

## MODERN FREE-TRADE AGREEMENTS AND THE RISE OF POPULISM: HOW TO ADDRESS POPULAR DISCONTENT?

*Abstract.* The difference between the post-war development of international legal trade regimes and the context of the latest free-trade initiatives is that the disparate effects of trade liberalisation have also become visible in the most advanced economies in the world, including the United States and the European Union, not only in developing countries. This trend requires a rethinking of trade arrangements that would provide suitable instruments, tools and policies when needed for restructuring. The key challenge in the process of deepening and widening the economic and legal integration is how to disseminate the economic, technological, financial and other benefits to those regions and parts of the population that are currently excluded. In order to overcome this negative trend, comprehensive efforts to disseminate the benefits as widely as possible should be applied at the local, national and international levels.

*Keywords:* free-trade agreements, policy space, institutional innovations, inclusive development, regulatory autonomy, dispute resolution mechanism

### Introduction

This analysis shows that the available variety of institutional models of capitalism does not necessarily stand in opposition to improved systems of cooperative economic governance and the development of international trade. The goal of deeper integration at the regional level (for example, the European Union), at the transatlantic cooperation level (various free trade initiatives in recent years), and at the global level (the incomplete Doha development round) should not be a simplified process of merely removing the remaining trade and non-trade barriers.

Instead, the goal of modern trade agreements should be to secure more balanced, inclusive and sustainable development at the regional level in the

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context of transatlantic cooperation, especially at the global level. It is frequently underestimated in international trade talks that any kind of trade agreement – no matter how carefully crafted – has strong distributional effects. In promoting trade agreements, the positive effects and benefits are generally highlighted, while the negative effects and losses are mostly overlooked. As witnessed in recent decades, trade agreements lack sufficient safeguards to compensate industries, employees and local communities that lose their competitive edge. Equally importantly, they often lack safeguards for social welfare, public health, the environment, and consumer protection.

The basic principles, contained in the European treaties are often forgotten when the EU is considering new trade agreements. Article 3 of Section of the Lisbon Treaty that expressly stipulates the EU should uphold *free and fair* trade therefore needs to be mentioned.

The new rounds of trade talks in the last decade at the global, transatlantic or regional levels started to lose their appeal amongst large segments of workers, farmers, small entrepreneurs, consumers, environmental non-government organisations, and others. The one-sided effects of trade liberalisation in recent decades have often led to economic benefits and technological advancements being concentrated in the hands of a relatively small number of the most competitive regional areas. Many other regions, localities, and large segments of society remain excluded from the benefits of deeper economic and legal integration.

The difference between the post-war development of international legal trade regimes and the context of the latest free-trade initiatives – such as CETA, renegotiated NAFTA agreement and the stalled TTIP and TPP initiatives – is that the disparate effects of trade liberalisation tend to be most visible in the most advanced economies in the world – the United States and the European Union. This trend requires a rethinking of trade arrangements to ensure adequate instruments, tools and policies are available for restructuring. The careful calibration of such instruments, tools and policies – not to distort, but to strengthen international trade – may constitute a “Bretton-Woods compromise” for the 21<sup>st</sup> century.

Such a compromise could provide an international legal framework conducive to long-term sustainable development that is more resilient to various possible international financial crises. The key challenge in the process of deepening and widening economic and legal integration is how to disseminate the economic, technological, financial and other benefits to currently excluded regions and populations. The prevailing notion that any deepening of economic integration may lead to a ‘race to the bottom’ by undermining existing economic and social security should be addressed by policymakers. Comprehensive efforts to disseminate the benefits as widely

as possible should be made at the local, national and international levels. In doing so, local communities should be encouraged to launch development strategies that suit their comparative advantages, potential and needs.

The question for academics, trade experts and policymakers from around the world should not be a one-dimensional dilemma between trade liberalisation and protection. Instead, the debate should focus on how to secure international trade integration while keeping room for domestic institutional innovations and local and regional development strategies.

The post-World War II liberalisation of trade undoubtedly opened up immense opportunities for industries from both developed and developing countries to gain benefits (WTO, 2015). The traditional conflict between protectionism (in the form of an import-substitution strategy mainly in Latin America) and liberalisation (in the form of a free-trade strategy pursued by East Asian countries, while retaining domestic control of strategic companies and industries) became an apparent success for the latter.

