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Trade Organization: Lessons for Our Time”**

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The Short but Significant Life of the International Trade Organization: Lessons for Our Time¹

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Abstract

Along with the World Bank and the IMF, the International Trade Organization (ITO) formed the centrepiece of new kind of international organization in the late 40s. At the time, what was particularly novel about the Havana Charter was that it was not simply or mainly a trade organization like the WTO, its latter day descendent. At its core, the countries of the world, rejected the idea that it was possible to maintain a firewall between trade, development, employment standards and domestic policy. Its most distinctive feature was the integration of an ambitious and successful program to reduce traditional trade barriers, with a wide-angled agreement that addressed investment, employment standards, development, business monopolies and the like. It pioneered the idea that trade disputes had to be settled by consultation and mediation rather than with legal clout. Further it established an institutional linkage between trade and labour standards that would effect a major advance in global governance. Finally it embedded the full employment obligation, along with "a commitment to free markets" as the cornerstone of multilateralism.

Despite these accomplishments, the US Congress refused to ratify the Havana Charter even though it had signed it. As a direct consequence, the ITO's collapse represented a significant closure of the full employment era internationally. In the end, it's demise made possible the rapid return of the free trade canon that increasingly, would impose its authority and ideology on all international organizations and on the practice of multilateralism. As this essay concludes, its history compelling because whatever its apparent shortcomings, governments, economists and ordinary people demanded that trade, employment goals and developmental needs should reinforce each other in the world trading system.

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Introduction

When the international order was being designed from scratch in the late forties, policy makers had to decide whether a global trade organization could be about more than trade, whether it could include issues like labour standards, development needs and human rights. Indeed, they had to find the optimum structure for such a body in which liberalism, in the words of the *Economist*, would be ‘freed of theology’ and could effect a compromise between market forces and the democratic aspirations of people.¹

Governments of the day believed it was possible to reconcile the irreconcilable and the Havana Charter was the product of their statecraft.² Since the financial and monetary machinery agreed to at the Bretton Woods Conference could not be expected to do all the work, a third international organization was needed along side the IMF and the IBRD. These were narrow-band organizations with broad regulatory powers to provide short- and long- term finance to stabilize the international order. By contrast the ITO was to have special responsibility for the regulation of trade, including areas such as tariff reduction, business cartels, commodity agreements, economic development and foreign direct investment. Its fiftieth anniversary has come and gone with no major attempt to reevaluate its contribution to global governance. This paper is about those events and the transformation in economic thought, international organization and state policy embodied in the ITO’s creation and its subsequent decline. They command our interest for three compelling reasons:

First with peace looming, countries had to find new ways to maintain exports, compete internationally, preserve their exchange rates and fulfill their employment obligations. Most of all, they needed new practices and higher standards that would pave the way for future agreements. The countries of the world also wanted ironclad assurances that tariff reductions and other commitments to reform of the world’s trading system would last and not be undermined by other more formidable barriers. Finally, they had to agree to allow their international agreements to influence domestic decision-making to a previously unprecedented degree. The question that arose then, was how would the ITO effect a compromise between a narrow, rigid legal interpretation of trade rules and the need to remove all non-tariff barriers to trade? At a time when the WTO is looking for new directions and considering significant kinds of reform, we can

identify in the ITO a number of objectives and provisions, which should also be included in the WTO.

Secondly, the policy elites at Havana had to strike a balance between expanding trade, enlarging investment rights and increasing social protection, concerns that have also shot to the top of the agenda in a post-Seattle world. Stamped by the powerful idea that people mattered even more than export opportunity, the ITO negotiators sought to embody the radical ideal that liberal trade principles should serve the full employment agenda which every industrial country had begun to adopt in the closing years of the war, after the British adopted the White Paper on Employment in 1944. (See Figure, *The Rise of the Full Employment Obligation: An Overview of its Institutionalization*)

With all industrial countries placing ‘a high and stable level of employment’ at the top of their policy agendas, the nations of the time needed practical solutions to the issues, many of which are still with us. They had to strike a balance between investment rights vs. labour standards; developmental needs vs. unrestricted market access; protection of the environment vs. best price practice; social protection vs. hard-knuckle economic protectionism. If trade liberalization was to be achieved, a new set of principles, not anchored in a classical economic theory that elevated comparative advantage as the driver of the world economy, was required. The world community seized the opportunity to address the intrusiveness of markets globally. The final design, including the many compromises that lead to the founding of the ITO, with its mix of liberal and non-liberal principles, continues to have much to instruct us.

Finally, the global economy of the twenty-first century is strikingly different from the heady-days of the ITO and it would be foolish to believe that the ITO can serve as a template for reforming the WTO. But the story of the ITO does offer an unparalleled case study of a short period in history when free trade, labour standards and human development were friends and not historical antagonists. Global employment became a public good and the way it was embedded, albeit briefly, continues to have echoes down to the present.³ London: Allen Lane. Ltd. Finally, it cannot be stressed enough the importance of reading the Havana Charter. The Charter is reproduced in Wilcox (1949); see ft.2 supra. A highly important collection of documents on international investment has been recently compiled by UNCTAD, United Nations is *International Investment*

Instruments: A Compendium, 3 volumes New York, 1996, UN sales no. E.96.II.A.9

If globalization is to produce benefits for the greatest number, rather than continue to be feared by many, we need to be much clearer about the realities, potentialities and limitations of global governance.

The first part of the paper explains why the ITO represented a singular moment when ideas, institutions and actors shared a common interest and, as Hirshman explains, “created a common ground where none existed”, previously. The international effort to create the ITO underlines the efficacy of policy ideas, both in changing statecraft and in “their practical value in solving political dilemmas that gives them a force in history.”(Ikenberry, 1992:320) The steps taken to create the ITO represented a unique occasion when the needs of international civil society and modern statecraft coincided. The attempt to fashion the ITO as the ‘regulator of regulators’ sheds light on this process.

The second part of the paper, focuses on the way leading trade theorists of the day recast trade principles. Like in our own time, economists and other policy experts specializing in international trade were at centre stage in designing the new world order. In Dean Acheson’s memorable phrase, they were not only ‘present at creation’ but were innovative ‘creators’ whose policy ideas gave shape to the institutional and legal framework of this international organization. The rebuilding of the world’s trading system took place in the context of the Keynesian revolution that transformed economic thinking and state practice. Ideas that transform a discipline or an era or the collective psychology of a period are a relatively rare occurrence. Those that succeed only do so because at the time the existing orthodoxy is discredited, a powerful, alternative conceptual framework can be offered. The new theoretical foundation must be compelling and, critically, institutional arrangements must arise to reflect these expectations. It was this condition that turned out to be key.

What also makes this complex history so important in terms of the transformation of ideas is that the free trade canon of modern economics did not yet exist as a doctrinaire set of first principles, even though leading international trade theorists such as Ohlin-Hersherker and Samuelson had written brilliant analyses of comparative advantage and international trade by the late forties.

(Irwin, 1996) These publications though, were understood as freestanding contributions to a rapidly expanding field of research on trade, employment and development. The discipline and field of international economics was ‘open’ with many conflicting theories and ideas vying for prominence. Kaldor, Meade, Hendersen, Hansen, Myrdal, Schumacher and Viner had all made important contributions and many more would follow.⁴ The point is that the great code of free trade theory would have to be invented not in the 1940s, but a decade later by the likes of Harry Johnson and others. (Johnson, 1969)

The third part of the paper examines the adequacy of the design of the Havana Charter and ITO. Despite its eventual demise, world leaders had learned one searing lesson from the experience of the 1930s and the failure of the League of Nations. Solving economic problems required practical answers to complex trade, technical and international questions. In an international economic organization designed to uphold the new world order, the ITO, or any similar body, would have to be more than a set of principles; it could not survive on generalities alone. It had to be an effective organization, one that not only addressed many complex issues, but also, one that enabled countries to maintain their exports, compete internationally for markets, safeguard their exchange rates and fulfill their employment obligations. All of these factors created the demand for new international rules to organize the world’s trading system as a practical exercise in statecraft. In Meade’s precise words, the ITO had to find the optimum way to internationally ‘maximize production and optimize trade’.

Finally, the paper looks at the short and long run consequences of the ITO’s failure. Even with its initial American sponsorship, in the end, it did not survive American trade politics, Destler’s evocative term-of-art, to describe the powerful coalitions that dominated US commercial and foreign policy. (Odell and Eichengreen, 1998) By 1949, US elites had reached the consensus that American interests and investment rights were not well protected in the ITO Charter. What had begun as an ‘American project’ did not remain one once the developing countries became involved in designing the ITO. They changed the US agenda. Whatever Washington’s intentions were originally, the final product was very different from the script that State Department officials had carefully prepared. In response, the Republican-dominated Congress opposed its ratification. So even though the US had gone to Havana and signed the Draft Treaty, by 1950, what had seemed a certainty only months earlier, ended in failure.⁵ Aware of this impending failure, Truman

renege on his Administration's international undertakings and withdrew the statute and US support for the ITO.⁶

That the ITO almost happened is important and this has to be examined carefully. Among its many accomplishments is the landmark General Agreement on Trade and Tariffs (GATT) rules that were negotiated as part of the ITO framework. The ITO also brokered the idea that political will was more important than rigid legal codes and it established the principle that in the future, any viable trade regime with hopes of survival would have to include escape clauses and loopholes. Further, it created an open world trading order with scarcely a mention of free trade in the Charter or in the GATT. It also recognized the importance of labour standards and the developmental needs of the Southern nations in its Charter. Among its other successes, the ITO pioneered the idea that trade disputes had to be settled by consultation and mediation rather than with legal clout. Finally, it established an institutional linkage between trade and labour standards that would effect a major advance in global governance. (Charnovitz, 1995)

Not everything included in the ITO Charter was innovative, indeed much that was contained in it reflected the conventional wisdom of the period. But it did have a new vision of political economy which suggested that a trade and investment regime had to be more than an abstract set of rigid legal principles with which to defend investors' rights at any price. Along with the World Bank and the IMF, it formed the centrepiece of new kind of international organization, which in the words of Richard Gardner, 'sought to make finance the servant, not the master of human desires' internationally. (quoted in Helleiner, 1993:20; Diebold, 1952) Anything less, even for a brief period of time, would not have ensured the work-ability of the new order.

