

## 1NC – Neolib K

**The WTO is a fundamentally unnecessary institution that functions solely to preserve US neoliberal hegemony. Reform is the wrong approach and merely props up WTO legitimacy—every empiric flows neg.**

Bello 99 [(Walden, Filipino academic, environmentalist, and social worker who served as a member of the House of Representatives of the Philippines.) "Why Reform of the WTO is the Wrong Agenda" Focus on Trade, No. 43, December 1999, <https://www.tni.org/my/node/6851>] TDI

In the wake of the collapse of the Seattle Ministerial, there has emerged the opinion that reform of the WTO is now the program that NGOs, governments, and citizens must embrace. The collapse of the WTO Ministerial is said to provide a unique window of opportunity for a reform agenda.

Cited by some as a positive sign is United States Trade Representative Charlene Barshefsky's comment, immediately after the collapse of the Seattle Ministerial, that the WTO has outgrown the processes appropriate to an earlier time. An increasing and necessary view, generally shared among the members, was that we needed a process which had a greater degree of internal transparency and inclusion to accommodate a larger and more diverse membership'. (1)

Also seen as an encouraging gesture is UK Secretary of State for Trade and Industry Stephen Byers' recent statement to Commonwealth Trade Ministers in New Delhi that the WTO will not be able to continue in its present form. There has to be fundamental and radical change in order for it to meet the needs and aspirations of all 134 of its members. (2)

These are, in our view, damage control statements and provide little indication of the seriousness about reform of the two governments that were, pre-Seattle, the stoutest defenders of the inequalities built into the structure, dynamics, and objectives of the WTO. It is unfortunate that they are now being cited to convince developing countries and NGOs to take up an agenda of reform that could lead precisely to the strengthening of an organization that is very fundamentally flawed.

What civil society, North and South, should instead be doing at this point is radically cutting down the power of the institution and reducing it to simply another institution in a pluralistic world trading system with multiple systems of governance.

Does World Trade Need the World Trade Organization?

This is the fundamental question on which the question of reform hinges.

World trade did not need the WTO to expand 17-fold between 1948 and 1997, from \$124 billion to \$10,772 billion. (3) This expansion took place under the flexible GATT trade regime. The WTO's founding in 1995 did not respond to a collapse or crisis of world trade such as happened in the 1930's. It was not necessary for global peace, since no world war or trade-related war had taken place during that period. In the seven major inter-state wars that took place in that period—the Korean War of 1950-53, the Vietnam War of 1945-75, the Suez Crisis of 1956, the 1967 Arab-Israeli War, the 1973 Arab-Israeli War, the 1982 Falklands War, and the Gulf War of 1990—trade conflict did not figure even remotely as a cause.

GATT was, in fact, functioning reasonably well as a framework for liberalizing world trade. Its dispute-settlement system was flexible and with its recognition of the 'special and differential status' of

developing countries, it provided the space in a global economy for Third World countries to use trade policy for development and industrialization.

Why was the WTO established following the Uruguay Round of 1986-94? Of the major trading powers, Japan was very ambivalent, concerned as it was to protect its agriculture as well as its particular system of industrial production that, through formal and informal mechanisms, gave its local producers primary right to exploit the domestic market. The EU, well on the way of becoming a self-sufficient trading bloc, was likewise ambivalent, knowing that its highly subsidized system in agriculture would come under attack. Though demanding greater access to their manufactured and agricultural products in the Northern economies, the developing countries did not see this as being accomplished through a comprehensive agreement enforced by a powerful trade bureaucracy but through discrete negotiations and agreements in the model of the Integrated Program for Commodities (IPCs) and Commodity Stabilization Fund agreed upon under the aegis of UNCTAD in the late seventies.

The founding of the WTO served primarily the interest of the United States. Just as it was the US which blocked the founding of the International Trade Organization (ITO) in 1948, when it felt that this would not serve its position of overwhelming economic dominance in the post-war world, so it was the US that became the dominant lobbyist for the comprehensive Uruguay Round and the founding of the WTO in late eighties and early nineties, when it felt that more competitive global conditions had created a situation where its corporate interests now demanded an opposite stance.

Just as it was the US's threat in the 1950's to leave GATT if it was not allowed to maintain protective mechanisms for milk and other agricultural products that led to agricultural trade's exemption from GATT rules, so was it US pressure that brought agriculture into the GATT-WTO system in 1995. And the reason for Washington's change of mind was articulated quite candidly by then US Agriculture Secretary John Block at the start of the Uruguay Round negotiations in 1986: [The] idea that developing countries should feed themselves is an anachronism from a bygone era. They could better ensure their food security by relying on US agricultural products, which are available, in most cases at much lower cost. (4) Washington, of course, did not just have developing country markets in mind, but also Japan, South Korea, and the European Union.

It was the US that mainly pushed to bring services under WTO coverage, with its assessment that the in the new burgeoning area of international services, and particularly in financial services, its corporations had a lead that needed to be preserved. It was also the US that pushed to expand WTO jurisdiction to the so-called 'Trade-Related Investment Measures' (TRIMs) and 'Trade-Related Intellectual Property Rights' (TRIPs) The first sought to eliminate barriers to the system of internal cross-border trade of product components among TNC (transnational corporations) subsidiaries that had been imposed by developing countries in order to develop their industries; the second to consolidate the US advantage in the cutting-edge knowledge-intensive industries.

And it was the US that forced the creation of the WTO's formidable dispute-resolution and enforcement mechanism after being frustrated with what US trade officials considered weak GATT efforts to enforce rulings favorable to the US. As Washington's academic point man on trade, C. Fred Bergsten, head of the Institute of International Economics, told the US Senate, the strong WTO dispute settlement mechanism serves US interests because we can now use the full weight of the international machinery to go after those trade barriers, reduce them, get them eliminated. (5)

In sum, it has been Washington's changing perception of the needs of its economic interest-groups that have shaped and reshaped the international trading regime. It was not global necessity that gave birth to the WTO in 1995. It was the US's assessment that the interests of its corporations were no longer served by a loose and flexible GATT but needed an all-powerful and wide-ranging WTO. From the free-market paradigm that underpins it, to the rules and regulations set forth in the different agreements that make up the Uruguay Round, to its system of decision-making and accountability, the WTO is a blueprint for the global hegemony of Corporate America. It seeks to institutionalize the accumulated advantages of US corporations.