Subsequent rounds of trade negotiations led to an increasingly formalised international trade framework, to the expansion of membership in the World Trade Organisation (WTO), and to a further reduction of tariff and non-tariff trade barriers. In recent years, many difficulties of a conceptual and practical nature have begun to emerge. One such difficulty stems from outside the relative success of Brazil, Russia, India, China, and South Africa (the BRICS countries), whereas not many developing countries and regions have been able to escape from their peripheral economic and social positions. This observation applies to many developing and middle-income countries around the world. The pathways from the periphery are always difficult in any given historical and normative context, but the present international trade regime is not sufficiently conducive to overall international economic development. The Ministerial Declaration adopted in 2001 emphasised that the “World Trade Organization has contributed significantly to economic growth, development and employment throughout the past fifty years...” but at the same time has recognised “the need for all our peoples to benefit from the increased opportunities and welfare gains that the multilateral trading system generates” (Doha Ministerial Declaration, 2001).

As we know today, the Doha trade round (a pro-development round) failed to complete its mission after many rounds and high-level meetings. Subsequently, the international economic, political and normative context has changed significantly for both the developing and developed parts of the world. Therefore, even if any kind of new global, development-friendly agreement had been reached in the last decade, many of the original assumptions made in the Doha round have changed so considerably that a new agreement for the first half of the 21<sup>st</sup> century would have likely have been necessary.

The alternative to the incomplete Doha round was a decision to negotiate bilateral and regional trade agreements. The two leading trading blocs, the European Union and the United States, were especially active in this. In addition, the two trading blocs, along with the large Pacific Rim trading bloc (notably with the deliberate exclusion of China) opted for regional free-trade agreements with a comprehensive regulatory framework. The Trans-Pacific Partnership (TPP) was even declared as the gold standard for all other future free-trade agreements around the world. After years of trade negotiations without sufficient public scrutiny (a pattern that had developed in the past), today NGOs, international civil society and other social actors have grown more sensitive to the important details of any contemporary trade agreement. Not only are marginal social groups critical of many of the agreed clauses, principles and standards included in these trade agreements, but so are many mainstream representatives, experts, social actors and policymakers.

Traditional arguments in favour of free-trade agreements are being confronted by more critics and unresolved dilemmas than in the past, for three primary reasons. First, the gains from free-trade agreements often turn out to be smaller than anticipated when they were being adopted, whereas certain unanticipated costs may have a greater impact on the firms, distribution of incomes and the level of employment. Second, gains from free trade often accrue mainly to the privileged segments of an economy. Third, in an economic crisis, the entire economy and society can be exposed to economic hardship. Fourth, the pressure on labour and social standards, health standards and the environment is only mounting with each new round of free-trade agreements.

The main research question in the present article therefore concerns how to develop a new generation of trade agreements and trade arrangements that would embrace the legitimate concerns of the part of the population and economy (so-called losers) excluded from various trade agreements. This research question is based on the assumption that large parts of the literature insufficiently address their concerns. In analysing recent trade initiatives – some of which were successfully concluded, while others have been stalled – the method of analysis will be critical legal analysis based on a comparative legal and institutional perspective.

Trading parties may enjoy many benefits. As pointed by John Van Reenen, an economist at MIT, trade brings four important benefits: the opportunity to specialise, to capture benefits from the larger market, to innovate under competitive pressure, and to enjoy benefits from the international flow of ideas. Yet, even though the pie is becoming bigger, not everyone is getting a bigger share, and some would even have been better off with less trade. Western governments – especially the American government

- underestimated the rise of China and its impact on the world economy. They have not developed policies to address the 'losers' of increased trade, with Van Reenen being convinced that: "If there had been better policies, there would be much less of a political backlash against trade than we are seeing right now". He therefore calls for a re-examination of the benefits and shocks from free trade (Van Reenen, 2018; Cohen, 2019).

Harvard economist Dani Rodrik went one step further by distinguishing between free trade as a concept and modern free-trade agreements. Modern free-trade agreements can produce mutually beneficial trade, but they can also produce welfare-reducing or purely redistributive outcomes (Rodrik, 2018a: 76). In order to avoid the latter unwelcome outcome, modern free-trade agreements require particular consideration and a careful weighing up of the benefits and costs.

