

CONTINUITY AND CHANGE IN THE WORLD

Today, the going wisdom is that the WTO is no longer fit for purpose, and even its supporters have suggested that major institutional reform is essential for its survival.

In this Article, we aim to contribute, as legal scholars, to the debate about the WTO's

the Great Depression.¹⁷ It was the result of failed negotiations for a fulsome international organization governing trade: the proposed International Trade Organization. The GATT ~~was~~ ~~inspired~~ ~~by~~ ~~in~~ ~~was~~ ~~hroughe~~

negotiations.²⁹ These new legal disciplines have long been thought to have enshrined a neo-liberal theory of global economic governance, which seeks to reduce state regulation and free

impede the mobility of goods and services.⁴⁵ Likewise, Jeffrey Schott referred to the results of the Uruguay Round negotiations on services as “disappointing,” and expressed frustration at the limited progress in moving beyond the all-too-modest commitments that had been made in the Round, as well as the need to expand as soon as possible the trade agenda to include liberalization of Foreign Direct Investment, global rules on anti-trust, and norms to discipline the purportedly protectionist use of trade measures linked to environment and labor.⁴⁶ In this way, the neoliberal understanding of the WTO’

globalization, whether small farmers in8(i)tnoopi-1.g(n8(i)tnema)7(ountma)5(ri)3.eers orrs industr

formal legalism is now its Achilles' heel.⁷⁹ The United States has relied on this critique when blocking the appointment of new members of the AB since May 2017, which ground the AB's

international level. If there is foundational disagreement among states about how to organize

obligations.⁹⁶

of multilateral trade to give rise to the hope that the Organization, when it is set up, will prove

accommodate the demands of value pluralism within

states.¹¹⁵

obtain market access that is non-reciprocal.¹²⁶ The adequacy of these flexibilities for developing countries has been strongly contested, and for good reason.¹²⁷ But this only reinforces the principle itself rather than undermining it. Likewise, the more recent controversy as to whether as competitive an economy as China's should benefit from Special and Differential Treatment has not shaken the principle, but intensified already existing controversies about the effective and appropriate means of fulfilling it.

in a pluralist spirit. Pluralism is a double-edged sword. Precisely because a formally pluralistic legal architecture for cooperation is indeterminate or agnostic as to the ideological or policy projects that it can accommodate, such a framework runs the risk of being coopted or conscripted for a particular project, where its proponents have political, epistemic, or economic power.¹³²

An obvious example is the justificatory force of the general exceptions in Article XX of the

Order. In response, the GATT community developed the Generalized System of Preferences,

The Green Room process became synonymous with the way in which powerful Western countries could present legislative outcomes as a *fait accompli* to smaller countries and members of the Global South.¹³⁹ For this reason, the GATT/WTO'

Coalition of Service Industries, [155](#)

violated various aspects of the TBT Agreement, including Article 2.4. When applying this provision, the AB significantly qualified the requirement that states harmonize technical reg-

objective of climate mitigation.

pluralism. To put it mildly, it is not likely that the WTO's member states will reach agreement on this issue. And from the normative perspective we identify here, nor should they.

Already the use of WTO committees, such as the TBT Committee, refl

MC12 resulted in last-minute agreement among WTO member states on a range of issues, both neoliberal and progressive critics argued that the WTO has not made sufficient substantive progress on rulemaking. And the MC12 did little to respond to trenchant American cri-