Is the WTO necessary? Yes, to the United States. But not to the rest of the world. The necessity of the WTO is one of the biggest lies of our time, and its acceptance is due to the same propaganda principle practised by Joseph Goebbels: if you repeat a lie often enough, it will be taken as truth.

Can the WTO Serve the Interests of the Developing Countries?

But what about the developing countries? Is the WTO a necessary structure - one that, whatever its flaws, brings more benefits than costs, and would therefore merit efforts at reform

When the Uruguay Round was being negotiated, there was considerable lack of enthusiasm for the process by the developing countries. After all, these countries had formed the backbone of UNCTAD, which, with its system of one-country/one-vote and majority voting, they felt was an international arena more congenial to their interests. They entered the Uruguay Round greatly resenting the large trading powers' policy of weakening and marginalizing UNCTAD in the late seventies and early eighties. Largely passive spectators, with a great number not even represented during the negotiations owing to resource constraints, the developing countries were dragged into unenthusiastic endorsement of the Marrakesh Accord of 1994 that sealed the Uruguay Round and established the WTO. True, there were some developing countries, most of them in the Cairns Group of developed and developing country agro-exporters, that actively promoted the WTO in the hope that they would gain greater market access to their exports, but they were a small minority.

To try to sell the WTO to the South, US propagandists evoked the fear that staying out of the WTO would result in a country's isolation from world trade ('like North Korea') and stoked the promise that a 'rules-based system' of world trade would protect the weak countries from unilateral acts by the big trading powers.

With their economies dominated by the IMF and the World Bank, with the structural adjustment programs pushed by these agencies having as a central element radical trade liberalization, much weaker as a bloc owing to the debt crisis compared to the 1970's, the height of the 'New International Economic Order', most developing country delegations felt they had no choice but to sign on the dotted line.

Over the next few years, however, these countries realized that they had signed away their right to employ a variety of critical trade measures for development purposes.

In contrast to the loose GATT framework, which had allowed some space for development initiatives, the comprehensive and tightened Uruguay Round was fundamentally anti-development in its thrust. This is evident in the following:

## Loss of Trade Policy as Development Tool

In signing on to GATT, Third World countries were committed to banning all quantitative restrictions on imports, reduce tariffs on many industrial imports, and promise not to raise tariffs on all other imports. In so doing, they have effectively given up the use of trade policy to pursue industrialization objectives. The way that the NICs, or 'newly industrializing countries', made it to industrial status, via the policy of import substitution, is now effectively removed as a route to industrialization.

The anti-industrialization thrust of the GATT-WTO Accord is made even more manifest in the Agreement on Trade-Related Investment Measures (TRIMs) and the Agreement on Trade-Related Intellectual Property Rights (TRIPs). In their drive to industrialize, NICs like South Korea and Malaysia made use of many innovative mechanisms such as trade-balancing requirements that tied the value of a foreign investor's imports of raw materials and components to the value of his or her exports of the finished commodity, or 'local content' regulations which mandated that a certain percentage of the components that went into the making of a product was sourced locally.

These rules indeed restricted the maneuvering space of foreign investors, but they were successfully employed by the NICs to marry foreign investment to national industrialization. They enabled the NICs to raise income from capital-intensive exports, develop support industries, bring in technology, while still protecting local entrepreneurs' preferential access to the domestic market. In Malaysia, for instance, the strategic use of local content policy enabled the Malaysians to build a 'national car', in cooperation with Mitsubishi, that has now achieved about 80 per cent local content and controls 70 per cent of the Malaysian market. Thanks to the TRIMs accord, these mechanisms used are now illegal.

## The Restriction of Technological Diffusion

Like the TRIMs agreement, the TRIPs regime is seen as effectively opposed to the industrialization and development efforts of Third World countries. This becomes clear from a survey of the economic history not only of the NICs but of almost all late-industrializing countries. A key factor in their industrial take-off was their relatively easy access to cutting-edge technology: The US industrialized, to a great extent by using but paying very little for British manufacturing innovations, as did the Germans. Japan industrialized by liberally borrowing US technological innovations, but barely compensating the Americans for this. And the Koreans industrialized by copying quite liberally and with little payment US and Japanese product and process technologies.

But what is 'technological diffusion' from the perspective of the late industrializer is 'piracy' from that of the industrial leader. The TRIPs regime takes the side of the latter and makes the process of industrialization by imitation much more difficult from hereon. It represents what UNCTAD describes as 'a premature strengthening of the intellectual property system... that favors monopolistically controlled innovation over broad-based diffusion'. (6)

The TRIPs regime provides a generalized minimum patent protection of 20 years; increases the duration of the protection for semi-conductors or computer chips; institutes draconian border regulations against products judged to be violating intellectual property rights; and places the burden of proof on the presumed violator of process patents.

The TRIPs accord is a victory for the US high-tech industry, which has long been lobbying for stronger controls over the diffusion of innovations. Innovation in the knowledge-intensive high-tech sector - in

electronic software and hardware, biotechnology, lasers, opto-electronics, liquid crystal technology, to name a few - has become the central determinant of economic power in our time. And when any company in the NICs and Third World wishes to innovate, say in chip design, software programming, or computer assembly, it necessarily has to integrate several patented designs and processes, most of them from US electronic hardware and software giants like Microsoft, Intel, and Texas Instruments. (7) As the Koreans have bitterly learned, exorbitant multiple royalty payments to what has been called the American 'high tech mafia' keeps one's profit margins very low while reducing incentives for local innovation.

