters after all!*

The size of domestic markets is an important factor affecting the degree of governments' bargaining power in trade negotiations. Market power is a relational concept. This means that the extent to which securing market access is a policy priority for a given country is related to the degree of dependence of that country's economy from its exports to other markets. It is often the case that this equation involves minor countries being more dependent on market access in major industrialised countries than it is in the inverse direction. In the global economy characterised by uneven levels of development and an increasingly transnationalised production structure, differences in market size act as powerful factors affecting the dynamics of trade integration processes.

In his seminal work on market size asymmetries, Albert Hirschman (1945) argues that when trade with a larger country accounts for a very large proportion of the total imports and exports of a smaller economy, the latter is increasingly vulnerable to coercion by the larger country. The implication of this point is that, rather than small countries being concerned about the potentially threatening effects of floods of imports from a larger country, countries ought to be more concerned when most of their own exports go to any one country. The argument is that if a large country A decides to stop exporting to a small country B, it will be relatively easy for B to find alternative sources for its imports. On the other hand, it will be relatively difficult for B to find alternative markets for its exports, 'all countries being ready to sell and none ready to buy' (Hirschman 1945: 32).

Governments can use market access as powerful bargaining chips in trade negotiations; either to persuade export dependent economies to offer greater concessions than they would otherwise be willing to offer, as well as to threaten them with the ending of existing market access preferences. The effectiveness and credibility of threats is reduced as with the size of a country's market.

The fear of losing market access is so great that some governments have gone a long way to ensure that their exports will safely reach the markets in industrialised countries. Shadlen (2008) has shed some light on the specific reasons that led the governments of Colombia, Peru, Chile and Central American countries to negotiate bilateral preferential agreements with the United States in highly asymmetric conditions which resulted in the abandonment of policy space and key development tools. These countries

already export to the US under the GSP scheme. However, GSP schemes generate market access that is unstable since there is always the risk that changing political conditions in the US and lobbying pressures could threaten market access privileges, whose renewal has to be periodically reviewed. In the WTO, under the MFN principle a country that withdraws market access rights is liable to demands for compensation. This option is not available in GSP schemes. Shadlen then concludes that the incentive for embarking in such negotiation processes was the reduction of uncertainty and risk derived from the possibility of being excluded from the US market. In so doing, these governments tied their economies to a common set of rules that dissipated the risk of losing market access. This was nonetheless done at the expense of great economic costs and policy space (Shadlen 2008).

The growth of emerging Southern economies that has taken place in recent times is beginning to shift the balance of power in trade processes. The clearest example is China, but also India, Brazil and South Africa are in that rank. As market size begins to count, so does the bargaining power of these countries in trade negotiations. The potential for gaining greater influence is also tied to the progress in promoting more substantial trade relations between such emerging powers facing the fear of being swamped by the major countries. The IBSA initiative (India, Brazil and South Africa) to promote South-South cooperation and closer trade relations is a positive step in this regard. This leads to the much-needed diversification of export markets away from the traditional industrial countries with the resulting consequence of gaining greater autonomy.

Likewise, pooling of market size through South-South regional integration projects is also a way of gaining leverage in trade processes. This permits minor countries to unite forces by combining their small markets. Much southern regional activity grows out of the need for mitigating asymmetries and balancing crystallised inequalities between states; it is also concerned with retaining power in the region, filling spaces in which global structures are seen as encroaching or excessively constraining. In a number of sectors where producer interests sometimes compete with foreign business and often plays a crucial political role, governments may well respond to the globalisation wave in ways that attempt to preserve and nurture spaces for local players. The regional arena is used by governments, business and other actors to resist and shape markets, the model emphasizing the primacy of concerted state intervention, domestic politics and economic or social values such as distributive outcomes rather than global efficiency. Governments, deriving political legitimacy from their capacity to undertake traditional social responsibilities for the societies they govern, may be compelled to turn to regional collective action as an option to maintain levels of employment and policy instruments.