At the time, what was particularly novel about the Havana Charter was that many thought of it as an incipient world constitution of trade, employment and development. It is significant that the Charter was not simply or mainly a trade organization like the WTO, its latter day descendent. At its core, the countries of the world rejected the idea that it was possible to maintain a firewall between trade, development, employment standards and domestic policy. Its most distinctive feature was the integration of an ambitious and successful program to reduce traditional trade barriers, with a wide-angled agreement that addressed investment, employment standards, development, business monopolies and the like.

Had it succeeded it would have obtained *international security of employment* as a critical benchmark for recasting the principles of trade. Likely, it would have embedded the full employment obligation, along with “a commitment to free markets” as the cornerstone of multilateralism.(Ruggie, 1983). As a direct consequence, the ITO’s collapse represented a significant closure of the full employment era internationally. In the end, its demise made possible the rapid return of the free trade canon that increasingly, would impose its authority and ideology on all international organizations and on the practice of multilateralism.

The account that follows attempts presumptuously to revisit this complex history and thus invites the reader to challenge many of its assumptions, inconsistencies and findings. Certainly there were many more forces at work than can be addressed here. Like any set of commercial negotiations, the investment imperative was never far from the centre of the ITO agenda and had remained ominously present throughout the lengthy negotiations. However, this history is so compelling that whatever its apparent shortcomings, this essay may help shed light on the way governments, economists and ordinary people demanded that while building a new and stronger international economy, employment goals and developmental needs should reinforce each other.

The Full Employment Obligation Internationally: Context, Setting, and Definition

Early in the War, the allied powers had already begun to plan for peace. They shared a strong conviction that never again would inter-war beggar-thy-neighbour monetary and trade policies be allowed to bring the international economy crashing to its knees. This concern was so important that in 1941, off the coast of Newfoundland, Churchill and Roosevelt met secretly. There they jointly agreed that the principle of multilateralism would be the cornerstone of an emergent international economic system. Along with this, they pledged an equal commitment to the idea that this new international order would give equal weight to increasing the well-being and employment prospects for all. This solemn pledge, contained in the Atlantic Charter, may be considered the first, irrevocable step toward requiring governments to organize trade internationally without sacrificing the prospect for a rising standard of living. The signatories pledged “to bring about collaboration between all nations in the economic field.” The Atlantic Charter represented the commitment that when peace was restored, the employment needs of nations everywhere would be addressed and the international trade order would be reorganized.

Article VII of the Anglo-American Lend-Lease Agreement rededicated the Allies to the full employment obligation as a global public good. It is worthwhile to recall the precise wording that put employment front and centre of the postwar agenda: “the expansion, by appropriate international and domestic measures, of production, employment, and the exchange and consumption of goods which are the material foundation of liberty and welfare of all people...” Hope for the postwar order lay in the many tasks of reconstruction and the speed with which one government after another committed themselves to full employment as the principal and “overriding aim of national policy.”(Diebold, 1952:12).

It was not difficult to see why the full employment obligation affected, to the degree it did, the work of the drafters of the ITO. The fifth principle of the Atlantic Charter had called for ‘the fullest collaboration between all nations in the economic field, with the object of securing for all improved labour standards, economic advancement and social security’. The sixth principle proclaimed the hope of establishing a peace, ‘which will afford assurance that all men in all lands may live out their lives in freedom from want and fear’ Even by 1945, this phrase had already entered the twentieth century political lexicon definitively, not only as political rhetoric, or a party program or a basic concept of modern economics but, most important, as a standard against which the public measured the success or failure of governments. In popular usage, it meant many different things: a higher standard of living, job security, mass consumption, industrial citizenship and new rights in the workplace secured through a modern collective bargaining system. (Armstrong, 1991; Hobsbawm, 1994; Drache and Glasbeek, 1995)

In its generic sense, it referred to policies that governments had to adopt to prevent economic depressions and assure social stability, both nationally and internationally. The experience of the thirties had taught the world an important lesson, namely, that employment was linked, in a variety of ways, “with the outside world.”(Krock, 1973:3) A decade later, every country accepted that unemployment had to be addressed at the interstate level; that unemployment and insecurity could not be accepted as ‘natural phenomenon’ by governments any longer and that no country on its own could solve these problems without addressing its international relations with other states.

For the British and American governments, the re-establishment of “expansionist, universal and multilateral trade” was their long-term goal but they were willing to look at the “less than

universal and less than completely orthodox alternatives” that might form a “natural starting point for a restructured international order.” Among other things, this consensus meant that, when the war ended, it would no longer be acceptable for governments to impose import controls that reduced living standards. If no country could afford to go back to the gold standard where international trade was controlled by rigid monetary principles, the question to be addressed was, how could the world’s countries maintain their economies in balance “without a great excess of imports or exports?” Countries needed arrangements which would permit the orderly adjustment of exchange rates and the mobilization of credit so that they would not have to rely on deflation as a means to correct imbalances. (Ikenberry, 1992: 314)

The international demand problem of modern economics had pushed Keynes towards his *General Theory*. It convinced him that a new social and political agenda was needed to ensure that the self-regulating market would not be extended into the international economy, once the war ended. Joan Robinson, the doyen of Cambridge radical economic thought, began her influential book, *Introduction to the Theory of Employment*, (reprinted seven times by the 1950s) with these well-known words: “The modern economic system fails to provide employment continuously for all who desire to work....”(Robinson, 1937 and 1969) The consensus that she and Keynes shared was that markets did not clear automatically and as complex social constructions, labour markets required very different kinds of policies to ensure optimum outcomes. Both Keynes and Robinson, had come to the conclusion that the rules of supply and demand bid down the price of labour without providing sufficient reason for the private sector to invest in human capital. Most importantly, labour markets would have to provide a sufficient amount of steady employment domestically and internationally.

James Meade, the future Nobel Prize Laureate, had come aboard the full employment intellectual movement in the 40s with his innovative work on the international dimension of full employment. He asked a penetrating set of questions in his authoritative analysis of the balance of payments problems and in doing so recast modern trade theory to “cover the domestic aspects of economic policies designed for the maintenance of full employment” in order to achieve a socially desirable distribution of income and property. (Meade, 1951, vii) He called his work the study of ‘comparative statics’; in reality, it was more than that. It was an attempt to find the solution to international problems either within price theory or by going beyond. His work, like that of so

many of his contemporaries, sought to radicalize conventional economics by adding to its theoretical core the assertion that international economic development had to facilitate real income growth. One of his most important contributions was to advocate enlarging domestic and international demand with a policy of employment at home and an international policy of nondiscriminatory trade as desirable objectives in themselves. Building a high import, high export economy required that countries find the collective means to maximize their production needs by optimizing their trade prospects.

The impetus behind adopting the notion that trade had to serve explicit employment goals came only at the end of the war. Kalecki's seminal notion of full employment capitalism addressed the domestic side of the full employment revolution. (1943) In his different writings, he attempted to reconcile the historic antagonists of the interwar period, *laissez-faire*, free trade capitalism, in which workers bore the brunt of international adjustment and the full employment needs of workers. What he articulated, in so many words, was that a pledge 'to create more jobs than there were men', would alter forever the operation of *laissez-faire* competitive labour markets and require the liberal state to transform itself in ways that few could imagine. Kalecki was right about the underlying change in state policy that full employment entailed. If workers could not be fired without cause, business would be required to plan and anticipate the ups and downs of the business cycle. Without the threat of the 'sack', the full employment obligation had direct and immediate consequences for political leaders and governments internationally. Eventually, it would force them to abandon their existing conventional approaches to international organization.⁷

In retrospect, linking the objective of a much-broadened concept of trade liberalization with an unequivocal commitment to the goal of full employment is not all that startling. (Sidelesky, 1994) Mass unemployment was the scourge of the interwar period. It overshadowed all other issues and concerns, affected the lives of millions of people and was the social problem that finally destroyed the last remaining vestiges of legitimacy of the gold standard and *laissez-faire* free trade. Unemployment policy as well as tariff, credit and exchange rate policies had been properly regarded as the individual concern of each country. In Maier's words, "the iron framework of wages, profits, state claims and international payments" would first have to be eased and then recast. (Maier,1982:341)

For this pivotal reason, the ITO can be understood, as a major break from prewar arrangements in which all governments believed that international monetary policy alone was “the glue that binds national economies together.”(Eichengreen, 1996) Jacob Viner, a leading advocate of liberal principles of trade, was speaking not only for himself when he dismissed the outmoded views of the free trader, in his influential 1947 article in *Foreign Affairs*, in these words: “There are so few free traders in the present-day world, no one pays any attention to their views and no person in authority anywhere advocates free trade.”(Viner, 1947) Exchange rate stability, that elusive ideal of classic liberalism, had meant employment losses and falling wages when Central Banks defended the gold standard with a high interest rate policy. The newly minted consensus was that in the new world order state-market relations had to be put on a new footing so that governments would be insulated from unregulated market pressures in order to pursue a range of goals other than short-term commercial gain.