The likely outcome is for a Southern manufacturer simply to pay royalties for a technology rather than to innovate, thus perpetuating the technological dependence on Northern firms. Thus, TRIPs enables the technological leader, in this case the United States, to greatly influence the pace of technological and industrial development in rival industrialized countries, the NICs, and the Third World.

#### Watering Down the 'Special and Differential Treatment' Principle

The central principle of UNCTAD (United Nations Conference on Trade and Development) - an organization disempowered by the establishment of the WTO - is that owing to the critical nexus between trade and development, developing countries must not be subjected to the same expectations, rules, and regulations that govern trade among the developed countries. Owing to historical and structural considerations, developing countries need special consideration and special assistance in leveling the playing field for them to be able to participate equitably in world trade. This would include both the use of protective tariffs for development purposes and preferential access of developing country exports to developed country markets.

While GATT was not centrally concerned with development, it did recognize the 'special and differential status' of the developing countries. Perhaps the strongest statement of this was in the Tokyo Round Declaration in 1973, which recognized the importance of the application of differential measures in developing countries in ways which will provide special and more favourable treatment for them in areas of negotiation where this is feasible. (8) Different sections of the evolving GATT code allowed countries to renegotiate tariff bindings in order to promote the establishment of certain industries; allowed developing countries to use tariffs for economic development and fiscal purposes; allowed them to use quantitative restrictions to promote infant industries; and conceded the principle of non-reciprocity by developing countries in trade negotiation. (9) The 1979 Framework Agreement known as the Enabling Clause also provided a permanent legal basis for General System of Preferences (GSP) schemes that would provide preferential access to developing country exports. (10)

A significant shift occurred in the Uruguay Round. GSP schemes were not bound, meaning tariffs could be raised against developing country until they equaled the bound rates applied to imports for all sources. Indeed, during the negotiations, the threat to remove GSP was used as a form of bilateral pressure on developing countries. (11) SDT was turned from a focus on a special right to protect and special rights of market access to one of responding to special adjustment difficulties in developing countries stemming from the implementation of WTO decisions. (12) Measures meant to address the structural inequality of the trading system gave way to measures, such as a lower rate of tariff reduction or a longer time frame for implementing decisions, which regarded the problem of developing countries as simply that of catching up in an essentially even playing field.

STD has been watered down in the WTO, and this is not surprising for the neoliberal agenda that underpins the WTO philosophy differs from the Keynesian assumptions of GATT: that there are no special rights, no special protections needed for development. The only route to development is one that involves radical trade (and investment) liberalization.

#### Fate of the Special Measures for Developing Countries

Perhaps the best indicators of the marginal consideration given to developing countries in the WTO is the fate of the measures that were supposed to respond to the special conditions of developing countries. There were three key agreements which promoters of the WTO claimed were specifically designed to meet the needs of the South:

The Special Ministerial Agreement approved in Marrakesh in April 1994, which decreed that special compensatory measures would be taken to counteract the negative effects of trade liberalization on the net food-importing developing countries;

The Agreement on Textiles and Clothing, which mandated that the system of quotas on developing country exports of textiles and garments to the North would be dismantled over ten years;

The Agreement on Agriculture, which, while 'imperfect', nevertheless was said to promise greater market access to developing country agricultural products and begin the process of bringing down the high levels of state support and subsidization of EU and US agriculture, which was resulting in the dumping of massive quantities of grain on Third World markets.

#### What happened to these measures?

The Special Ministerial Decision taken at Marrakesh to provide assistance to 'Net Food Importing Countries' to offset the reduction of subsidies that would make food imports more expensive for the 'Net Food Importing Countries' has never been implemented. **Though world crude prices more than doubled in 1995/96, the World Bank and the IMF scotched an idea of any offsetting aid by arguing that the price increase was not due to the Agreement on Agriculture, and besides there was never any agreement anyway on who would be responsible for providing the assistance.** (13)

The Agreement on Textiles and Clothing committed the developed countries to bring under WTO discipline all textile and garment imports over four stages, ending on January 1, 2005. A key feature was supposed to be the lifting of quotas on imports restricted under the Multifiber Agreement (MFA) and similar schemes which had been used to contain penetration of developed country markets by cheap clothing and textile imports from the Third World. Developed countries retained, however, the right to choose which product lines to liberalize when, so that they first brought mainly unrestricted products into the WTO discipline and postponed dealing with restricted products till much later. Thus, in the first phase, all restricted products continued to be under quota, as only items where imports were not considering threatening-like felt hats or yarn of carded fine animal hair - were included in the developed countries' notifications. Indeed, the notifications for the coverage of products for liberalization on January 1, 1998 showed that even at the second stage of implementation only a very small proportion" of restricted products would see their quotas lifted. (14)

Given this trend, John Whalley notes that the belief is now widely held in the developing work that in 2004, while the MFA may disappear, it may well be replaced by a series of other trade instruments, possibly substantial increases in anti-dumping duties. (15)

When it comes to the Agreement on Agriculture, which was sold to developing countries during the Uruguay Round as a major step toward providing market access to developing country imports and bringing down the high levels of domestic support for first world farming interests that results in dumping of commodities in third world markets, little gains in market access after five years into developed country markets have been accompanied by even higher levels of overall subsidization—through ingenious combinations of export subsidies, export credits, market support, and various kinds of direct income payments.

The figures speak for themselves: the level of overall subsidization of agriculture in the OECD countries rose from \$182 billion in 1995 when the WTO was born to \$280 billion in 1997 to \$362 billion in 1998! Instead of the beginning of a New Deal, the AOA, in the words of a former Philippine Secretary of Trade, has perpetuated the unevenness of a playing field which the multilateral trading system has been trying to correct. Moreover, this has placed the burden of adjustment on developing countries relative to countries who can afford to maintain high levels of domestic support and export subsidies. (16)

The collapse of the agricultural negotiations in Seattle is the best example of how extremely difficult it is to reform the AOA. The European Union opposed till the bitter end language in an agreement that would commit it to 'significant reduction' of its subsidies. But the US was not blameless. It resolutely opposed any effort to cut back on its forms of subsidies such as export credits, direct income for farmers, and 'emergency' farm aid, as well as any mention of its practice of dumping products in developing country markets.