The proponents of this type of regionalism play a circular game of alternating pro and anti-liberalisation stances through regional structures and arrangements. A lesson stemming from Europe is that regional integration projects often need large member states with technocratically capable cadres in order to provide vision and leadership for the rest of the group. France and Germany played this role in the European Economic Community and its antecedents from the 1950s, and Singapore and Thailand seem to aspire to a similar partnering role in the Association of South East Asian Nations (ASEAN).

However, for regionalism to be conducive to the reduction of international power asymmetries it also needs to be able to address domestic and regional asymmetries. This requires that countries succeed in keeping policy space over key public instruments needed to adopt long-term development strategies at the national and regional level. It is not sufficient to integrate markets. Regional governance instruments are indispensable: macro-economic coordination, a common development strategy based on complementarity and integration of productive chains, regional public instruments to address internal asymmetries (smaller economies and/or sub-regions). A successful and sustainable project of regional integration based on a common development strategy will eventually reduce the unequal power conditions that currently affect countries with small markets.

#### *Intergovernmental coalitions*

The usual response to the problem of weak bargaining power is the strength-in-numbers argument. The formation of intergovernmental coalitions constitutes another source of bargaining power to contest asymmetries (Odell 2006). The incorporation of new members to the WTO in recent years has opened a political opportunity for developing countries to increase their leverage in negotiations by building coalitions around a series of common issues and agendas. Approximately 100 of the WTO's 144 members are developing countries. This presents a favourable situation for weaker states to build coalitions to reduce the power asymmetries in trade negotiations, make decision-making processes more equitable and transparent (Narlikar 2003, 2006, Kumar 2007: 5).

Developing country coalitions such as the LMG, the African Group and mainly the G-22, G-33 and G-90 have gained considerable repercussion in recent years. The resistance of the LMG and the African Group against the exclusionary decision-making procedures at the WTO led to the breakdown of the ministerial meeting of Seattle in December 1999. This set an important precedent for developing countries in signalling the relevance of forming new groupings as a means to promote their views on key issues collectively (Keet 2006: 14). Moreover, the pressures of the G-22, G-33 and G-90 led to the impasse at the Cancún meeting in 2003. This created a new precedent in the history of the WTO. They also succeeded in getting three of the four Singapore issues (investment, competition policy, and government procurement) dropped off the negotiating agenda of the Doha Round (Kumar 2007: 5). In the aftermath of the Cancun meeting, the G-33 stepped up its demands for special and differential treatment (S&D) as a prerequisite for progress in the Round, particularly the right to identify special products of interest to developing countries on which there would be no tariff reduction commitment and no new tariff rate quote commitments (Charlton 2005: 4, Mably 2009).

Other indications of the influence acquired by developing country government coalitions can be seen in relation to TRIPs and public health (Odell and Sell 2006), and to the Cotton Initiative led by the Cotton-4 supported by the African Group (Patel 2006: 7). The influence of these coalitions in trade discussions has changed the institutional dynamics of the WTO (Narlikar and Tussie 2004, Patel 2006). Not all the developing country coalitions that have gained preponderance in recent times are new creatures, however. There has

also been a revival of old coalitions such as the Non-Aligned Movement and the revitalisation of the G-77-Plus China group in the United Nations.

New coalitions differ from their older counterparts and predecessors. They adopt a more prominent and publicly visible role in negotiations, which often involves issuing public declarations, holding press conferences, engaging in media campaigns, creating logos and forms of branding. Another distinctive feature of new coalitions is their engagement with NGOs in the framing of negotiating positions and in the undertaking of public advocacy campaigns. The case of the campaign of developing countries allied with NGOs to frame the negotiations of intellectual property as a health issue in the Doha conference illustrates this point (Odell and Sell 2006). Finally, there is also considerable cooperation between various coalitions which at times can overlap (Patel 2006: 7–9). The resulting openness to other coalitions rather than a us versus the rest antagonism, and logrolling that is not completely random but relatively more focused on a smaller set of issues (partly as a result of the research) makes the more recent coalitions considerably evolved, and certainly more evolved than the traditional ideology inspired third worldist demands.