Broadening the Trade Agenda

There is nothing in the history to suggest that the aim of the ITO was to remove all non-tariff barriers to trade. That would be wrong because countries do need to employ restrictions, from time to time, to address a whole raft of problems, such as balance of payment deficits, promoting development and other national and economic problems. (Miskell, 1994) Rather, the framers of the detailed trade charter concentrated on removing practices “that gave a competitor in one country an unfair advantage over a competitor [in another country] as a consequence of deliberate governmental measures.” (Ibid.) For many like Hansen, a pro-ITO supporter, creating a stable and effective trade organization could only succeed if a liberal trade policy was “undertaken side by side with a program of development, expansion and full employment throughout the world.” (Hansen, 1945:1992)

This was a major departure for the newly formed trade organization. In the past, the formation, administration and organization of a commercial policy had required only general rules outlawing quantitative restrictions and the removal of trade barriers. To restore international trade required that the countries of the world plan for trade and define an appropriate set of commercial relations. For the drafters of the ITO, broadening the traditional liberal trade agenda entailed a number of things. It meant that tariffs and quotas could not be considered separately from the problems of

raw materials, economic development, restrictive trade practices and measures to reduce the possibility of depressions. Their goal was to create the foundation for a smooth transition to a new economic order for many European countries suffering from acute currency shortages while at the same time, avoiding “too many irrevocable commitments” and a code so strict that it would require countries to accept “submission to rigid rules.”(Viner, 1947: 626)

Top policy makers also had to decide what levels of trade barriers would be acceptable in the postwar period. Would ordinary tariffs be more acceptable than quantitative import restrictions, such as import quotas and how would a commitment to dismantling trade barriers be consistent with comprehensive, national economic planning? They had to make the Charter more detailed than previous attempts without imposing too many rigid obligations on member states. Finally, the negotiators had to devise and agree upon a code that was acceptable to free market-economies, state-trading economies and developing economies.⁸

In terms of enforcement procedures, the ITO had to have final authority if it were to outlaw any deviation from its general Code of trade rules. The Charter had to have bite if hard cases of unfair trade were to be punished. It also needed to be able to accommodate established patterns of trading relations, particularly the preferential system of the Commonwealth, at the same time as being flexible enough to address future changes from whatever quarter. For trade liberalizers such as Viner, the Charter passed muster because it was able to supply practical answers on two key issues: the effective reduction of quantitative restrictions as well as making nondiscrimination in trade a cornerstone of multilateralism.

Liberal trade theory, largely a product of the nineteenth century, could not be expected to supply answers to the large and unwieldy agenda facing the countries of the world at the close of World War II. (Brown 1950) Recent experiences had taught policy makers that countries would not voluntarily drop policies that conflicted with liberal trading principles. So multilateral trade could not be made to work if it was premised only on permitting free enterprise and the price system to play the largest roles. The thinking in elite circles was that new principles were needed that would require states not to consider commercial policy as an end in itself but rather as part of a group of policies that assured both social stability and the rapid expansion of the international trading system.

W.A. Brown, who wrote one of the best-detailed assessments of the ITO Charter in the early fifties for the Brookings Institute, captured its essence in his analysis of its guiding principles. (Brown, 1950:163-168) Of the ITO's aims and objectives, only one directly concerned the way in which trade should be organized. "To promote on a reciprocal and mutually advantageous basis the reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international commerce."(Art.1,4)

Article One concerned exclusively the needs of countries for economic development: "To foster and assist industrial and general economic development, particularly of those countries which are still in the early stages of industrial development, and to encourage the international flow of capital for productive investment." (Art.1,2)

Two dealt with the founding principles of the world order and were comprehensive in intent: "To further the enjoyment, by all countries on equal terms, of access to markets, products and productive facilities which are needed for their (members') economic prosperity and development"; (Art.1,3) and "to enable countries, by increasing the opportunities for their trade and economic development, to abstain from measures which would disrupt world commerce, reduce productive employment or retard economic progress." (Art.1,5).

A third linked national prosperity to building an expanding world economy and made it a matter of international concern: "to assure a large and steadily growing volume of real income and effective demand, to increase the production, consumption and exchange of goods and thus to contribute to a balanced and expanding world economy. " (Art.1,1)

Another gave prominence to its co-ordinating role: "to facilitate through the promotion of mutual understanding, consultation and cooperation the solution to problems relating to international trade in the field of employment, economic development, commercial policy, business practices and commodity policy". (Art. 1,6)

But it was the first sentence that defined the radically new relationship between trade and employment that members individually and collectively pledged to undertake: "...the attainment of higher living standards, full employment and conditions of economic and social progress and

development, envisaged in Article 55 of that Charter.” (Art.1)

Whatever the compromises needed to secure the ratification of the Charter at Havana, liberal trading principles clearly had not carried the day, either symbolically or substantively. Future members of the ITO had affirmed a world trading system with goals of “full and productive employment” and agricultural stabilization, planned economic development and reconstruction and the maintenance of national security. (Brown, 1950; 166) Classical free trade liberalism had not been bridled by any means, but the first step had been taken ‘to regulate markets beyond the state.’

Not surprisingly, the issue of tariff reduction took on enormous symbolic and political significance for the ITO. In the interwar period, efforts to remove trade barriers had failed because trade conferences attained agreement only on broad principles and each government was expected to comply voluntarily.⁹ It quickly became apparent that the key to the entire enterprise lay in tariff reduction and the elimination of as many tariff and non-tariff barriers as possible.

The removal of discriminatory trade barriers was essential for maintaining a high import-high export trading system. It was this act, more than any other single measure that countries might negotiate themselves, that was likely to generate jobs in the industrial sector of countries characterized by pent-up demand for consumer goods. At the same time, countries could exempt sectors that were prone to shed labour (agriculture and textiles being the most likely candidates) or industries that were seen as strategic for developmental or other reasons. In this way, the framers of the ITO accepted the possibility of limiting their core set of principles to the essential issues of trade (including investment), development and employment. Agreeing to recognize diversity and asymmetry, rather than uniformity of condition, as the fundamental starting point in framing the rules of the new trading order.

They would also recognize the ‘exceptional short-term needs of governments’ through the innovative, though high risk, option of safeguard practices and other escape clauses. Anything less was unacceptable and any rule-driven liberal-trading regime that was not results-oriented would not pass muster with so many developing countries present at the negotiating table. (Miskell, 1994; Diebold, 1994; Odell and Eichengreen, 1996) India, the world’s largest democracy, had

gained its independence in 1947 and had played an important role among the developing nations at the conferences negotiating the ITO charter. Nation building for the developing world required political resources and tools that only the state could provide.

In other respects, the Charter could not be expected to settle all the outstanding questions that many countries had about the future role of the US in the world's trading system. What was evident, was that emerging welfare states in Western industrialized countries had to be compatible with an open trading system and that the investment provisions of the Havana Charter would have to be flexible enough for developing countries and for those with a large state planning sector. Free traders had appeared to have lost the battle to control investment for their own ends. Although this "victory" did not calm fears of many delegates that US trade proposals for the ITO were part of an American campaign against the principle of economic planning, in favour of free enterprise. In fact, US free traders did succeed in demanding concessions which narrowed the ITO's agenda. (Odell and Eichengreen, 1998) These conflicts did not ultimately prevent the Havana Charter from being signed after four years of difficult and often acrimonious discussion.¹⁰ It is the comprehensiveness of the text itself which best conveys the internationalism of the period.

Provisions of the Havana Charter

The Charter was a prototypical model agreement for its time, complementing the IMF and the World Bank, as envisaged by the Bretton Woods Agreement of 1944, bolstering public authority and opening markets. There were detailed rules not only on the 'staples of trade' such as tariffs, quotas, exchange controls and state monopolies but on a host of other matters. These reflected the newfound consensus that a trade agreement had to be part of "the more constructive policies" that governments had to agree to if economic depressions were to be avoided. In addition, the Charter addressed rules relating to restrictive business practices, intergovernmental commodity agreements, industrial stabilization and international investment, as well as non-tariff barriers. It also set out the terms and conditions for release from obligations for economic development; for balance-of-payments difficulties; to prevent injury to domestic producers and to form custom's unions and free trade areas.