#### Oligarchic Decision-Making as a Central, Defining Process

Is the system of WTO decisionmaking reformable?

While far more flexible than the WTO, the GATT was, of course, far from perfect, and one of the bad traits that the WTO took over from it was the system of decision-making. GATT functioned through a process called 'consensus'. Now consensus responded to the same problem that faced the IMF and the World Bank's developed country members: how to assure control at a time that the numbers gave the edge to the new countries of the South. In the Fund and the Bank, the system of decision-making evolved had the weight of a country's vote determined by the size of its capital subscriptions, which gave the US and the other rich countries effective control of the two organizations.

In the GATT, a one-country one-vote system was initially tried, but the big trading powers saw this as inimical to their interests. Thus, the last time a vote was taken in GATT was in 1959. (17) The system that finally emerged was described by US economist Bergsten as one that does not work by voting. It works by a consensus arrangement which, to tell the truth, is managed by four - the Quads: the United States, Japan, European Union, and Canada.(18) He continued: Those countries have to agree if any major steps are going to be made, that is true. But no votes. (19)

Indeed, so undemocratic is the WTO that decisions are arrived at informally, via caucuses convoked in the corridors of the ministerials by the big trading powers. The formal plenary sessions, which in democracies are the central arena for decision-making, are reserved for speeches. The key agreements



to come out of the first and second ministerials of the WTO-the decision to liberalize information technology trade taken at the first ministerial in Singapore in 1996 and the agreement to liberalize trade in electronic commerce arrived at in Geneva in 1998-were all decided in informal backroom sessions and simply presented to the full assembly as faits accomplis. Consensus simply functioned to render non-transparent a process where smaller, weaker countries were pressured, browbeaten, or bullied to conform to the 'consensus' forged among major trading powers.

With surprising frankness, at a press conference in Seattle, US Trade Representative Charlene Barshefsky, who played the pivotal role in all three ministerials, described the dynamics and consequences of this system of decision-making:

The process, including even at Singapore as recently as three years ago, was a rather exclusionary one. All meetings were held between 20 and 30 key countries... And that meant 100 countries, 100, were never in the room... [T]his led to an extraordinarily bad feeling that they were left out of the process and that the results even at Singapore had been dictated to them by the 25 or 30 privileged countries who were in the room. (20)

Then, after registering her frustration at the WTO delegates' failing to arrive at consensus via supposedly broader 'working groups' set up for the Seattle ministerial, Barshefsky warned delegates: ...[I] have made very clear and I reiterated to all ministers today that, if we are unable to achieve that goal, I fully reserve the right to also use a more exclusive process to achieve a final outcome. There is no question about either my right as the chair to do it or my intention as the chair to do it.... (21)

And she was serious about ramming through a declaration at the expense of non-representativeness, with India, one of the key developing country members of the WTO, being routinely excluded from private talks organized by the United States in last ditch efforts to come up with a face-saving deal. (22)

In damage-containment mode after the collapse of the Seattle Ministerial, Barshefsky, WTO Director General Mike Moore, and other rich country representatives have spoken about the need for WTO 'reform'. But none have declared any intention of pushing for a one-country/one-vote majority decision-making system or a voting system weighted by population size, which would be the only fair and legitimate methods in a democratic international organization. The fact is, such mechanisms will never be adopted, for this would put the developing countries in a preponderant role in terms of decision-making.

Should One Try to Reform a Jurassic Institution?

Reform is a viable strategy when the system in question is fundamentally fair but has simply been corrupted such as the case with some democracies. It is not a viable strategy when a system is so fundamentally unequal in purposes, principles, and processes as the WTO. The WTO systematically protects and the trade and economic advantages of the rich countries, particularly the United States. It is based on a paradigm or philosophy that denigrates the right to take activist measures to achieve development on the part of less developed countries, thus leading to a radical dilution of their right to 'special and differential treatment'. The WTO raises inequality into a principle of decisionmaking.

The WTO is often promoted as a 'rules-based' trading framework that protects the weaker and poorer countries from unilateral actions by the stronger states. The opposite is true: the WTO, like many other multilateral international agreements, is meant to institutionalize and legitimize inequality. Its main



purpose is to reduce the tremendous policing costs to the stronger powers that would be involved in disciplining many small countries in a more fluid, less structured international system.

It is not surprising that both the WTO and the IMF are currently mired in a severe crisis of legitimacy. For both are highly centralized, highly unaccountable, highly non-transparent global institutions that seek to subjugate, control, or harness vast swathes of global economic, social, political, and environmental processes to the needs and interests of a global minority of states, elites, and TNCs. The dynamics of such institutions clash with the burgeoning democratic aspirations of peoples, countries, and communities in both the North and the South. The centralizing dynamics of these institutions clash with the efforts of communities and nations to regain control of their fate and achieve a modicum of security by deconcentrating and decentralizing economic and political power. In other words, these are Jurassic institutions in an age of participatory political and economic democracy.

### **Dispute settlement is neoliberal—judges are ideological, not neutral arbiters**

Stoppioni 20 [(Edoardo, Senior Research Fellow (Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law) “A Neo-Gramscian Analysis of the Neoliberal Discourse of the WTO Judge (IEL Collective Symposium II)” University of Bristol Law School Blog, March 2020, <https://legalresearch.blogs.bris.ac.uk/2020/03/a-neo-gramscian-analysis-of-the-neoliberal-discourse-of-the-wto-judge-iel-collective-symposium-ii/>] TDI

This post aims at using the work of Gramsci to analyse the hegemonic structures of the discourse of the WTO judge and to disentangle its relation to the neoliberal structural bias of its normative space. The objective is to transpose to international economic law the critical lenses that neo-Gramscian scholars, like Robert Cox, used in international relations. A neo-Gramscian approach focuses on the « material structure of ideology », in order to show how certain norms and practices emerge in a certain context and what is their emancipatory potential concerning a given legal order. By so doing, Cox enlarged the notion of hegemony to include those institutional practices of internalization of a certain ideology and the way they project it externally.