### **Free Trade (dis)Equilibrium**

In modern trade theory, comprehensive modelling based on empirical data allows the conclusion there is more than one possible outcome of free-trade agreements. William Baumol and Ralph Gomory concluded that multiple outcomes of free-trade agreements with multiple equilibria (good, bad and mediocre) are possible. They emphasised that free "trade is not always and automatically benign" (Gomory and Baumol, 2000: 72). To reach a good equilibrium (a situation of mutual gains for the trading partners), many elements must be carefully calibrated. Among them is the need for governments to play an active role in supporting the moves toward a good equilibrium. The gains of trade are not only a matter of individual firms and industries because they affect entire national incomes in various ways (Gomory and Baumol, 2000: 20-22). Moreover, trading partners should take the interests of other partners into account, not merely their own.

The reason that in modern trade theory and practice more than one single outcome is possible, namely multiple outcomes with multiple possible equilibria, is that unlike in traditional trade arrangements run by market forces and the invisible hand the modern comparative advantages are based on knowledge-based economies and societies. These advantages are not inherited but invented and constructed, often through a partnership between public and private sectors (Unger, 2007: 36). In the words of Baumol and Gomory, high start-up costs and learning may lead to the establishment of a so-called retainable industry: "A retainable industry, because of its high real start-up costs, offers the current established producers a substantial degree of protection from competitive entry, making it easier for them to retain their position... Market forces in retainable industries tend to perpetuate the status-quo" (Gomory and Baumol, 2000: 17). The authors use

the concept of retainable industry in contrast with the traditional argument of infant industry for protecting certain industrial sectors.

The shift from classical to modern trade arrangements indicates the end of traditional-free trade agreements. The former free-trade agreements should be revised to establish whether they produce outcomes of mutual interest or lead to a zone of conflicts. Baumol and Gomory state that in modern trade arrangements “there can be inherent conflicts as well as mutual gain for nations engaged in global trade” (Gomory and Baumol, 2000: 73). In searching for a better equilibrium, one should move beyond the “mistaken impression that maximizing world output automatically maximizes national prosperity” (Gomory and Baumol, 2000: 40).

Perhaps in the past, the underlying assumptions on which the free-trade agreements were founded were not critically assessed because they did not significantly affect the advanced sectors of industry in the leading industrial countries. The emergence of knowledge-based societies, the increasingly important role of the large developing countries from BRICS (especially China) and the growing anxiety of the relatively privileged sectors of economy and society in the leading industrial countries give the opportunity to carefully reassess the achievements and failures of the traditional free-trade agreements. The next step should be to start carefully calibrating the future trade agreements with less of a focus on maximising world output and a greater focus on securing sustainable, balanced and inclusive development at the local, regional and national levels of both the developed and developing parts of the world. Such an approach might be called a search for the Bretton Woods compromise for the 21<sup>st</sup> century.

In the following sections, the missing elements of the failed Doha round that would have made it truly development friendly are discussed. In the next section, certain key implications of the rise of the BRICS countries, especially China, are presented. The growing anxieties in the leading industrial countries are then addressed. Finally, the opportunity to develop a compromise based on mutual interests and positive outcomes for partners from the developing and developed parts of the globe are put forward.

### **Conceptual deficiencies and the missing elements of modern free-trade agreements: example of NAFTA**

The assumption that free-trade agreements are always and automatically beneficial for all participating trading partners is theoretically and empirically flawed. Trade is about specialisation in relative comparative advantages with the aim to contribute overall gains. It has distributional effects throughout society; it creates winners and losers. In order to remain in the zone of mutual gains and prevent any slide into the zone of conflict, many

safeguards must be established for all participating partners. These safeguards must be narrowly tailored according to the socio-economic, institutional conditions and productive potential of each trading partner. In addition to mutual understanding and an interest in the overall well-being of all participating partners, the capacity to compensate the segments of workers and social groups who are excluded (the 'losers') must be retained by each trading partner. The goal of free-trade agreements is not to maximise trade, but to support the comprehensive, inclusive and sustainable development of all participating trading partners.