In terms of labour standards and full employment guarantees, in addition to the principles already discussed, it recognized that labour standards belong in a trade agreement. More specifically, Article 7 of the Charter recognized that there were links between core labour standards and trade as well as foreign direct investment and employment. It stated that “the Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade...”(Art.7,1) It also included a provision that ILO (International Labour Organization)and ITO members “shall cooperate with that organization in giving effect to that undertaking.”(Art.7,2) Its most innovative feature was to provide grounds that required unfair labour conditions to be subject to a nullification and impairment complaint within the ITO’s dispute settlement procedures (Art. 94 and 95) (Charnovitz, 1995)

While the ITO did not define a core group of labour standards, it did provide an all-important institutional mechanism within the ITO for members and its Executive Board to consider such issues. Social dumping, the practice of selling exports below what the costs of production would be if international labour standards were followed, had received attention at the UN Conference on Trade and Employment, as well as at the World Trade Union Conference held in London in 1945. It called for making long-term loans for economic and social development to colonial countries “conditional on observance of internationally agreed to working conditions.” Charnovitz argues convincingly that the ITO did not endorse the ‘labour standards to aid link’ but, it did connect the improvement of labour standards to the larger trade agenda with respect to investment and development.

The Charter provided that the ILO and the ITO should “act in close cooperation with each other and consult [with] each other regularly in regard to matters of common interest.” Where violations occurred, countries could bring their complaints to the Executive Board for remedy. To underscore the importance accorded the ILO, by the ITO Charter, the ILO was allowed the right to participate in ITO meetings. This partially fulfilled Roosevelt’s wartimes promise that the ILO would have an essential part to play in rebuilding a “stable international system of social justice for all peoples”. (Alcock, 1971:169)

The thinking at the time was that the articulation of workers rights had to be an integral part of trade and commercial policy. Investors were to receive their due but not at the exclusion of other

concerns. Capital's rights were to be safeguarded and so the emphasis in the Charter was to find the middle ground in this and other matters. Governments recognized that labour rights were in their common interest and that countries had "to establish a balance of mutual advantage" in advancing their trade and employment goals. Commodity policy and business practices had to be reinforcing so as to "contribute to the expansion of production, trade and employment."

In addition to these provisions, industrialized countries committed themselves to other general principles of conduct that directly would enhance employment-creating policies. With respect to employment, for instance, positive commitments towards employment were largely voluntary and left to the discretion of member states. Provisions concerning employment-creation were put in very general terms creating a 'high standard' but no formal legal obligation. (Diebold, 1952:12)

Even with such a low minimum, members were permitted to take safeguard "actions within the provisions of the charter" should other members fail to comply with these commitments. The crucial clause in favour of full employment policy was related to cases where the quantitative restriction ban would be lifted. This was an innovative provision even if it remained a solution of last resort.¹¹ As well, in terms of state policy, a highly complex procedure allowed member states to impose quantitative restrictions to avoid deflationary trends in cases of severe currency crises or even for broader objectives, such as "the achievement and maintenance of full and productive employment" (art. 21.(b))

In the area of international market forces as regulators of international life, trade barriers had to be reduced and wherever possible eliminated. The rules for adjudicating disputes as well as the mechanism for constructing a system that was both rules-driven and sensitive to outcomes was spelled out in detail. These complex rules had been negotiated at Geneva, in 1947, as an essential part of the preparatory work of the ITO.¹² (Jackson, 1989: 32-39) The important point here was that countries had to have legal recourse to take exceptional measures when they faced unusual short-term conditions that threatened their economies. The extent and nature of these 'escapes' were spelled out in the GATT rules and they were accepted by all governments, including Washington and the UK, as an essential component of establishing a nondiscriminatory system of trade. Without these exemptions it would not have been possible to ban the use of other barriers which, Ostry underlines, were also a part of the GATT. (Ostry, 1997:68) It was better to have

modest safety valves than outright protectionist policies. While the Havana Charter was very broad in scope, a close reading of the text suggests that the chapter on disputes resolution and unfair trading practices was designed explicitly to impose a much stricter code of discipline on members. In addition to its lofty principles, the Charter had a lot of market muscle to address contentious trading issues. It envisaged that the GATT was to become the police of the new organization.

In the area of international economic regulation, its jurisdictional scope included power to make recommendations and to promote agreements ‘to facilitate an equitable distribution of skills, arts, technology, materials and equipment’ to assure just and equitable treatment for the enterprise, skills, capital, arts and technology brought from one Member country to another’ and to ‘avoid double taxation’. (Picciotto, 1998) It included a chapter requiring states to prevent enterprises from engaging in practices restraining competition, limiting access to markets, or fostering monopolistic control, and it set up a procedure for investigating and reporting on specific complaints about such practices. (UNCTAD 1996-I:3)

Combatting protectionism required that quantitative measures such as import quotas, quantitative restrictions and import duties should be disallowed to the maximum extent possible. In an imperfect world, countries everywhere employed export subsidies, quantitative restrictions, and commodity agreements to discriminate against their competitors. The United States had import quotas on wheat, wheat flour and cotton, as authorized under section 22 of the Agricultural Adjustment Act. (Brown, 1950: 25) As well, it had separate import quotas on raw and refined sugar which were incompatible with the Charter’s provisions and would have had to be abolished. Changes would also have had to be made to the Philippines Trade Act, in order to put both countries into conformity with Charter requirements. France had special relations with its colonies based on a discriminatory trade relations, while the UK relied on the Imperial Trading Preferences. All of these special relationships would have to be altered and abandoned in due course, as they were, in fact, by the early sixties. But in the Charter all these exceptions were ‘grand-fathered’.

Another group of trade norms and principles were addressed under the category of special circumstances, that is, times when a country could not implement the principles of the Charter due

to a 'drastic and sudden change in existing trade practices.' It was entitled to relief through negotiation or a transitional period after which conformity was required. Here too, the Charter could hardly be considered radical in permitting this kind of escape clause. It had already been agreed to at Geneva when the GATT was negotiated. More importantly, US trade law recognized that its trade authorities had discretionary power to "suspend, withdraw or prevent the application of concessions to carry out a trade agreement" which were interpreted to be discriminatory, restrictive or burdensome for US commerce.

For developing countries, new ground was broken with respect to price volatility as it affected the production and trade in primary commodities such as mining and agricultural products. Both developing and industrialized countries agreed to establish procedures for temporary intergovernmental commodity agreements based on a regulation of price and production though excluding buffer stocks. (Chapter 6) The aim was to bring price and revenue stability for primary producers and consumers. At the time this provision was path-breaking. The collapse of primary products had affected all countries severely in the interwar period and the Charter attempted to provide a practical alternative that would permit and encourage marketing boards and other market-limiting institutions. In addition, special provisions were designed to guarantee an effective support for the agricultural sector through subsidies and quantitative restrictions. (art.20, 22,27)

Finally, the investment provisions of the Charter were, by far, the most controversial. They implicitly recognized the right of expropriation of host countries and entitled them to impose specific requirements on foreign direct investment. Host countries could take any 'appropriate important measures' to prevent foreign direct investment from interfering in their domestic policy. Countries would be entitled to permit or refuse future investment and regarding nationalization, the host country's right was implicitly recognized and payment of compensation was acknowledged. (art.12) These special provisions to promote economic development were designed "particularly for those countries which (were) in the early stage of industrial development." (chap.3) At the insistence of developing countries this principle was given a very broad reading including, tariff preferences, quantitative restrictions and limitation of investor's rights.

Still, the far-reaching issue of host rights vs. investor obligations was hardly resolved. (see *Fifty*

Years of Regulating Foreign Investment 1948- 1998). In reality, the ITO conferences demonstrated that there was an absence of international consensus on this crucial issue. The combined opposition from Latin American, Indian and Australian delegations opposed the sweeping definition of traditional international property rights as defined by the US Congress. The US demand for an unambiguous commitment to protect the investments of international business from the incipient Organization was rejected in the Final text.¹³ Latin American countries turned to other avenues to pursue these issues in the UN. In 1952, at the height of US Cold War power, the General Assembly passed the first resolution on Permanent Sovereignty over Natural Resources. The resolution endorsed the right of all states to nationalize and exploit their natural resources. The final resolution affirmed the right of member states to “have the due regard, consistent with their sovereignty...the need for maintaining the flow of capital in conditions of security.” Still for others, the formation of UNCTAD, often called the developing countries GATT, had its origins in the end of the ITO. Almost all of the same concerns and many of the provisions present in the development decade framework document can be traced to this pioneering multilateral forum. Continuity was provided by no less than Raoul Prebisch who was at both the London Conference as well as at Havana, where the text was finalized. As his own correspondence reveals, he was profoundly marked by this experience. He was to play a major role in drafting the UN’s development decade. Issues such as the need to balance foreign direct investment with the asymmetrical needs of developing countries, the importance of price stabilization measures, the need for escape clauses were folded into the UN’s Development Decade of the sixties. Ed Dosman, York University, is completing an intellectual biography of Prebisch and has in his possession much documentary evidence showing just how influenced Prebisch was by the attempt to create the ITO. For the text establishing the developmental decade, see B. Stern, *Un Nouvel Ordre Economique International? Recueil de Textes et Documents*. Paris: Economica, 1983.

Clair Wilcox, one of the US negotiators at London, Geneva, and Havana, prepared a *Reader's Guide to the Havana Charter* which captured the full flavour of this seminal agreement.