Critical doctrines on international law’s “fragmentation” have demonstrated that certain jurisdictions are capable of exercising hegemonic power in the international legal sphere and that a link should be established in that regard with the peculiar bias of economic jurisdictions, such as the WTO judge and the investment arbitrator. The WTO judge is a perfect example thereof (“judge” as, en passant, I find the judicial nature of the mechanism largely demonstrated and recently reaffirmed). As I previously theorized using Gramscian concepts, its discourse constantly oscillates between two poles. The first pole is the one of “prestige” or hegemony via expansion: the judge uses a language of dissemination; it exercises pedagogy to make its own idiom (the language of trade values) the dominating form of legal expression. The second pole is the one of “economism”, or of hegemony via isolation. The judge prefers using a discourse of self-containment to make its power uncontested. It refuses to listen to a foreign language not to put into danger its domination over its own normative regime.

This latter form of hegemony comes from what Gramsci theorized as a pattern of those discourses with an economic tropism. In the Notebooks, he had linked this tendency of isolation to the ideology of free-trade: “the theoretical separation of the economic dimension from a social and political ensemble: more specifically, the reduction of this ensemble to its economic causes” (Fogacs, The Gramscian Reader,

2000, 422). Following Gramsci, the free-trade prism can lead to an artificial separation of the economical from the rest of the normative sphere, which can describe the self-contained attitude of the judges.

The neoliberal twist translates in WTO case law in different discursive elements, making the idea of market a pillar of international trade law, silencing any other possible vision. This is visible in the way the Appellate Body progressively structured its case law on the “similarity test”, a fundamental judicial test to verify the existence of trade discrimination, as a market-based test. Robert Hudec had explained that « since GATT is a commercial agreement, it seems reasonable to start with the assumption that ‘likeness’ is (or should be) a commercial concept, meant to describe one or more market phenomena. The central commercial concept that comes to mind is competitiveness ». Only a dissenting opinion in the Asbestos case questioned this approach, generally theorized as ineluctable. This competitiveness reading of the similarity test places the focus on the product as it stands on the market, on the capitalistic product of consumption and not on its production process, that can be flawed with abuses and egregious violations of human rights.

A similar tendency can be observed in the “four corners of the GATT” doctrine, whereby the activity of the judge “would be limited in its activities and findings within the four corners of GATT”. This prism provides a restrictive interpretation of the jurisdictional specialization of the WTO judge to the observation of the impact of WTO Agreements violations exclusively, which explains its restrictive interpretation of the principle of systemic interpretation of Article 31(3)(3) VCLT, as attested in the Biotech or in Large Civil Aircraft cases.

One could challenge the impact of the hegemonic discourse of economism in WTO case law as being a “false contingency”, as « what seems to be given and presupposed is merely what we have temporarily refrained from challenging and remaking ». Interestingly enough, Quinn Slobodian claimed that this unchallenged vision comes from the historical project of those who like Wilhelm Röpke and Michael Heilperin used the WTO to insulate the markets against sovereign social justice policies. This type of hegemonic discourse has therefore strong historical roots on one particular vision of world economic regulation that has been injected in the agreements.

Liberal international law parlance and indeterminacy allow the normalization of such neoliberal bias. Following Chantal Mouffe, the topicality of Gramsci’s work lies in his radical reading of the economic problematic of ideology. Gramsci showed the “vagueness and imprecision characterizing the mechanism of subordination of politics and ideology to economics”. With this prism of analysis, adopting a neo-Gramscian approach to international trade law should raise awareness over the impact of this neoliberal bias on the WTO judicial discourse and question its hegemonic structures.

If Robert Howse has analyzed the role of the Appellate Body in cutting the link between its jurisprudence and the neoliberal aspirations of the secretariat, discourse analysis has shown that neoliberal elements are still present in the judicial practice. The objective of a Gramscian theory of international trade adjudication is therefore to add to a static discourse analysis a dynamic reading of the impact of neoliberalism on the functioning of WTO dispute settlement.

**The aff’s rhetoric of helping developing economies is the Trojan Horse for neoliberal privatization which destroys healthcare and is a vehicle for imperialism.**

Gatwiri et al 19 [(Kathomi Gatwiri, lecturer based at Southern Cross University where she teaches Social Work & Social Policy; Julians Amboko, finance and economics correspondent with the Nation Media

Group; and Darius Okolla, Bachelor of Commerce - Finance degree, from Kenyatta University) “The implications of Neoliberalism on African economies, health outcomes and wellbeing: a conceptual argument” Soc Theory Health. 18(1): 86–101. 6-26-19, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7223727/>] TDI

Since the late 1980s, the sub-Saharan has been struggling to address the issues of inequality that have been inflated by neoliberal policies and capitalist development policies that focus on production of labour and little on the health and wellbeing of the “producers” of the said labour. Globally, the rolling out of neoliberal policies has led to a plethora of harmful socioeconomic consequences, including increased poverty, unemployment, and deterioration of income distribution (Rotarou and Sakellariou 2017; Collins et al. 2015). Hartmann (2016, p. 2145) states that “neoliberalism typically refers to minimal government intervention, laissez-faire market policies, and individualism over collectivism [which] has been adopted by—and pressed upon—the majority of national governments and global development institution.” She further states that “neoliberal policies have contributed to the privatization and individualization of healthcare, resulting in growing health inequalities.” By privatising healthcare, education, electricity, water and housing, neoliberals argue that private institutions are more capable, effective and efficient in providing social services. Harvey (2007) states that neoliberalism is “a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, ... free trade” and a “hands-off” approach from the government. This is what Friedman referred to as the system of “free market capitalism” (Friedman 2009). However, (Garnham (2017) argues that decreasing public spending and government involvement in the welfare of people through the rhetoric of choice and freedom has a harmful impact on people’s health and wellbeing.