In so doing, each trading partner must address its own internal imbalances and look for new productive niches, while avoiding beggar-thy-neighbour policies. This model of mutual benefits and understanding was achieved during the GATT regime, with greater policy space and manoeuvring room for the trading partners than allowed by the modern WTO rules or modern free-trade agreements.<sup>1</sup>

When analysing the missing elements of modern free-trade agreements, one should mention the NAFTA agreement which represents the birth of modern free-trade agreements. During the campaign to adopt the NAFTA agreement, many expectations of the benefits and new opportunities for shared growth and mutual progress were expressed. Two decades later, we can see that the bilateral economic, investment, social and political relations have for both trading partners developed in substantially different directions than originally anticipated.

The North American Free Trade Agreement (NAFTA) was declared an important boost for the US economy and a major boost for the Mexican economy. However, after more than 20 years in place, NAFTA may be described as in a relatively mediocre equilibrium.<sup>2</sup> Mexico's exports to the USA increased substantially, as did its foreign direct investment, but the Mexican economy did not experience any overall economic transformation.<sup>3</sup> The Mexican economy grew slowly compared with other fast-growing

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<sup>1</sup> *The literature dealing with structural changes following creation of the WTO is comprehensive. A critical assessment of the "anti-development bias" of many WTO agreements was undertaken by Ajit Singh (2005: 252), the WTO's shift toward the shrinking "development space" was analysed by Robert Wade (2005), while the lack of flexibility for countries to intervene in periods of economic and social crisis that was possible under the GATT regime was examined by Roberto Unger (2007).*

*On the other hand, there is comprehensive literature claiming that the "policy space" can also be effectively used by developing countries within the WTO context (for example, Mayer, 2009).*

<sup>2</sup> *Analysis of NAFTA agreement after 20 years by the Peterson Institute emphasises that trade, investment and economic interdependence between the three countries have grown dramatically and that, despite small US job losses, created a new foundation for US-Mexican relations (Hufbauer, Cimono-Isaacs, Moran, 2014).*

<sup>3</sup> *On the reasons Mexico has failed to achieve sustained output and productivity growth, see de Souza and Gomez-Ramirez (2018).*

developing countries. There was a net loss of employment for Mexico, and it brought limited job creation in manufacturing but substantial job losses in agriculture due to imports of cheap corn and other agricultural products. Despite the inclusion of the ILO's core labour standards in the NAFTA agreement and the stated goal of promoting the upward convergence of labour standards in North America, the wage gap of nearly six times between the USA and Mexico has even widened. Almost half of Mexico's is unable to find formal employment (Pardee, 2009).

One critical development since NAFTA's establishment came in job manufacturing. Since 2000, North America has lost about one-quarter of its jobs in manufacturing, revealing lost competitiveness across the entire free-trade economy. North American now needs a new regional strategy to compete effectively with other manufacturing exporters, particularly China. Most significantly, the impact of NAFTA was that in place of convergence, it accentuated the economic and regulatory asymmetries that had existed among the three countries (Pardee, 2009). The lessons and experience with NAFTA require a deep rethinking of the free-trade agreement.<sup>4</sup>

### Deficiencies and conceptual flaws of the modern generation of free-trade agreements: example of CETA

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After the stalled Doha trade talks – an attempt to launch a genuinely development-friendly round of world trade talks – the major trading blocs, most notably the EU and USA, headed into a new round of bilateral trade agreements with other parts of the globe. Both leading trading partners approached the new rounds of trade talks without analysing deficiencies of the previous trade agreements or questioning the theoretical and conceptual assumptions. The main point of departure continued to be that reaching free-trade agreements is always positive and beneficial, whereas not being able to reach free-trade agreements is a sign of lost opportunity and lost (anticipated) benefits. This assumption remains irrefutable, notwithstanding the actual context or socio-economic conditions of trading partners and without paying any attention to the representativeness of trade talks (such as the representation of workers and trade unions, independent