Barriers to trade, other than tariffs, should be eliminated or minimized; tariffs should be reduced and preferences outlawed; trading areas should be widened by forming customs unions and free trade areas; member states should not discriminate against other member states; state trading operations should be governed by the principles that apply to private

trade; subsidies should not be used to obtain more than a fair share of the world market; international trade should not be restrained by public or private monopolies or cartels; economic development and reconstruction will expand world trade and increase real income; international private investments will promote economic development; the use of protective measures to promote economic development may be justified; members should consider the effect of their trade policy on others and consult with them. (Wilcox, 1949: 223-4)

What made the Charter unique and a step forward as an international body to regulate trade was that its design and principles were intended to provide all countries with a way to adapt and adjust to competitive pressures without having to sacrifice modern goals of equity and social justice. Organizationally this spirit of equality was also manifested. In the ITO, major decisions by the member states would be based on ‘sovereign equality’ rather than weighted-voting as in the case of the IMF and the World Bank. Democratic governance at the international level demanded recognition and extension of majority voting rather than elite control by the few.¹⁴

So as long as the ITO could make it the interest of every major country to eschew protectionist and deflationary practices, then, the new international order presided over by the ITO would be very different from its liberal antecedents, just as Keynes, from Britain and Harry Dexter White, from the US, the two intellectual leaders who had challenged financial liberalism in the 30s, had predicted. Freed from the sterile debates of the past, a non-liberal approach to investment and development matters had begun.

Was the Design Adequate to the Task?

For extreme advocates of laissez-faire internationalism in the US, the Charter transgressed the fundamental notion that trade was principally organized for private gain and profit and that it had to be fully competitive, subject only to moderate barriers such as tariffs for revenue or industrial protection.¹⁵ The failure of the ITO to find sufficient support in the court of US legislative opinion should not be allowed to hide its most important achievement. A Charter for world trade always raises the fundamental questions of how to balance two potentially conflicting agendas: big-picture ideas, that is, the principles and guiding beliefs (without which none of the Bretton Woods

organizations would have been able to see the light of day) with the pragmatic details of the legal text, including the all-important minutiae of regulation, complex trade rules and other measures to enhance export opportunity and maximize import openness. It is this model of international organization that has been improved upon but never abandoned.

In the untested Charter, the ITO's blend of Keynesian demand principles with a well-thought plan for freer trade between developing and developed nations provided a pragmatic way to reconcile the historic antagonists of the interwar period and begin to address the new challenges of development and decolonization. The dynamic that led to the Havana Charter would have been unthinkable without the presence and active participation of the developing nations of the world. It was their influence which transformed a rather modest US-UK initiative into a broad-based proposal to put trade, money, investment, employment and development on a radically new footing.

The consensus embodied in the Havana Charter was path breaking for the nations of the world also because it created the template for all other similar broad initiatives. Some fifty countries had produced a framework document combining a statement of intent with practical measures, set a fixed timetable to attack quantitative restrictions and established the broad principles and a realistic set of procedures to get there that included a dispute resolution mechanism and a massive reduction in tariffs. The innovative idea that inspired the ITO was that no country nor powerful business lobby nor trade union ever wants to be tied to an inflexible set of rules that did not let countries protect themselves from the short-term difficulties of adjustment that lead to loss of jobs or markets or both when faced with sharp swings of the business cycle. When the Charter provided a sufficient number of escape clauses, in the GATT, that recognized the diverse needs of countries at different stages of development, it struck the proper balance of serving both the developmental needs of Latin American and Asian countries, as well as the short-term needs of the industrial world.

Many of the escape clauses were drawn from US practice and US trade legislation which should have guaranteed its passage through the US Congress.¹⁶ In the end it did not, but, more importantly all countries kept these provisions in the mini-Havana Charter of the GATT. However, in another way, the GATT language of Article XIX with respect to safeguard mechanism remained quite

ambiguous with a highly contingent set of criteria.¹⁷

In other ways the brief existence of the ITO ensured the future of the world trading order. The deals made at Geneva in 1947, under its fledgling trade arm, the GATT, gave the postwar trading system a badly needed lift off.¹⁸ Its prestige and authority made possible the single largest tariff cut ever -- some \$10 billion worth of trade at prewar prices involving 45,000 concessions were made with the backing of the US Congress that authorized the President to cut tariffs up to 50 percent. (Curzon and Curzon, 1969:57) The value of world trade increased some 360 percent from 1947 to 1966. No subsequent tariff negotiations, until the development decade of the sixties, ever exceeded the work of the ITO.¹⁹ (See table, *Growth of World Trade 1900- 1990*) It was one of the largest stimulatory measures ever undertaken, designed both to promote domestic growth and create jobs by reducing barriers to trade. Here was demonstrable proof of Meade's virtuous cycle linking trade, production and employment-creation as mutually reinforcing.

In ways that few have grasped, tariff-reduction became the ideal instrument to promote international Keynesianism, a perfect match to support the same political imperative domestically. No wonder the architects of the ITO believed that they had reconciled international trade reciprocity with an equally far-reaching commitment to provide employment for everyone who needed it. Tariff reduction carried the day not just for liberal ends, but for the all-important reason of building a different kind of international order. In it, politics and economics were no longer treated as separate watertight compartments.

In other ways, too, the ITO set the agenda for the next five decades. There was no other equivalent moment when the countries of the world rewrote the rules and practices in such an extensive and innovative way. Practical issues such as non-tariff barriers, improvements to the antidumping code, as well as, state trading practices which had been part of the Havana Charter were finally addressed in the Kennedy Round. But, by then, multilateral tariff bargaining was no longer as revolutionary a method as it had been in 1947.

Looking Back-Looking Forward: the End of the Story

The ITO had a bold plan to build a social market globally because it set out to create a common ground between the full employment obligation that had shot to the top of the agenda throughout the industrial world and the developmental needs of the Southern nations in the emerging world. In the rear-view mirror of history one large and very powerful idea stands out. The framework agreement for this new age could not be a system of pure commercial gain designed to advance the free enterprise principle at any cost. This made impeccable economic sense, as well as, smart statecraft. When economic growth stalled, few countries would accept the dictates of crude market logic to open their economies, regardless of the cost and despite the consequences. So the public and private domain required a new division of labour and regulation at the international level. The Havana Charter was the defining moment, recasting the relationship between trade, development and employment. Its disappearance left a cavernous hole in the architecture of the postwar institutions of global governance in five critical areas: labour rights and standards, dispute settlement and interpretation, the international price for primary commodities, the regulation of transnational business and on governments themselves. By comparison, the GATT had only residues of the non-liberal characteristics that had stamped the ITO as an organization.

First, the ITO provisions on fair labour standards were not included in the GATT. Charnovitz notes that “except for the provision in Article XX(e) that permits governments to ban trade in goods produced using prison labour, GATT says nothing about labour standards.”(Charnovitz, 1995:171) The original intent was that labour standards were covered not through the GATT but were to be given a more important and legitimate place within the general framework of the ITO. Without the ITO there was no institutional place for labour standards in the GATT nor later in the WTO.

Secondly, the Havana Charter had an explicit provision that its members had the authority to make legal and binding interpretations of the Charter. This was crucial because with this power, the ITO had the authority to establish what Jackson calls ‘joint action’ that would not only facilitate the operation of the new organization but would further the objectives of the Agreement and allow it to grow and adapt to the changing international economy.

Internationally, organizations that explicitly give their charters such power to make legal and binding findings are preferred to those which can only 'recommend' compliance. In the case of the ITO, interpretation and dispute settlement decisions carried with them a binding treaty obligation even when its member states disagreed with a decision because it was unfavourable to their immediate interests. (Jackson 1989:90) The penalty for noncompliance entailed sanctions, the principal one being suspension of trade concessions.

By contrast, GATT had no such provision. It had no binding interpretative powers once the ITO was stillborn. In terms of international law setting norms, the GATT had no requirement, as had the ITO, that all countries had to use their dispute resolution procedure exclusively. Havana had broken new ground because it permitted reference to the International Court of Justice, in some matters. Appeal to the Court was needed because in the words of Clair Wilcox, the vice-chair of the US Delegation to the Havana Conference, "it provided for the development of a body of international law to govern trade relationships."(Ibid., 93) Without the power of formal binding interpretation, the GATT's dispute settlement mechanism was voluntary and thus could be ignored largely without penalty thus making new legal norms difficult to establish.²⁰Under GATT rules, a contracting party was not obligated to accept an amendment which it opposed. Here too, the retreat from the ITO's provisions for a New World trading order with muscle was marked.

Thirdly, for the developing countries of the world, the end of the ITO created a multitude of problems. It had provided a framework to stabilize the international price of primary commodities. It also saw the need for producers to work together to market primary products. This was lost when the ITO failed. In terms of investment rules, the pivotal idea of the Charter was that a new investment regime could only succeed on the condition that countries dismantle state-erected barriers and enforce a code regulating the restrictive practices of international business. The two went together. The key was that investors' rights could not be so broad as to limit host country's responsibilities. In the Charter, no member was precluded from enforcing any national statute to prevent what was at the time called "monopoly practices" (Art.52)

The word monopoly practices meant something quite explicit to the assembled negotiators at Havana. They were prepared to accept the fact that there were many trade-distorting activities that impaired markets from effective functioning. Some were state-centred, many more came from

international business. What was needed was a framework for a new investment regime with a strong pro-active capacity to hold foreign direct investors and multinational corporations accountable to international authority.