The biggest conceptual challenge is that neoliberal ideology adopts the language of freedom and choice, increased foreign investments, and open markets and trade to progress policies that lead to privatisation of basic needs such as education, healthcare, water, electricity and housing. The rich can often afford these services and can compete “fairly” in the “free market”, but the poor—unable to afford health care, education or decent housing—are left marginalised. Njoya (2017) explored the use of language in promoting inequality in the healthcare system. She argued that “neoliberalism uses the language of social policy and justice but [insidiously] drives a very corporate and unequal agenda.”

Neoliberalism has radically shifted the African public health space in the last two decades. Most sub-Saharan African countries drastically reduced their healthcare budgets following the International Monetary Fund (IMF) and the World Bank Structural Adjustment programs (SAPs) directives. As Hartmann (2016, p. 2146) wrote, it “decentralized health care decision-making and funding, resulting in wide-scale privatization of health care services, delivery, and insurance, which led to structural segmentation and fragmentation.” SAPs have had myriad negative impacts on African economies, including, but not limited to, “inflationary pressures, the marginalization of the poor in the distribution of educational and health benefits and a reduction in employment” (Rono 2002, p. 84). As the main impetus of the SAPs was to reduce and ration expenditure, structural adjustment in the healthcare sector slashed public spending on primary healthcare, and aided the privatisation of health systems and services. In Kenya, for example, The Bamako Initiative of 1987 anchored cost-sharing as a central tenet of public health policy, in which patients were required to pay for nearly all costs of diagnosis and treatment (Rono 2002). Outside of an emergency, patients were required to provide proof of payment

before medical services are availed. By channelling funding to narrow medical interests, structural adjustment policies resulted in an uneven medical landscape, with a few prestigious fields surrounded by poorly resourced departments. Clinicians had to tailor their decisions about treatment to the limited medicine, technologies and resources available.

The increased number of private healthcare organisations, coupled with a significant reduction in the role of government in the provision of healthcare services, contributed to extensive negative outcomes on the quality, effectiveness, cost and access of health systems and services, which severely impacted on people's wellbeing. Rotarou and Sakellariou (2017, p. 497) state that the private institutions, "with their focus on increasing profits, and not on providing affordable and good-quality healthcare, have led to the deterioration of public health systems, increase in urban–rural divide, as well as increase in inequality of access to healthcare services." Privatisation of healthcare has made services more unaffordable and less available to the population of people that need it the most. As a result, life expectancy has stagnated or fallen in most African countries, and mortality from preventable infections and diseases continues to rise. Further to this, the politics of healthcare through a neoliberal lens are often framed as "individual" issues rather than "structural and ideological" issues. This implies that the neoliberal approach to health has diminished the idea of healthcare as a universal human right.

Reframing, reshaping, rethinking and re-politicising healthcare reveals the colonial attitudes that dictate who "deserves" good healthcare. Njoya (2017) states,

[Politicians in Kenya] come to the rescue of the poor by paying hospital bills but will not have a conversation about the fact that we the taxpayers are paying millions [worth of] medical cover for each of them and will not engage in a conversation about the underfunding of healthcare, and the looting of the little money given to healthcare. When [the] Netherlands and the UN are helping foreign companies purchase Kenyan hospitals, [they are] supporting our government's deafness to [our right to basic healthcare] and [promoting their] refusal to fund public hospitals.

The privatisation and buying out of African hospitals by foreign companies in an attempt to "help and rescue them" is a capitalist response that undercuts universal healthcare for Africans by appropriating the language of care and inclusion. In reality, this "white saviour approach" is layered with nothing but racism, disempowerment, exploitation of people, and exclusion of those who cannot afford those "privatised" services. Access to health services, therefore, remains both a political as well as a human rights issue that's closely tied to social justice (Braveman and Gruskin 2003b); but Africa's colonial history, fuelled by Western greed for her resources, promotes discriminatory policies that continue to impact Africans and their wellbeing.

**The alternative is to decentralize global trade. A pluralistic global system allows for flexible industrial development while avoiding the pitfalls of centralized neoliberalism. Alternative indicts are unfounded fearmongering.**

Bello 99 [(Walden, Filipino academic, environmentalist, and social worker who served as a member of the House of Representatives of the Philippines.) "Why Reform of the WTO is the Wrong Agenda" Focus on Trade, No. 43, December 1999, <https://www.tni.org/my/node/6851>] TDI

Building a More Pluralistic System of International Trade Governance

If there is one thing that is clear, it is that developing country governments and international civil society must not allow their energies to be hijacked into reforming these institutions. This will only amount to administering a facelift to fundamentally flawed institutions. Indeed, today's need is not another centralized global institution, reformed or unreformed, but the deconcentration and decentralization of institutional power and the creation of a pluralistic system of institutions and organizations interacting with one another amidst broadly defined and flexible agreements and understandings.

It was under such a more pluralistic global system, where hegemonic power was still far from institutionalized in a set of all encompassing and powerful multilateral organizations that the Latin American countries and many Asian countries were able to achieve a modicum of industrial development in the period from 1950-70. It was under a more pluralistic world system, under a GATT that was limited in its power, flexible, and more sympathetic to the special status of developing countries, that the East and Southeast Asian countries were able to become newly industrializing countries through activist state trade and industrial policies that departed significantly from the free-market biases enshrined in the WTO.

The alternative to a powerful WTO is not a Hobbesian state of nature. It is always the powerful that have stoked this fear. The reality of international economic relations in a world marked by a multiplicity of international and regional institutions that check one another is a far cry from the propaganda image of a 'nasty' and 'brutish' world. Of course, the threat of unilateral action by the powerful is ever present in such a system, but it is one that even the powerful hesitate to take for fear of its consequences on their legitimacy as well as the reaction it would provoke in the form of opposing coalitions.

