

# DEVELOPMENT AT THE WTO

## Looking beyond the Doha round

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# The WTO and development paradox

- Major transformations in the role of developing countries in world trade since the Uruguay Round...
- ...But a debate on development at the WTO largely frozen in time

# Overview

- Disconnect between development needs and WTO disciplines
- Disconnect between developing members' participation and WTO institutions
- 2 paradigms for reconsidering the trade and development relationship at the WTO

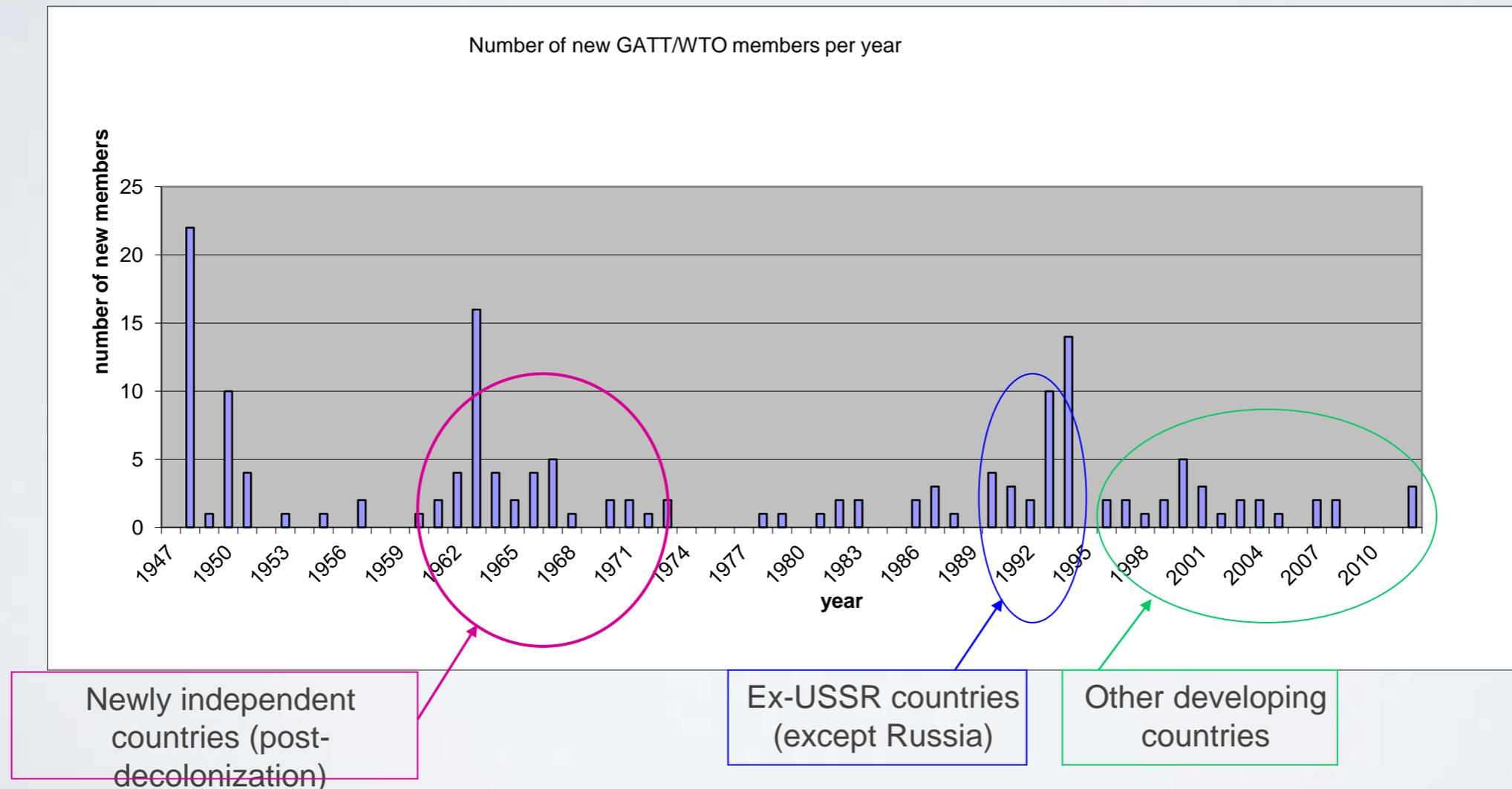
# Disconnect between development needs and WTO disciplines