The particular form that is adopted by these coalitions depends largely on kinds of agendas for which they were created. Coalitions that are built in response to particular threats – which tend to dissipate over time – are formed by ‘alliance-type’ groups that come together for ‘instrumental reasons’. Conversely, coalitions built for the negotiation of a variety of issue areas generally consist of ‘bloc-type’ groups of like-minded states. In this case, such coalitions rely on identity-related methods (Narlikar 2003) and often develop

some kind of formal structure to facilitate sharing technical capacity, division of labour and the articulation and coordination of joint negotiating platforms.

Amongst these coalitions, the G-20 (in which the big countries such as Brazil, India, China, South Africa, Argentina) carries weight by its sheer market power, but the development component of the final outcome of the round is of particular significance to smaller developing countries which remain at the margin of the negotiating process. In this sense, another coalition – the G-90 – plays a key role with regard to transparency and democracy in the WTO, mainly by questioning participation conventions in the rule-making process, in particular the set of negotiation practices that continues to sideline them. A third coalition, the G-33 has also been trying to shape negotiations in agriculture. This is a grouping of over 40 developing countries with interests in protecting special products and obtaining a special safeguard mechanism for them. Arguing that, in the absence of deep pockets, tariffs are the only instruments available to protect their farmers, the G-33 calls for an approach to tariff reduction that does not result in developing countries paying high prices and experiencing disruption in their rural economies. It also wants recognition of a category known as “special products” for special treatment (i.e. lower market access obligations).

Intergovernmental coalitions that rely on the production of knowledge to argue their case are better positioned to increase the bargaining power of developing countries in asymmetric multilateral trade negotiations. The reason for this is that formalised and shared knowledge can gradually change rules of engagement as they assist developing country governments with technical and analytical resources. This capacity is needed to deal with the dilemmas of the

circular game between bilateral and multilateral negotiations that lives on as a system of escalators. Informality is a rich learning ground; it has the advantage of having low start-up costs, allowing greater flexibility in the negotiations, avoiding costly sanctions. By way of example, following the Cancún Ministerial, some members of the G-20 were compelled to drop out in response to pressures from the US. Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, and Peru broke away from the group for some time but after concluding their bilateral negotiations with the US they returned to the fold and were accepted with no acrimony ready to charge on. These flexible arrangements also serve as safety nets when regional agreements are watered down and even split as a result of the push of North-South agreements. This has been the case of the Andean Community of Nations, the Central American Common Market and ASEAN.

*Alignment with networks of non-state actors*

As was discussed in the first section, the new emphasis on reciprocity has added a previously absent domestic dimension, whereby the gains of one sector abroad require another sector to adjust to heightened import competition. The sensitivity of domestic actors to the distributional impact of trade concessions has tended to generate conflicts and resentments. Unleashing sufficient fury from below, civil society campaigns and new forms of organisation and resistance were triggered. These increasingly mobilised actors have created transnational networks and coalitions exercising voice and demanding participation. Moreover, some of these civil society actors have taken the next step of beginning to construct social movements in an attempt to articulate responses to the push of asymmetric negotiations.

The capacity of a government to seize the opportunity and to enrol with non-state actors can become an additional source of bargaining power in trade negotiations. Leaning on these campaigns, governments can manipulate value conflicts, trim proposals and react with counterproposals either through regional agreements or the looser coalitions in the WTO. Dealing with asymmetry becomes less of an exercise in helplessness. Instead, it becomes more of an exercise in negotiated accommodation where state and non-state actors interact and feed off each other in a process whereby values become shared, rules gradually codified, and all actors get to reinvent themselves. There is then a constant weaving of negotiations to build consensus at home by co-opting some anti-globalisation movements.