In other words, what developing countries and international civil society should aim at is not to reform the WTO but, through a combination of passive and active measures, to radically reduce its power and to make it simply another international institution coexisting with and being checked by other international organizations, agreements, and regional groupings. These would include such diverse actors and institutions as UNCTAD, multilateral environmental agreements, the International Labor Organization (ILO), evolving trade blocs such as Mercosur in Latin America, SAARC in South Asia, SADC in Southern Africa, and ASEAN in Southeast Asia. It is in such a more fluid, less structured, more pluralistic world with multiple checks and balances that the nations and communities of the South will be able to carve out the space to develop based on their values, their rhythms, and the strategies of their choice.

### **Try-or-die for the alt—collapse of neoliberalism is inevitable but alternative leftist visions are necessary to counter reactionary right populism**

Galant 19 [(Michael, coordinator of the Wire Pillar of the Progressive International) “The Battle of Seattle: 20 years later, it's time for a revival” Open Democracy, 11-30-19, <https://www.opendemocracy.net/en/oureconomy/battle-seattle-20-years-later-its-time-revival/>] TDI

#### **Globalization and its dissent**

Neoliberal globalization is a political project intended to raise the power of capital to the international level – to cement its supremacy as an immutable universal law beyond the reach of political communities. “Free trade” agreements and WTO rules establish the primacy of profit over democracy, labor, environmental, and consumer protections. World Bank and IMF loan conditions impose austerity,

privatization, and deregulation on nations of the Global South. An international system of tax havens allows corporations and wealthy individuals to hoard their plundered resources. Global supply chain fragmentation shields multinationals from accountability for their abuses. Investment treaties unleash finance and corporations to cross borders in search of opportunities for exploitation, setting off a regulatory race to the bottom. If there was doubt before that capitalism must be confronted at the global level to be defeated, the power grab that is neoliberal globalization puts those doubts to rest. Capital is global. Labor must be too.

Yet there are forces preventing such global solidarity. Beginning during the Cold War, the majority of Northern labor accepted a compromise: support a foreign policy that enacts the interests of capital, and benefit from a share of the spoils in the form of minor concessions, a tempered welfare state, and cheap consumer goods. This tacit agreement survived largely intact into the neoliberal era – dividing the interests of a global working class and quelling demands for systemic global change.

The Alter-Globalization Movement rejected the compromise. While activists in the Global South had long resisted destructive free trade agreements and World Bank austerity, occasionally with solidarity from the North, the extremity of turn-of-the-century neoliberalism led to the explosion of a movement that refused to accept the mere crumbs of neocolonial extraction, and sought instead to build an alternative global economy for the many, both North and South.

This was a movement that brought together American anarchists with Korean peasants; libertarian socialist indigenous groups in Mexico with US anti-sweatshop activists; the International Confederation of Free Trade Unions with the Industrial Workers of the World; the Brazilian Movement for Landless Workers with Greenpeace; Filipino anti-capitalist scholars with French farmer activists best known for physically dismantling a McDonald's. Their demands were many and varied – from land redistribution to the abolition of the World Bank, from a renegotiated NAFTA to the protection of indigenous knowledge of seeds from privatization – but all shared a vision of a global solidarity that would overcome the forces of neoliberal globalization.

Organizing under such a big tent, the AGM is better understood as a dispersed, informal network – a “movement of movements” – than a unified political structure. This fluid network manifested in many forms. The flagship World Social Forum regularly convened activists in an alternative to the annual World Economic Forum. Transnational advocacy networks campaigned on issues such as Global South debt relief. Northern activists used their positions of relative privilege to support local campaigns in the South, fighting water privatization in Bolivia and indigenous displacement from hydroelectric dams in India. And, as in Seattle, meetings of international organizations became rallying points for major global demonstrations.

With these organizing methods, the movement achieved substantial victories. The Jubilee 2000 campaign led to significant debt relief for Southern nations. Potentially disastrous trade agreements from the FTAA to TPP have been, at least temporarily, defeated. International Financial Institutions like the IMF and World Bank – while still agents of global capital – have vastly improved their lending practices since the 90's. But its greatest successes were intangible: the AGM undermined the hegemonic ambitions embodied in Thatcher's “There Is No Alternative”, slowed neoliberal globalization's seemingly inexorable onslaught, and kept alive the flame of resistance during an otherwise nadir of Leftist politics.



The AGM should not, however, be romanticized. Emerging in a moment when the failures of 20th century socialist politics weighed heavily on the Left's imagination, the AGM turned too far in the opposing direction. Big-tentism led to a dilution of demands and paved the way for the NGO-ization of the World Social Fora. A preference for all things decentralized made grabbing headlines easy, but building lasting political structures difficult. Resistance was often treated as an intrinsically valuable ends, rather than a means to taking power. And criticisms of "neoliberalism" typically fell short of identifying the true enemy – capitalism – or advancing a coherent alternative – socialism.

Ultimately, the neoliberal plan for the global economy succeeded more than not. While resistance to neoliberal globalization would rage on in the South, Northern solidarity faded. The September 11th attacks were the beginning of the end. Energy shifted to the anti-war movement, the state expanded its repression of Leftist organizing, and increased pressures toward "patriotism" led some to reconsider the old foreign policy compromise. By the mid-2000's, little was left of what the AGM once was.

A call for revival

It's time to rekindle the flame.

The global economy is still structured in the interest of capital. But the neoliberal consensus has begun to waver under the weight of its own contradictions.

The Right has a response to the crisis. Reactionary nationalists like Trump and Johnson seize upon existing systems of oppression to scapegoat the symptoms of a failed economic model. The problem is not that the global working class has lost out to a global capital class. The problem is that "we" – White, Christian, cishet, native-born Americans – have lost out to "them" – People of Color, immigrants, entire foreign countries, feminists, LGBTQ+ folks, and all those who threaten our supremacy in their struggles for liberation.