This was the pivotal idea that struck a deep chord with many countries, both developed and developing. Even if many of their recommendations were not as strong as they might have been, the Havana negotiators understood that unregulated concentration in capital-exporting activities such as telecommunications, insurance, banking, mining and pharmaceutical sectors, posed an immediate threat to the orderly development of the international system. Here too, states had to be able to act to defend their interests and use their power of expropriation. This is why the developing world saw in the *Final Text* signed at Havana such a positive beginning. Developmental inequalities were to be addressed within a non-liberal framework. It would take more than a decade for the developing nations of the world to make economic and social planning the centre of the development decade of the sixties.

Fourthly and uniquely, the Havana Charter not only applied to governments but also to the actions of private firms whose restrictive business practices threatened to undermine the liberal goal of nondiscriminatory trade. The ITO contained a whole chapter on anti-competitive practices. In contrast, the GATT included none of that language.

Finally, indeed, with the end of the ITO, GATT members opposed any steps for regulating the intra-company trade, to set bright-line standards for multinationals or, in any way, to impose any obligations on international private actors. Led by the US and others, the GATT Contracting Parties decided not “to bring this subject under GATT” but only provide for limited consultations. (Jackson, 1989:212)

Restrictive business practices were explicitly excluded from GATT procedures and were not a subject covered by its disputes mechanism. (Article XXIII) In short, only governments would be subject to international regulation, not multinationals.²¹ This more than any other provision marked a dramatic turnabout from the public objectives embodied in the ITO; that private authority no less than state actors had to be accountable to international law. By contrast, the GATT chose to be silent on the monopolistic practices of powerful transnational actors. The

rupture with the ITO was complete.

A Final Word

The end of the ITO transformed the fabric of the post-World War II international economic organizations. Without this one non-liberal institution and its provisions to limit international markets, global markets quickly found a new political legitimacy that none of the signatories at Havana could have anticipated. The governments who signed the Charter had thought that it was possible to regulate markets outside of the state but, in 1949, they failed. In the end the ITO was a victim of Cold War politics, shifting US priorities, a protectionist Congress and elites that preferred not to have a strong world trade organization with non-liberal principles and goals. Embedded liberalism was, at best, a second best option. It gave a more limited role to state interventionism and by contrast, a very large play to international market needs.

In his important study of the spread of Keynesian ideas, Peter Hall makes the general point that for the time the linking of trade, employment and social policy constituted a revolution in state policy making.(Hall, 1989) For the next five decades, the frontier between the state and the market was definitively redrawn and the division of their roles permanently altered, as witnessed by the growing responsibility of the state in the economy.(Yergin and Stanislaw, 1998) The proof was that the ideas of international regulation, full employment, development and nondiscriminatory trade had conquered world economic thought but not the GATT and the world trading order post-ITO.²²

As states everywhere feel the adaptive pressures from global free trade and the powerful legal code of the WTO, they would do well to take a long hard look again at the Havana Charter for both its strengths and its shortcomings. The legacy of Havana presents a challenge of epic proportions for triumphant liberalism.

It was a potent international instrument that could, in due course, have established new international standards. It was also a highly normative exercise in trade politics that recognized that foreign direct investment and full employment were indispensable for the stability of the international economy. One of the ITO's fundamentals was that foreign direct investment was not

an absolute, rather it had to be acceptable to the host country. Another was that labour standards and human rights belonged in a trade organization. The ITO championed the principle that countries had the responsibility to manage job loss when it occurred, along with the obligation to restructure their economies when business failures threatened to undermine the benefits from increased trade. Both these policy imperatives prevented an immediate return to an embedded laissez-faire free trade regime.

In the fifties and later the sixties, with pro-labour oriented governments elected to office in Western Europe, Canada and Australia, policymakers sought to capitalize on these new planning techniques to provide jobs for everyone. The rise of the modern welfare state and the transition from a wartime to a peace time economy meant that national markets grew in new and dramatic ways and joblessness reached historic lows. Elected government's quickly developed international strategies with a complementary set of collective bargaining institutions at home that supported expanded trade. (Rodrik, 1997) To do this they adopted social insurance and safety nets that built support at home for trade liberalization while pursuing full employment strategies or goals. Thus they found it easy to square the circle, social protectionism did not hurt the economy very much and, indeed, made the economy more efficient. Public policymakers also quickly discovered that trade generates a lot of gains only when the domestic economy is growing rapidly and the state intervenes to ease the burden of adjustment. This is why the pursuit of purely commercial advantage today holds even less allure than the proponents of free trade proclaim.

With capital more mobile than ever and domestic economic growth weak, building counterweights, one of the central ideas that lead to the Havana Charter and the ITO, has to be at the top of the world agenda today. The advanced countries have always favoured national controls over their own resources and strategic sectors and have never abandoned state aids and subsidies to support their home industries. This is why there have been so few successful worldwide efforts to protect foreign investors rights from the reach of nations. And this is also why a strategy of expanding trade requires strengthening such social institutions as unemployment insurance, education, training and a comprehensive social policy. No less an authority than the OECD describes the current jobs crisis “as the most widely feared phenomenon of our times.” Once again free trade is the nemesis of the full employment obligation.

Whatever its shortcomings, the ITO, the practical embodiment of the full employment revolution in state practice internationally, was as good as it gets. The ITO was a remarkable organization that pioneered the idea of an integrated trade and employment organization, not a specialized one like the WTO. Despite its short, but significant, existence it nevertheless set the international trade agenda for years afterwards. It was the highwater mark of the only international trade organization that effectively rewrote the fundamentals. 'Trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods.' These words are taken from the preamble to the GATT, a final bit of evidence of the way the world of trade and employment was envisaged when the ITO was in its heyday. Belated happy 50th birthday Havana.

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The Rise of the Full Employment Obligation: An Overview of Its Institutionalization

- 1941 Atlantic Charter Article IV - VI sets the stage for future international negotiations on the links between national recovery, the international economic order and security. The fifth principle called for ‘the fullest collaboration between all nations in the economic field with the object of securing for all improved labour standards, economic advancement and social security’. The sixth proclaimed the hope of establishing a peace ‘which will afford assurance that all men in all lands may live out their lives in freedom from want and fear’
- 1941 Roosevelt addresses the ILO December Washington meeting and promises the ILO delegates that their Organization will play an essential part in building up a stable international system of social justice for all peoples everywhere.
- 1941 Lord Keynes to Treasury where his ideas on full employment begin gain influence and acceptance and he takes part in discussions on the postwar order in Washington
- 1942 Beveridge’s report on Social Security in a postwar world published incorporating the principles of the Atlantic Charter and signalling the new role for labour in public policy making
- 1942 Article VII Lend-Lease commits US and UK to begin to search for new principles for rebuilding the world’s trading system
- 1942 James Meade writes a *Proposal for an International Commercial Union* calling for ‘far-reaching and imaginative proposals for the reduction of restrictions to international commerce’; top civil servants preoccupied with working on the proposal
- 1943 Interdepartmental and inter-agency committees meet continuously in Washington from the spring of 1943 to summer of 1945 chaired successively by Acheson and Clayton; also talks with Canadian officials
- 1943 ‘New Dealers’ in Department of State begin to prepare the draft treaty proposing the ITO; eventually they loose control of the agenda
- 1943 First UK/US postwar planning negotiation related to Article VII in Washington
- 1944 US Employment Bills: full employment commitment watered down. Congress refuses to follow the UK example
- 1944 UK White Paper on Full Employment/ followed by Canadian and Australia White Papers on Employment
- 1944 *The Economist* Restructuring the World Trading System, a series of six articles on trade, employment and the design of the commercial order
- 1944 Schumacher publishes a major statement on trade and employment as Fabian pamphlet; Hayek’s book *Road to Serfdom* appears in print
- 1944 ILO Philadelphia Convention on full employment policies
- 1944 Finance Ministers at Bretton Woods meetings establish the IMF and the World Bank including full employment obligation to be included in their original mandates. The ITO was to be established later and the ‘essential’ third pillar to over the new trading system for the world
- 1944 Brynes replaces Hull as Secretary of State; free trader Clayton nominated Under-Secretary of State for Economic Affairs
- 1945 Alvin Hansen, key economic advisor to the President, publishes influential volume, *America’s Role in the World Economy*
- 1945 UK Labour victory
- 1945 Britain negotiates a \$5 billion loan from Washington and US officials insist on