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<sup>4</sup> A critical assessment by Kevin Gallagher, an expert on global development policy from Boston University: "There is now a consensus that NAFTA was oversold. The US has a glaring trade deficit with Mexico, NAFTA put downward pressure on wages and regulation for social welfare, accentuated job losses in the most vulnerable communities, and put the governance of global trade in the hands of the most powerful corporate interests in the United States. These impacts are in part due to the fact that the rules of NAFTA were largely written by corporate-led interest groups in the first place... If the rules are written once again by and for corporate elite, most of us will not gain from the benefits of expanded trade. Rather, we will again only bear the costs" (2017).

environmental and health experts, consumer organisations, and others). The secrecy of trade talks – presumably in favour of protecting national interests and national strategies – with the simultaneous involvement of lobbies, well-organised interest groups and multinationals reached new heights. The only occasional leaks to the public revealed deeply problematic legal clauses, often at the expense of public goods and the public interest on all sides.<sup>5</sup>

What is really new and different from past trade agreements is that the current international trade framework is already so liberalised regarding low tariff levels that the new generation of trade agreements focuses on regulatory cooperation and harmonisation. The goal of this latest generation of free-trade agreements is to make multinational companies' operations easier wherever they conduct their business activities. However, the common regulatory standards the newly created supranational technocratic bodies have adopted are reducing the scope of regulatory autonomy and democratic control in each trading partner. Further, in the absence of checks-and-balance mechanisms, regulatory harmonisation at the supranational level might become an arm's-length service in the interest of well-organised multinationals. This regulatory tilt toward multinationals' interests often runs against the interests of other stakeholders, such as workers, consumers, local producers, civil society, and public goods. It narrows the scope and ability of the governments to regulate and provide public goods. The liberalisation of trade and the irreversible process of privatisation on one hand, and the supposedly neutral regulatory harmonisation at the supranational level, on the other, are simultaneous processes. As a consequence, unequal and unbalanced free-trade agreements lead to corporate welfare and an irreversible process of the loss of public goods, erosion of high-quality public services, and destruction of the economic and social security of a large part of population. The unbalanced outcomes of modern free-trade agreements are fueling greater discontent in larger segments of the population than more publicly known clauses like the ISDS provision (Edwards, 2016) (in the CETA agreement refurbished as an ICS provision, different wording with similar content), (Koeth, 2017) regulatory cooperation with the risk of reducing the achieved standards, the negative list of public services, according to which

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<sup>5</sup> EU Trade Commissioner Cecilia Malmström described the CETA agreement as “unprecedented and unrivalled transparency” in EU trade (EU Observer, 2017). On the other hand, Alfred de Zayas, the UN Independent Expert on the promotion of a democratic and equitable international order, warned before the Parliamentary Assembly of the Council of Europe that “CETA is incompatible with the rule of law, democracy and human rights... The corporate-driven agenda gravely endangers labour, health and other social legislation, and there is no justification to fast-track it” (OHCHR, 2016).

On how to improve the balance between negotiating efficiency, legitimacy, transparency while taking the positions of all stakeholders into account, see Delimatsis (2017).

all the services can be liberalised, except those expressly excluded. Foreign investors are granted many new rights and protections, but these new rights are not adequately balanced with their responsibilities toward the domestic legal system and democratic regulatory decision-making procedures (Van Harten in Corporate Europe Observatory, 2016: 7). Consequently, the EU's precautionary principle for "the protection of health, environment and consumers will be rendered more difficult by the CETA and (potentially) TTIP drafts" (Stoll in Corporate Europe Observatory, 2016: 5). We already saw in the example of NAFTA that trade liberalisation does not automatically provide benefits for all participants. In the case of CETA, two international trade experts, Pierre Kohler and Servaas Storm, prepared an econometric study on the CETA agreement's socio-economic consequences (Kohler and Storm, 2016). Unlike studies based on the computable general equilibrium (CGE) model with unrealistic assumptions, such as permanent full employment in Canada and the EU, or that trade liberalisation leads to an instantaneous and costless adjustment of trading partners (Kohler and Storm, 2016: 258), these two trade experts applied the United Nations Global Policy Model that allows for changes in employment and income distribution. The findings of their alternative approach produce a substantially different outcome from the benefits of the free-trade agreement that are officially declared.<sup>6</sup>

Certain findings of their study show many negative externalities of the CETA agreement, such as a reduced share of labour income and the rise in the share of national income accruing to capital leading to wage compression. CETA will also create net losses in government revenue, shrink the policy space for supporting domestic investment, while production and investment will lower government revenue and expenditure. CETA will in addition lead to job losses. In sum, CETA will produce not just economic losses but also higher unemployment and inequality, with negative implications for social cohesion in an already complex and volatile political context (Kohler and Storm, 2016: 284 285).