- 1955: Addition of Article XVIII of the GATT
  - 1958: Report by the Director General summarizing the concerns and demands of developing members: mostly high tariffs on “tropical” products in industrialized countries
- 1964: Creation of UNCTAD; addition of Part IV of the GATT on Trade and Development
- 1971: Temporary Waiver to “legalize” preferences and encourage more favorable treatment of developing countries
- 1979: Tokyo Round: Enabling Clause; non reciprocal negotiations
- 1986 - 1994: Uruguay Round : “Special and Differential Treatment”
- 2001: Doha “Development” Round inaugurated

~~• 2003 Decision on Public health amending TRIPS art. 31~~

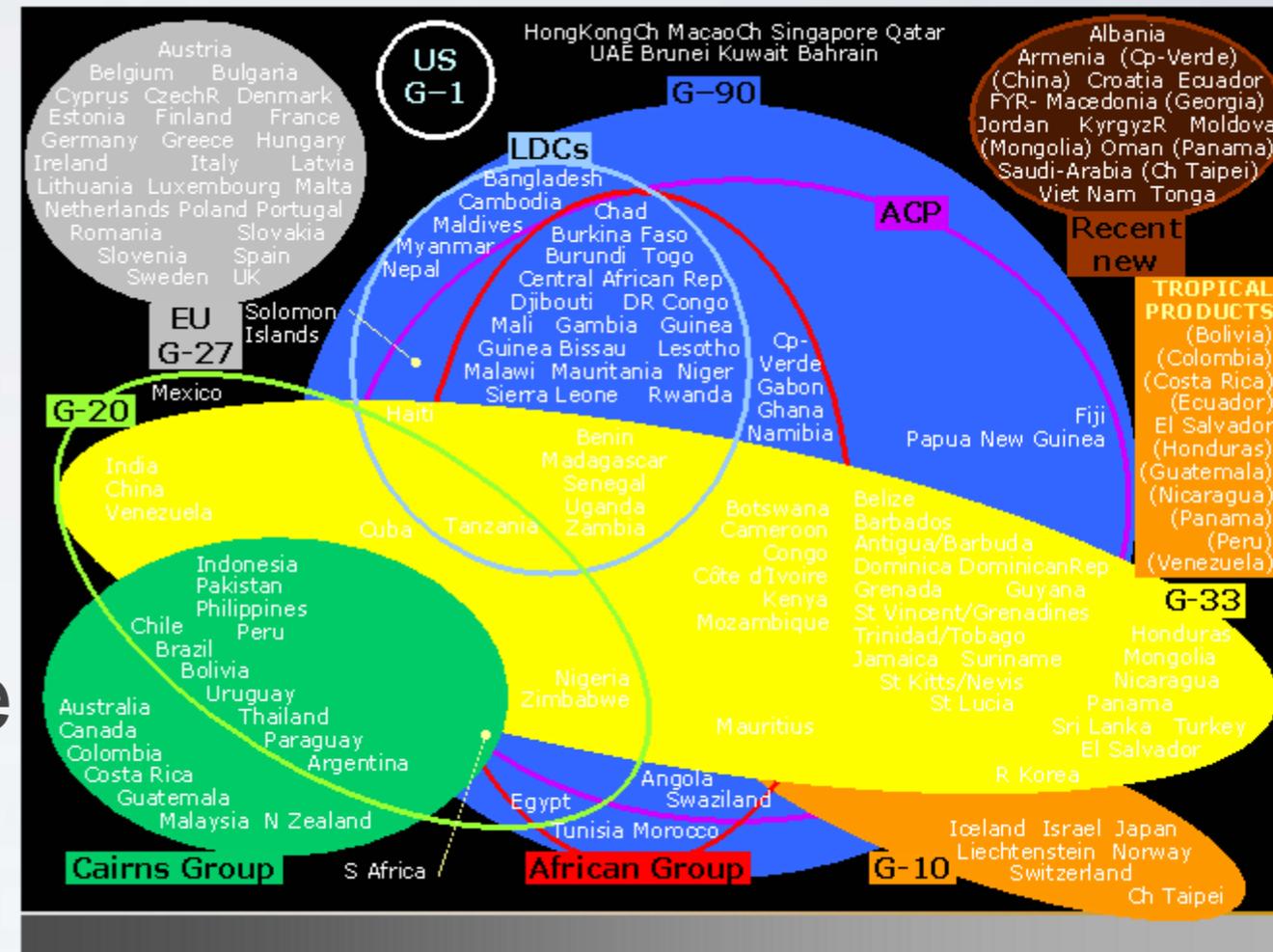
# A changing membership

- 158 members:
  - 75 % are developing countries