- committing UK on joint proposals for establishing the ITO
- 1945 Australia elects a labour government under Chifley, a strong advocate of the tariff for national development and ITO, World Bank and full employment goal internationally
- 1946 First meeting of the Preparatory Committee of the ITO, October 15 to November 26 in London; representatives of 18 countries have exploratory talks on the ITO on US *Proposals for the Expansion of World Trade and Employment*
- 1946 France establishes national planning under Jean Monnet
- 1947 Joint GATT ITO meetings at Geneva; successful tariff negotiations make possible non-tariff measures to be included in Havana Charter
- 1947 US initiates Marshall Plan to support European reconstruction and a rival agenda to the ITO
- 1947 Britain nationalizes its coal industry
- 1947 India becomes the world's largest democracy and independent from Britain
- 1947 Jacob Viner, leading US trade authority, declares support for the ITO in *Foreign Affairs*, a leading US forum of opinion and expert advice
- 1947 UN Conference on Trade and Employment is opened in Havana, November 18; 56 nations send delegations. A great deal of criticism of Geneva text that it was one-sided and served the interests of the major industrial powers and not the developing countries.
- 1948 The US sponsors the creation of the Organization for European Economic Cooperation (OEEC) to promote trade liberalization and the further reduction of barriers.
- 1948 US Congressional elections return a Republican US Congress hostile to many ITO provisions
- 1948 Havana Conference, final text is signed by 53 countries on March 24. Includes major chapters on trade policy, cartels, commodity agreements, employment, economic development and international investment and the constitution of a new UN institution in international trade
- 1949 *Report on National and International Measures To Achieve Full Employment* published by the UN's Economic and Social Council Group of Experts among them Kaldor.
- 1949 Chifley's 'Light on the Hill' address recommits Australia to full employment
- 1949 ITO Treaty is submitted to Congress, not voted on
- 1950 US abandons the ITO. A coalition of protectionists and perfectionists, critics of the Charter, convinces Truman to withdraw the draft treaty from Congress.
- 1950 US Congress so hostile that President Truman signs GATT as an executive order; not submitted to Congress

Fifty Years of Regulating Foreign Investment 1948- 1998

The Havana Charter in 1948 is signed by more than fifty countries and affirms the rights of investors to fair treatment, emphasizes the importance of foreign investment flows for development and reconstruction as well as protecting the host country's right to develop national resources for national ends. Different articles pronounce in favour of countries taking domestic measures against restrictive business practices including nationalization with compensation while at the same time requiring states to dismantle barriers to trade.

In 1952 at the height of US cold war power, the General Assembly passes its first resolution on Permanent Sovereignty over Natural resources. The resolution endorsed the right of all states to nationalize and exploit their natural resources. The final resolution affirms the right of member states "have the due regard, consistent with their sovereignty...the need for maintaining the flow of capital in conditions of security."

In the 1960s the principle of permanent sovereignty over national resources is declared in General Assembly Resolution 1803 (XVII) no. 3. (1962) The principle affirms the rights of nations to control their natural resources and represents the high water mark to find common ground between the developed and developing countries. The resolution also provides for appropriate compensation when resources are nationalized.

1961 - Codes of Liberalization of Capital Movements and of Current Invisible Operations establishes binding rules and provides effective machinery for their gradual expansion and implementation by OECD countries.

1967 - OECD developed countries negotiate a Draft Convention on the Protection of Foreign Private Property and is approved by the Organization's Council but is never opened for signature.

1970 - Decision 24 of the Andean Pact imposes stringent controls and screening procedures on FDI and the transfer of technology including a provision requiring the disinvestment of foreign firms after a number of years.

1974 - The Decade To Establish a New Economic Order. International activity is focused on host country's demands for economic independence and national control over TNCs and the UN passes the Charter of Economic Rights and Duties of States. The rights belong to newly developing countries and the 'duties' to multinational firms and advanced industrial states. One hundred and twenty nations voted for it; ten abstained and the United States, United Kingdom, West Germany, Denmark, Belgium and Luxembourg voted no. The charter effectively permits national efforts to restrict and control foreign investment throughout the Third World including expropriation, contract abrogation and the use of municipal courts to settle disputes.

1976 - OECD takes the lead and adopts a Declaration on International Investment and Multinational Enterprises that includes a voluntary set of guidelines for MNEs Among other things, it calls for assurance of national treatment, addresses problems of incentives and disincentives and proposes an easing of performance requirements on TNCs. This and other instruments provide the key elements of a emerging liberal framework for states in the developed world.

1981 - WHO pioneers a code of International Code of Marketing of Breast Milk Substitutes in the area of consumer protection. This is one of several initiatives taken to protect consumers from TNCs and set new standards for corporate behaviour.

1983 - An extensive UN Code on the conduct of TNCs is proposed but the instrument is never adopted despite agreement on many of its provisions.

1986 - ILO Tripartite Declaration of Principles concerning MNEs and Social Policy is adopted even if only voluntary.

1985 - World Bank is in the forefront of reversing the early trend set by the developing countries in proposing radical changes in the making of national investment laws. It sponsors the Convention establishing the Multilateral Investment Guarantee Agency that, among other things, leaves investors free to transfer their profits and capital out of the host country.

1991 - OECD Council of Ministers reviews the OECD instruments on TNCs and agrees on a number of changes to strengthen them.

1992 - The World Bank prepares and proposes the non-binding Guidelines on the Treatment of Foreign Direct Investment that will be a benchmark in augmenting protection for foreign direct investment rights.

1991 - Andean Countries amend their previous instrument on foreign investment and replace it with a liberal set of regulations – a major reversal of policy. They now relax rules regarding foreign investment in host country.

1993 - NAFTA . A path-breaking agreement that serves as the prototype for other agreements internationally. Chapter 11 goes further than anyone anticipated in dismantling barriers to foreign investment; in affirming non-discriminatory pricing practices in the management of resources and in extending national presence and national treatment to US investors. It particularly limits Mexico and Canadian governments' ability to nationalize or expropriate.

1994 - The Uruguay Round is successfully completed with its path-breaking agreement on Trade-related Investment Measures and Trade-related Property Rights. Specific commitments cover market access and national treatment. Most developing countries have had little experience with issues related to the liberalization of foreign direct investment and trade in services.

1994 - Final Act of the European Energy Charter Treaty proposes new investment rights and protection for private investors.

1994 - APEC's Non-Binding Investment Principles adopted supporting foreign direct investment and new protection for investors.

1997 - Over 1,300 bilateral investment treaties have been signed but there is still no comprehensive agreement -- the goal that eludes the OECD for more than a quarter of a century.

1997-8 - the MAI-OECD Treaty is negotiated by 28 developed countries responding to the coverage of financial services in the Uruguay Round. It is a framework agreement to promote a liberalized investment regime and provide an effective dispute settlement mechanism. Some reservations are permitted for national security, subnational measures and cultural protection. But, it is the most comprehensive set of measures ever proposed to enlarge investors rights and has immediate consequences for national governments in many policy domains. Defeated in the US Congress and by a world wide campaign against the anti-MAI organized by social movements with utilizing the world-wide net and other modern communication technologies.

from *International Investment Instruments: A Compendium*, UN/UNCTAD, New York and Geneva, 1996; Lipson, 1985, pp.86-90

¹ * Ngaire Woods urged me to revise my study of the ITO for publication, along with Sol Picciotto who has shared his knowledge of international investment regimes with me, both have been very helpful in reworking my original ideas. Neither are responsible for the final product. This paper was originally written during my sabbatical leave in 1997, when I was a visiting professor in the Canadian Studies Centre, at the University of Western Sydney and in the Department of Geography at Macquarie University, Australia. An earlier version was presented at the University of Wollongong, June 1997 and at the Centre of International Studies, University of Toronto October, 1997. Louis Pauly, Peter Groenewegen, Ed Dosman, Geoffrey Underhill and Chris Nyland all provided useful information and feedback. Jean-Christophe Graz also discussed the paper in detail and gave me some useful criticism in one of its many reiterations. Daniel Drache is the Director of the Robarts Centre for Canadian Studies and Professor of Political Economy at York University. Currently he is writing a book on full employment and free trade and comments on this paper are welcome and appreciated. By email he is reachable at: drache@yorku.ca or by fax: 1. 416. 736.5739

¹ One of the most forceful advocates of the need to liberate trade of its liberal ideology came unexpectedly from *The Economist*, itself a vocal and persistent champions of laissez-faire free trade. See the remarkable series of essays written during 1944;1945;1946 addressing the future of trade and employment in the postwar world.

² United Nations Conference on Trade and Employment, *Final Act and Related Documents*, New York: United Nations, Sales No 1948 II.D.4.1, 1948.