In this section, we observed procedural and substantial deficiencies in the new generation of modern free-trade agreements. The secrecy of talks with only the retrospective involvement of parliament and under-representation at the negotiating table are procedural issues that should be addressed. In terms of substance, the underlying premises of free trade as something that is automatically and universally beneficial to all participants, should also be reconsidered. The role of governments, regulatory authorities, and the local should be re-examined as well. While international

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<sup>6</sup> *It will certainly take several years – when the formal ratification process in the EU is completed – to provide a proper assessment of the CETA agreement, but its preliminary assessment by the European Commission after 1 year of provisional implementation is positive (European Commission, 2018).*

investors enjoy ever wider rights and protections, this process is not in balance with the expansion of their responsibilities. As a result, public goods and the values enshrined in the EU treaties are under growing pressure. The challenge lying ahead is to rethink the current direction of free-trade agreements and today's current global trade regime so that it may become more conducive to decentralisation, more inclusive, and provide for more sustainable development than we are witnessing at present.

### **Trade rules, multilateral trade institutions and bilateral trade agreements – greater manoeuvring room to secure the sustainable development of all trading partners**

Every trade regime, every trade agreement, has distributional effects. Any of the participating parties representing industries, firms, employees and consumers may benefit from trade agreements, while other industries, firms, employees and consumers may end up under greater stress. The latest generation of free-trade agreements has not developed mechanisms for those sectors of the economy and society that lose out from trade liberalisation. The first and most obvious step to alleviate the negative impact of trade agreements is to tax the surpluses from such trade agreements and compensate for the losses (Rodrik 2018a; Rodrik, 2018b: Chapter 10).

The mechanism for redistributing the created new wealth cannot resolve all the problems brought by this new generation of free-trade agreements. The most problematic points of the new generation of free-trade agreements are the following: the expansion of corporate rights and safeguards without adequate expansion of their legal responsibilities; the loss of the trading partners' regulatory autonomy; the irreversible processes of liberalisation and privatisation of traditional public services; the lack of sufficient tax obligations of multinational companies and others. The most controversial ISDS clause (in the CETA agreement the ICS clause) is only the tip of the iceberg of the problematic direction of this generation of free-trade agreements.

A popular backlash against such free-trade agreements is building. Yet it is not the number one social and economic challenge currently facing excluded parts of the populations in the developed and developing parts of the world. Other policies, such as the continuation of austerity, insistence on further privatisation, structural adjustment, low investment levels in infrastructure and low levels of social investments, all point in the same direction. They are widening the gap between the segment of the relatively privileged part of society and the majority of people without sufficient economic and social opportunities. This pattern of economic and social dualism can be observed not only in developing countries, but also in middle-income countries and the most developed countries of the world.

Globalisation processes in their present context are moving in the opposite direction away from inclusive and balanced development. They are not going in the direction of shared global prosperity toward sustainable and equitable development.

However, it is still not too late to reverse these trends. In the area of multilateral and bilateral trade agreements, developing countries should be granted special and differential treatment in its expanded, operational version, as envisaged by the Doha Ministerial Declaration. In their efforts to integrate with the world economy, the developing countries should retain the right to articulate and implement their own development strategies and exploit their own productive potential. Successful examples of some developing countries in escaping the poverty trap and dependency on international aid may serve as a source of encouragement for other developing countries and for the international community as a whole.

Middle-income countries, such as Mexico, should be stimulated and allowed to develop strategic partnerships between the public and private sectors, while integrating with the world economy. The goal of such strategic partnerships is to expand good practices, advanced technologies and know-how from the advanced, integrated sectors of the economy and to disseminate them among the excluded, informal sectors. The rise in productivity of all factors should be linked to an improvement in labour standards, and enhanced investments in the education and the training of workers, young entrepreneurs, and farmers.