  - 34 of 50 Least-Developed Countries are members



# Institutional disconnect with developing members capacity

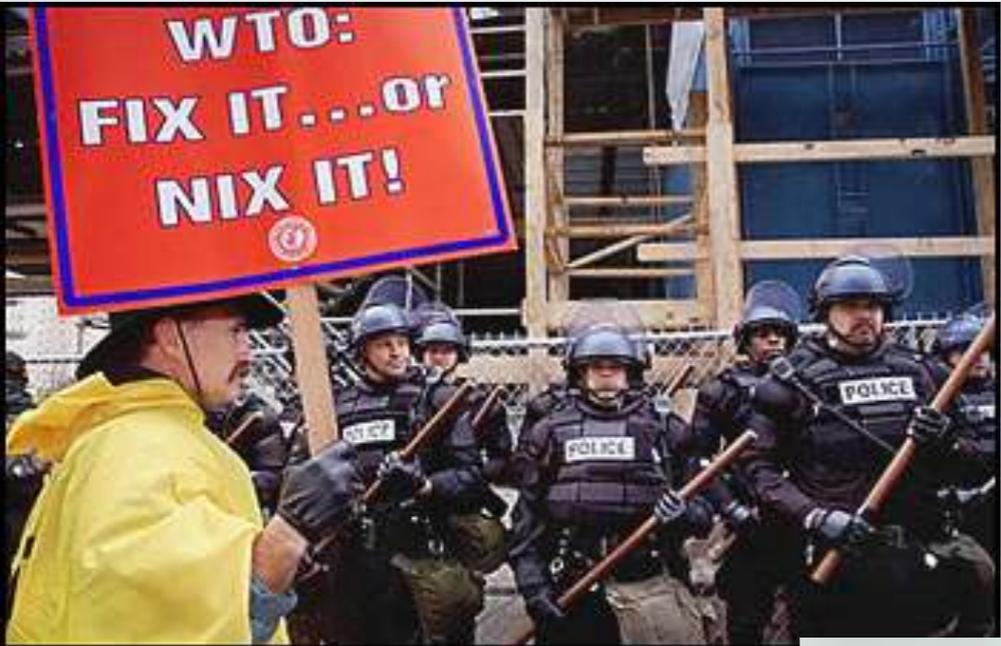
- Coercive effect of consensus
- Increased “secondary legislation”
- No legal recognition for groups of developing members
- Under-participation in dispute settlement
- Capacity-building efforts at the Secretariat



# Institutional disconnects: dispute settlement

- Has the “law based system” leveled the playing field for weaker members?
  - Still virtually no participation by LDCs
  - Some victories by large developing countries (e.g., *Upland Cotton*); increased participation (China)
- Inconsistent treatment of SDT in disputes
- Negotiations on implementation similar to UR positions for many developing members.