³ Hundreds of officials were involved in its creation and there are 100 volumes of transcribed minutes of deliberations. There is an extensive literature on the ITO. For the American side of the story consult, W.A. Brown Jr.(1950). *The United States and the Restoration of World Trade. An Analysis and Appraisal of the ITO Charter and the General Agreement on Tariffs and Trade*. Washington D.C.; The Brookings Institution; Clair Wilcox, (1949). *A Charter for World Trade*. New York: MacMillan; William Diebold Jr. (1952). *The End of the ITO. Essays in International Finance No.16*. Princeton, Princeton University ; R. Gardiner. (1956). *Sterling Dollar Diplomacy: Anglo-American Collaboration in the Reconstruction of Multilateral Trade*. New York, OUP. Three recent articles that should not be missed are: William Diebold,. "Reflections on the International Trade Organization." *Northern Illinois University Law Review* 14:2(Spring): 335-346, 1994 and a second by Diebold, *From the ITO to GATT -- And Back? The Bretton Woods-GATT System Retrospect and Prospect After Fifty Years*. Orin Kirshner. (Ed.). New York:, M.E. Sharpe: 152-173, 1994. John Odell and Barry Eichengreen have added substantially to our understanding of why the ITO did not receive Truman's political support "The United States, the ITO and the WTO: Exit Options, Agent Slack, and Presidential Leadership." in *The WTO as an International Organization*. Ann. O. Krueger. ed. Chicago: University of Chicago Press, 1996. Steve Charnovitz has provided important analysis of the place of labour standards and the ITO's institutional link to the ILO in "Trade, Employment and Labour Standards." *Temple International and Comparative Law Journal* 11: 131-163, 1997 and "Promoting Higher Labour Standards." *The Washington Quarterly* 18:3: 167-190, 1995. For a non-American examination of the first two decades of multilateralism, a very useful source is Karin Kock, (1969). *International Trade Policy and the GATT 1947-1967*. Stockholm, Almqvist and Wiksell; From the 'Toronto' school of international relations, there are a number of studies that are helpful. See particularly Eric

Helleiner, (1993). When Finance Was the Servant: International Capital Movements in the Bretton Woods Order. In *Finance and World Politics*. Philip Cerny ed. London, Edward Elger Publishing: 20-48. and Helleiner (1995). From Bretton Woods to Global Finance. In *Political Economy and the Changing Global Order*. Richard Stubbs and Geoffrey Underhill eds. Toronto: McClelland & Stewart: 163-175. Louis Pauly, (1997). *Who Elected the Bankers? Surveillance and Control in the World Economy*. Cornell: Cornell University Press. For useful background on the regulation of investment rights see, Charles Lipson, (1985). *Standing Guard: Protecting Foreign Capital in the Nineteenth and Twentieth Century*. Berkeley, University of California Press. Jackson, John (1992). *The World Trading System*. Cambridge, Mass, MIT Press. For a more contemporary discussion of international property rights, consult S. Picciotto, (1998). "Globalization, Liberalization, Regulation." unpublished paper. For contemporary analysis of these events see Charles S. Maier, (1981). "The Two Postwar Eras and Conditions for Stability in Twentieth Century Western Europe." *American Historical Review* 86(April): 327-352. 1973; Barry Eichengreen, (1996). *Globalizing Capital A History of the International Monetary System*. Princeton: Princeton University Press; John Ikenberry, (1992). "A World Economy Restored: Expert Consensus and the Anglo-American Postwar Settlement." *International Organization* 46:1(winter): 289-321; Charles S. Maier, (1981). "The Two Postwar Eras and Conditions for Stability in Twentieth Century Western Europe." *American Historical Review* 86(April): 327-352; John G. Ruggie, (1982). "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order." *International Organization* 36 (Spring), 379-415 and his more recent article (1992). "Multilateralism: an Anatomy of an Institution." *International Organization* 46:3(summer): 573-598. A helpful retrospective analysis of the Bretton Woods era by participants is found in Keith Acheson, John F. Chant, et al., eds. (1972). *Bretton Woods Revisited*. Toronto: U of T. Finally there is a very large literature on full employment obligation including Philip Armstrong, Andrew Glyn, et al. (1991). *Capitalism Since 1945*. London: Basil Blackwell; Henderson, Hubert Douglas (1955). *The Inter-War Years and Other Papers A Selection from the Writings of Hubert Douglas Henderson*. Oxford: OUP; James Meade, (1953). *Problems of Economic Union*. London: George Allen & Unwin as well as the writings of Keynes. For the latter Robert Sidelesky, (1994). *John Maynard Keynes The Economist as Saviour 1920-1937*

⁴ For a particularly influential work on the full employment imperative internationally, see Schumacher 1944. Much later his influential work *Small is Beautiful* established his international reputation as a practical utopian.

⁵ Havana was broadly representative of the countries of the world at the time. Half came from Latin America and Asia and ten from the Middle East or Africa, with the remaining signatories from First World countries. (Charnovitz, 1995)

⁶ We now understand the complex issue of the failure of the Truman government to muster the necessary domestic support to win Congressional approval for the ITO. By 1949, the highwater mark of US internationalism had passed and the Truman administration had begun to devote its energies to the more immediate military-political threats on its foreign policy agenda such as getting Congressional support for the Marshall Plan and NATO. (Odell and Eichengreen 1996) Without high level Presidential support for the ITO, most major American business organizations turned against its investment provisions. (Diebold, 1952; 1998)

⁷ In terms of political theory, the defining element for government was interpreted to mean "...how much responsibility will be left to private enterprise and how much will be assumed by

public authority.”

⁸ The list is adapted from Viner, (1947).

⁹ There had been international meetings and congresses to promote customs co-ordination in 1900, 1908, and 1913. As well Conferences were held throughout the twenties in 1920, 1922, 1923, 1927, 1930 and 1933. The League of Nations completed an International Convention Relating to the Simplification of Customs Formalities which Jackson notes “covered many of the matters now treated in GATT.” As well, the League carried out a series of studies on trade problems between 1926 and 1936 which influenced the drafters of the Havana Charter. (Jackson,1989:31)

¹⁰ Odell and Eichengreen make a powerful case that it was not the investment provisions that prevented Truman from supporting the Havana Charter. Rather it was the fact that Truman did not mobilize public opinion on its behalf and had other foreign policy priorities that his Administration deemed more important. American business interests had been early supporters of the ITO but as the Cold War heated up their position changed from support to opposition. Not all of US business were anti-ITO zealots though and in retrospect it would appear that the ITO could have passed had Truman used his executive authority and congressional muscle.

¹¹ According to the Charter, a member State targeted for retaliation was indeed free to withdraw from the ITO within 60 days.(art. 6,21, 75, 93-5) But if the GATT experience is any guide, it is doubtful that a country would exercise the ‘exit’ option. In practice, countries have always preferred to negotiate their differences rather than become an international outrider. In this sense, the ITO was built better than it realized and its mechanism to handle trade disputes remains within the international norms of the last fifty years.

¹² The three aims of the Geneva meeting were: “continuing the preparation of the charter; negotiation of a multilateral agreement of tariff reduction; drafting “general clauses of obligations related to tariff negotiation.” (Ostry, 1997: 62) Plainly, GATT was the creature of the ITO and its principles and legal norms were developed as part of the larger organization’s mandate and non-liberal philosophy.

¹³ The contentious subject of investment rights did not die with the end of the ITO.

¹⁴ At the World Bank, the US had a fifth of the voting power, the EEC almost a quarter and OECD nations close to 60 percent. Capital rich nations comprised 16 percent of the membership in 1982 but four times the votes! It is not difficult to see why, as a consequence of these voting arrangements, after the disappearance of the ITO, the World Bank and the IMF have supported the rights of foreign investors and have condemned international behaviour that extends host countries’ rights to maintain control over their resources. (Lipson, 1985:90-91)

¹⁵ See Brown, 1950:Chapter VII for the pros and cons of this debate which has never had any closure.

¹⁶ Jackson underscores the fact that the US was one of the most insistent countries in maintaining trade flexibility practices. The modern era of safeguards legislation began with the US Reciprocal Trade Agreements program of 1934 and is still one of the pillars of US trade policy sixty-odd years later. Its evolution can be seen in other US statutes such as the US Reciprocal Trade

Agreement in the US-Mexico Agreement of 1943. Jackson adds that the GATT escape clause (Article XIX) is a direct descendent of the safeguard clause in the US-Mexico Agreement. (Jackson: 1989:153)

¹⁷ By contrast, with the passage of time US law was to become ‘increasingly more detailed and elaborate’ with very precise definitions. Even here the US has had the decisive advantage of relying on its own parallel legal norms to protect US interests by using its trade laws for restrictive protectionist ends.

¹⁸ Since GATT was not an ‘organization at the time’, its status was that of a negotiating forum of the ITO. GATT membership and a full secretariat came much later. (Jackson, 1989:45)

¹⁹ The system of tariff negotiation pioneered by the ITO and the GATT had its limitations. Item by item negotiations were lengthy and difficult and many countries gave away as little as possible. It was complicated by the fact that tariff concessions were measured by the height of the existing tariff. At the Kennedy Round, countries adopted a linear across the board method of tariff reduction based on the commitment to reduce tariffs by the same amount for all. Another model of tariff reduction consists of attempting to liberalize trade within a given sector such as steel, automobile or refrigerators. Aside from many technical problems associated with defining the ‘sector’, tariff reduction depends in the final analysis on political will and the capacity to generate sufficient momentum. It is the latter two ingredients that account for the success of the ITO-GATT negotiations of 1947.

²⁰ For a discussion of the reasons for the weak dispute settlement in GATT, see Jackson, 1989:94-103.

²¹ Voluntary codes are a poor second best choice by any standard to address this issue. Two such efforts are: *1976 OECD Guidelines for Multinational Enterprises* and the *1980 UNCTAD set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices*.

²² Countries in the postwar period were engaged in different kinds of national planning exercises that required them to address many of the same issues of full employment, trade and investment domestically. In Britain the Labour Party had won the general election in 1945 and had committed itself to a full employment obligation. Even the Conservatives backed the full employment provision in the 1947 Industrial Charter. (Weir, 80 in Peter Hall, 1989) In 1946 France established ‘planification’ the system of prioritizing and expanding state control over the economy and its first head with Jean Monnet. In the US, planning, trade and employment questions were also priorities even though the mechanisms and the commitments undertaken by Washington were weaker than Whitehall’s. see, Armstrong et.al.1991.