When the USA signed the NAFTA agreement, many large American companies benefited. Yet the benefits and social costs of the trade agreement were shared unevenly. Cullen Hendrix notes that free trade was not accompanied by a rise in social protection and that the USA lags behind in government spending. Such exposure to trade with minimal social protection for American workers has inspired protectionist sentiments in the USA. Without launching new government spending and compensatory programmes to address the technological and trade shocks, the rise of protectionism, even populism and perhaps future trade wars may become real possibilities (Hendrix, 2016).

Compensating the excluded parts of society, employees and small businesses would be a step forward towards correcting the trade agreements' negative impacts. Rearranging trade agreements and the work of international tribunals to include labour-protection safeguards, social-welfare provisions, and environmental protection at the same level of enforceability as the safeguards enjoyed by corporations would be a move towards common prosperity (Shaffer, 2018). Taxing multinational corporations in the countries where they generate revenues would help level the playing field for multinational companies and host governments. Clear rules on the taxation

of multinational companies, while preventing tax avoidance and implementing sophisticated accounting practices under the proper control of tax authorities, would also significantly improve the free-trade agreements' deficiencies. The protection of public goods and hence the preservation of governments' necessary regulatory autonomy is another step in ensuring a better balance in the new generation of trade agreements. The levels of the liberalisation of public services, of privatisation, and the extent of public and mixed ownership are to be chiefly determined by the trading partners themselves, not by trade agreements. Last but not least, domestic modern industrial, research and education policies aimed at inclusive and sustainable development should be envisaged and encouraged by the international trade arrangements.

## **Conclusion**

It is neither possible nor desirable to return to the post-World War II regime. New global challenges such as environmental issues and growing social disparities in the globe's developed and developing parts are some reasons explaining why it is impossible to simply review the post-war trade, financial and monetary international arrangements. While one cannot return to the past, it is possible to apply and adjust some of the premises and principles that have proven to be successful in times gone by. For example, more manoeuvring room for the GATT regime was allowed in the early post-war period.

Today, many factors are contributing to the persistent global economic and social imbalances beyond the current international trade regime deficiencies. These include the international monetary and financial arrangements, rapid technological progress (digitalisation, robotisation, artificial intelligence), geostrategic developments and others. The focus of this contribution, however, is a critical analysis of the inherent flaws, contradictions and inequities of the existing international trade regime that contribute to the growing divide between the privileged and excluded parts of the population in developing and developed parts of the world. The issue remains to determine what are institutional possibilities at the international and national levels to address the legitimate needs of those who are being left behind due to the disparate and uneven impact of such trade agreements.

To achieve the "possibility of coexistence among different development strategies, institutional systems, and forms of social life... the room for national and regional diversity, deviation [and] heresy" (Unger, 2007: 180) must be created. For Roberto Unger, reconciling the global openness and coexistence of the various institutional models is a more important goal than merely maximising free trade (Unger, 2007: 180). The idea of "one

institutional size fits all” underlies the current international trade, economic and financial framework. The underlying assumptions of the Bretton-Woods compromise are tailor-made solutions, institutional innovations and decentralised development based on public-private cooperation.

Varieties of institutional models are available, suiting the potential and comparative advantages of different regions and countries around the world. They can offer more balanced, inclusive and sustainable development in the future. This may address the problem of the persistent structural imbalances in the world economy (Svetličič, 2018). Global markets do not presuppose identical institutional and policy arrangements in all the diverse member states and their regions around the world. The different institutional arrangements stem from different traditions and decision-making processes. Developing countries under various institutional arrangements should not be further stalled by world trade regimes. The international regulatory framework is not necessarily incompatible with the varying institutional structures of the member states.

Comparative institutional analysis shows that, despite the widespread assumption that the processes of globalisation would inevitably lead to the institutional convergence of different national socio-economic models, in practice one observes the continuation of a variety of market economies. The study of comparative institutional development, at least as regards Europeanisation, concluded the member states have used different strategies to retain, adjust or when it suited their comparative advantages, and changed their institutional and domestic regulatory regimes when seeking compromises in the context of multilateral cooperation (Bartl, 2018). In so doing, institutional convergence was not a prerequisite for the successful development of any kind of international integration (Fioretos, 2001). It is equally plausible to assume that institutional diversity and coexistence within any kind of multilateral organisation should not be hindered, but supported when establishing the common framework.

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