# Geneva, we have a problem...



Hong Kong, 2005

Seattle, 1999



Cancun, 2003



# Reframing the trade and development relationship

- Ad hoc paradigm:
  - Pragmatic case-by-case consideration of trade and development
- Normative co-constituent paradigm:
  - Trade liberalization and development as complementary core principles to infuse WTO law and institutions

# Ad hoc paradigm for trade and development

- Adaptive obligations
  - Use of legal standards
  - Best efforts
- Criteria and triggers for SDT
  - Specify bearer of obligations
  - Specify nature and content of obligations
  - Explicit relationship between SDT and other trade disciplines
- Improved adjudication
  - Transparency and coherence in interpretation of SDT

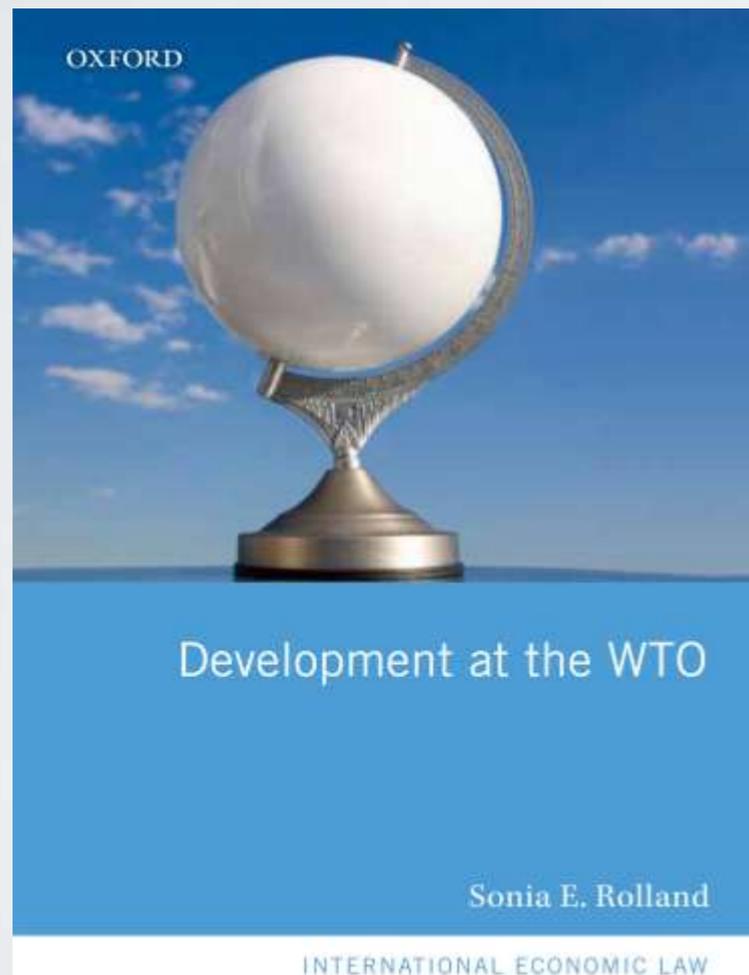
# Normative co-constituent paradigm

- Decision-making
  - Moving beyond formal equality
  - (Advisory) indirect representation?
- Negotiation design
  - Single undertaking as part of the problem?
  - Relative valuation of concessions?
- Dispute Settlement
  - Normative commitment to development would infuse treaty interpretation
  - Rethink retaliation and implementation

# Moving forward in practice

- Increasing human and financial resources
- Shifting members' and the organization's practices
- Using interpretative decisions by the General Council
- Bringing the interpretation of the WTO agreements in line with contemporary developments in public international law
- Reexamining the negotiation process

# THANK YOU



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# Selected Publications

- *Considering Development in the Implementation of Panel and AB Reports*, 4 TRADE, LAW AND DEVELOPMENT 150 (2012). Republished as part of the TLD Online Symposium at the International Economic Law and Policy Blog *available at* <http://worldtradelaw.typepad.com/ielpblog/>
- *Redesigning the Negotiation Process at the WTO*, 13 JOURNAL OF INTERNATIONAL ECONOMIC LAW 65 (2010).
- *Developing Country Coalitions at the WTO: In Search of Legal Support*, 48 HARVARD INTERNATIONAL LAW JOURNAL 483 (2007).
- *Chapter 7: WTO Law*, in TRANSNATIONAL LAW (M. Reimann, J. Hathaway, T. Dickinson, J. Samuels eds., *forthcoming West casebook*)