In terms of alignments with transnational civil society networks, there is the well recorded case of the alliance crafted between developing countries and Non-Governmental Organisations (NGOs) like Consumer Project on Technology, Médecins Sans Frontières and Oxfam has been a crucial aspect of the Declaration on TRIPs and Public Health that was agreed by ministers in Doha (Mayne 2002, Odell and Sell 2006). Another prevalent example is the informal alignment of the Venezuelan government with social movement coalitions in Latin America in the context of the negotiation of a Free Trade Area of the Americas (FTAA). This alignment centred on building regional opposition to the neo-liberal trade agenda contained in the FTAA project, as well as fostering the construction of alternative integration projects in line with the Bolivarian Alternative for the Americas (ALBA) initiative (Saguier 2007). The ALBA project and the Trade Treaty of the Peoples proposed by Bolivia to create a new model of cooperative development evidence recent shifts in the

balance of forces regarding global trade processes (Keet 2006: 4) as well as the strategic importance of governments' alignments with organised civil society sectors.

Concessions of selective participation to some civil society actors, a common currency used by the United States in classic two level games to increase leverage in negotiations (Putnam, 1988) are emulated by weaker governments in their challenging strategies. What emerges from these trends is an interesting relationship between the use of mobilisation and resistance in which it is not always clear how governments will adapt in response to claim-making and mobilizing by civil society and balance the move with the risk adverse mindset of elites with popular disaffection.

#### *Discursive/Normative power*

Negotiations are embedded in an intellectual landscape that directly affects course and outcome. Perhaps this is the least-discussed element and the one leading to the reproduction of intangible asymmetries. Ideas in trade relations have become so dominant that they are embedded in trade institutions and promulgated by those institutions. They can remain then largely unquestioned and taken for granted, playing a subtle background role in shaping and limiting public debate and the articulation of policy alternatives, thus de-politicizing issues. As such ideas can exercise a non-coercive form of power wielded by dominant actors, often called soft power or cultural hegemony, concealing power relations that stratify the global system into a core of rule makers and a broad band of heterogeneous rule takers.

Ideas may also be used, however, to frame or re-frame an issue and influence the public discourse around it (Sell and Prakash 2004, Odell and Sell

2006). Used as tools ideas can contribute to the definition of interests, identification of policy problems and preferred solutions, especially in their capacity to posit causal relationships. They have also been seen to be useful in building the types of coalitions mentioned above. Norms, ideas about what is right or wrong behaviour, can legitimate action or challenge legitimacy. Ideas can also become weapons to undermine prevailing ideas and institutions particularly in periods of crisis or uncertainty. As contending players grow in strength and stature, relying on the creation of coalitions, they must at the same time invest in becoming technically empowered to challenge asymmetry through knowledge, research and value creation. Value creation and the crafting of operating principles all play a role in balancing asymmetry and claim-making.

Peter Haas's work (1992) on the role of international epistemic communities illustrates how the transnational collaboration of 'professionals' can shape policy preferences and are applied to problem solving.<sup>13</sup> The term epistemic communities refers to a congregation sharing a world view (or episteme). It is an international network of professionals with recognised expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue area. The professionals in an epistemic community have a shared set of normative and principled beliefs: common casual beliefs, which are derived from the analysis of practices leading or contributing to a central set of problems in their domain and which then serve as the basis for elucidating the multiple linkages between possible

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<sup>13</sup> See also Botto (2010) in the case of EU-MERCOSUR.

policy actions and desired outcomes. They also share notions of validity and a mutual policy enterprise.

Political networking with governing institutions lays the groundwork for a broader acceptance of the community's beliefs and ideas. Economic and political networking allows them to control the channels by which these innovations diffuse and to become the torchbearers of new ideas, setting standards for some policies and freezing out others as wrongheaded. Once achieved, that inner circle can be expanded to broader and broader international sets of governments and civil society networks until it is shared by enough to persuade the world that its policy aspirations are achievable.

Such constructions can matter, not simply because they can provide the substantive content of demands in a trade negotiation, but also because it can serve as an important legitimising device. This source of power in trade negotiations concerns the ability of governments to frame particular demands and agendas in terms of notions, concepts or themes that can enhance the imperatives of one position over another avoiding or softening visibly ideological grounds.