The Left must offer an alternative vision. The dramatic growth of socialist organizing and rise in popularity of social democratic politicians should offer great hope. But as the AGM understood, social democracy for the North is not enough. Our socialism must not mean merely a greater share of neocolonial extraction for Northern workers. Our socialism must rightly identify the global nature of our challenge, and unite across borders to confront a globalized capital.

That means internationalizing labor organizing to confront multinational corporations. Changing the rules of trade and investment. Ending tax havens. Building alternatives to the existing intellectual property regime. Holding corporations accountable for abuses in their supply chains. Supporting the struggles of peasants, indigenous peoples, and all global subaltern groups. Democratizing global governance. Opening borders to those displaced by the ravages of global capitalism. Advancing alternative models of development. Transforming, if not abolishing and replacing, the Bretton Woods Institutions. And confronting the all-important threat of climate collapse with, to begin with, a global Green New Deal. These are not minor addendums to a socialist platform. Class war is global. Internationalist demands are fundamental.

Organizations that remain from the AGM, international labor, and newcomers like Justice Is Global, the Fight Inequality Alliance, and Bernie Sanders and Yanis Varoufakis's Progressive International, are already struggling for this vision. But its fruition depends on the backing of a far broader movement.



Like the AGM, we must take a global frame of analysis, and see neoliberal globalization as a concerted effort to undermine our power. Unlike the AGM, we must understand that neoliberalism is merely one manifestation of a greater enemy.

Like the AGM, we must build diverse, anti-racist, anti-sexist, anti-xenophobic movements that transcend borders. Unlike the AGM, we must not allow fears of centralization to undermine a coherent platform.

Like the AGM, we must reject a class compromise that sacrifices the possibility of a better world for the crumbs of colonialism. Unlike the AGM, we must build lasting political structures that back our rejection with political power.

20 years ago, the streets of Seattle echoed with a chant that would become the defining motto of the movement: “another world is possible!” It still is – if we’re willing to fight for it.

### **Neoliberal exploitation causes extinction.**

**Clark 18** (Brett, associate professor of sociology and sustainability studies at the University of Utah; Stefano B. Longo, Assistant Professor specializing in Environmental Sociology at NC State; “Land–Sea Ecological Rifts”, Land–Sea Ecological Rifts, <https://monthlyreview.org/2018/07/01/land-sea-ecological-rifts/>)

Covering approximately 70 percent of the Earth’s surface, the World Ocean is “the largest ecosystem.”<sup>1</sup> Today all areas of the ocean are affected by multiple anthropogenic effects—such as overfishing, pollution, and emission of greenhouse gases, causing warming seas as well as ocean acidification—and over 40 percent of the ocean is strongly affected by human actions. Furthermore, the magnitude of these impacts and the speed of the changes are far greater than previously understood.<sup>2</sup> Biologist Judith S. Weis explains that “the most widespread and serious type of [marine] pollution worldwide is eutrophication due to excess nutrients.”<sup>3</sup> The production and use of fertilizers, sewage/waste from humans and farm animals, combustion of fossil fuels, and storm water have all contributed to dramatic increases in the quantity of nutrients in waterways and oceans. Research in 2008 indicated that there were over 400 “dead zones,” areas of low oxygen, mostly near the mouths of rivers.<sup>4</sup> Nutrient overloading thus presents a major challenge to maintaining healthy aquatic ecosystems.

Nutrients are a basic source of nourishment that all organisms need to survive. Plants require at least eighteen elements to grow normally; of these, nitrogen, phosphorus, and potassium are called macronutrients, because they are needed in larger quantities. While all essential nutrients exist in the biosphere, these three are the ones most commonly known to be deficient in commercial agricultural production systems. Beginning in the early twentieth century with the Haber-Bosch process, atmospheric nitrogen was converted into ammonia to create synthetic nitrogen fertilizer. The fixation of nitrogen, an energy-intensive process, made the nutrient far more widely available for use in agriculture. This in turn dramatically changed production systems, which no longer depended on legumes and manures to biologically supply nitrogen for other crops such as wheat, corn, and most vegetables.

In the modern era, particularly since the Second World War, the increased production and use of fertilizers served to greatly expand food production and availability. Major macronutrients are routinely applied to soils in order to maintain and increase the growth of plant life on farms, as well as private and public landscapes such as golf courses, nurseries, parks, and residences. They are used to produce fruits, vegetables, and fibers for human and non-human consumption, expand areas of recreation, and beautify communities. However, like many aspects of modern production, given the larger social dynamics and determinants that shape socioecological relationships, these technological and economic developments have generated serious negative—often unforeseen—consequences. The wide expansion and increasing rates of nitrogen and phosphorus application have caused severe damage to aquatic systems in particular. Rivers, streams, lakes, bays (estuaries), and ocean systems have been inundated with nutrient runoff, which has had far-reaching effects.

Here we examine the socioecological relationships and processes associated with the transfer of nutrients from terrestrial to marine systems. We employ a metabolic analysis to highlight the interchange of matter and energy within and between socioecological systems. In particular, we show how capitalist agrifood production contributes to distinct environmental problems, creating a metabolic rift in the soil nutrient cycle. We emphasize how the failure to mend nutrient cycles in agrifood systems has led to approaches that produce additional ruptures, such as those associated with nutrient overloading in marine systems. This analysis reveals the ways that the social relations of capitalist agriculture tend to produce interconnected ecological problems, such as those in terrestrial and aquatic systems. Further, we contend that these processes undermine the basic conditions of life on a wide-ranging scale. It is important to recognize that nutrient pollution of groundwater as well as surface waters has been a major concern since the rise of modern capitalist agriculture and the development of the global food regime.<sup>5</sup> The failure to address the metabolic rupture in the soil nutrient cycle and the contradictions of capital are central to contemporary land-sea ecological rifts.