Ideas, like interests, are not static. Uncertainty, crises and unforeseen or unintended consequences of past policies and actions can present opportunities for change, which is, learning. Ideas and interests may also be reshaped through interactions with other actors. In this context, policy networks and communities of knowledge can serve as a focal point to share analyses of the environment, the consequences of policies, and the legitimisation of change. The power politics of knowledge can influence first the conceptual change and then legitimise the implementation of an agenda that has evolved as a result of several other, often

political, forces. The value of ideas and knowledge is that it can justify and explain demands of one group to other groups; and can help to disentangle the knowledge trap. Likewise, ideas and knowledge are also powerful insofar as they make it possible to envisage alternative scenarios and aspirations on which political visions can take form.

## **Conclusions**

Where does our analysis lead by way of conclusion? We drew attention at the outset that trade negotiations on a reciprocal basis take place in conditions of severe asymmetric power relations with scarce if any chance of fair play. Put bluntly, such reciprocity is one sided. Many have argued that the renewed North-South imbalance embedded in the North-South agreements are a straightjacket that compels developing countries to follow standard neoliberal policies. This depiction, applauded by some and assailed by others, understates the difficult dilemmas that countries face.

It is undeniable that changes in the contemporary international political economy limit past options, and it is correct that today's developing countries are being deprived of opportunities to use many of the policy instruments that more developed countries used at similar levels of income. But this argument does not count the opportunity costs, the cost of being excluded and the domestic political frictions involved;<sup>14</sup> nor does it take into account that the straightjacket is never watertight. This is not to say that some of the choices we might wish to make have not become more costly. A useful way to think about the issue is to distinguish between *trends* and *outcomes* (Shadlen 2008). The

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<sup>14</sup> If there is an opportunity for an actor to achieve an export gain, an 'opportunity logic' may be invoked by the actor presented with the opportunity, often highly conditioning government action.

trend is towards reduced policy discretion. Dependent parties conform their behaviour to the preferences of those they depend on. This no doubt is the beginning of current wisdom. Yet the ultimate outcome remains one where a range of significant alternatives continues to exist. One also needs to know how and how much new options are made available to relieve strains and reduce vulnerabilities while the old options get caught in the web. This point is critical to our understanding of the dynamics inherent in asymmetric relations.

Asymmetrical trade negotiations are driven intensely by knowledge and ideas that were linked strategically to the interests of proponents. Policy failures will at some point clear away lingerings of loyalty to these ideas while underlings continue to open new territories for policy and build new alliances for offsetting asymmetries and create room to manoeuvre. The overarching challenge for minor countries as asymmetric negotiations press on does not lie in making a compelling case for an *anti-monde* or that economic analyses and expectations of great benefits to come from asymmetric negotiations bear little fruit. The overarching challenge is to make incremental changes in power positions building new alliances; to provide structure and principles to handle such changes and to allow for transitions that might otherwise prove unmanageable or too costly to face. Along these lines, cleavage along moral or ideological lines is not sufficient to develop viable policies and negotiating positions. Negotiations require interest-based problem solving and hands-on research. Agenda setting, assessment, and the construction of counter-proposals involve continuous evaluations and filtering to suggest alternative modes of actions. Placing demands directly under the aegis of visibly ideological grounds can be used to walk away from asymmetric negotiations. But if what is on offer

is perceived to bring relative gains, (whatever these may be in the eye of the beholder) ideology tends to extinguish rather than create political synergy when it is not accompanied with a viable power strategy and sound policies.

Political synergy, in turn requires mustering of collective forces where coalitions cooperate with each other to mobilise for change, to solve problems and attain goals.

While intergovernmental coalitions and regional agreements are mechanisms to strategically *influence* the process, civil society networks can also serve to *challenge* the process. They have all become significant symbolically as well as practically.

To belabour the point, victims act; but balancing cannot take place without mustering sources of leverage and increased bargaining competence which includes both a vision, a map and operating principles. Herein lies the challenge of choosing to participate rather than protest from the sidelines in an age of transition when all inherited orthodoxies appear inadequate, but where the asymmetric power relation in the centre-periphery model has hold still. This is why the issues of regional and global governance have become so prominent and are likely to loom even larger.

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