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Reflections on the International Trade Organization

WILLIAM DIEBOLD*

This article will attempt to give informal and sketchy answers to the three following questions:

1. What made the International Trade Organization (“ITO”) different from the General Agreement on Tariffs and Trade (“GATT”), or anything else, before or since?
2. Is there anything new to say about why it failed?
3. Where might we be in international trade policy if we had the ITO?

I. THE QUIDDITY

Before we single out the differences between the ITO and GATT, we should recall what they had in common.

Both came out of the process carried on during and right after the Second World War of constructing a multilateral, liberal, open, world economy. As others have already said, it was common at the time to speak of the ITO as “the third leg of the Bretton Woods stool.” We thought we could demonstrate that the whole financial and monetary mechanism already agreed to at Bretton Woods wouldn’t work if we did not have an arrangement for trade of the sort that would have been provided by the ITO and the Havana Charter of 1947—or something very like it. Obviously, we were wrong.

GATT and the ITO were alike in reflecting the view of those who had studied the interwar experience that international agreements concerning trade should embody concrete, workable, commitments. There should be no repetition of the League of Nations experience of trade conferences that produced fine statements of principle that were not adhered to.

At the same time, principles were important—very important. Both GATT and the ITO embodied the same principles: multilateralism; reciprocity; equal treatment; provisions for negotiations to reduce tariffs and other trade barriers; and the creation of intergov-

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ernmental machinery to carry out the processes devised to move toward those objectives.

Neither the ITO nor GATT said a word about free trade. The reason was not just that in the United States, at least,—and I think in much of the rest of the world—the term was politically untouchable, or at least unsayable. The issue went deeper than that. I know of no one involved in working out the problems of international trade at the time who thought that free trade was a realistic goal or even a reasonable aspiration for a liberal economic system that had to be operated by sovereign states. Indeed, I know of no one, including me, who expected as much tariff reduction as we got by the end of the Kennedy Round.

Perhaps the best way of fitting together GATT and the ITO is to think of the GATT agreement as the chapter of the ITO Charter dealing with traditional trade restrictions, such as tariffs, quotas, and some non-tariff barriers. The reason this “chapter” was adopted in isolation, while the negotiations for the Charter were still going on, was because those negotiations were turning out to be slower and more difficult than had been expected. There was a feeling that the processes for reducing trade barriers should be put in operation before new structures of production increased the resistances to trade liberalization all over the world. I was told that Will Clayton said that “we need to act before the vested interests get their vests on.” Whether he really said that, I don’t know, but it makes the point.

Thought of as an advance installment, GATT could be folded into the ITO later on. In that comprehensiveness lay the quiddity of the Charter, the factor that made it different not only from GATT but from efforts to liberalize trade before or since.

As I see it, the ITO was based on the conviction that you could not maximize trade liberalization—or probably not even achieve the objectives of GATT—by means of traditional trade negotiations alone. It was necessary to do two more things. One was to deal with segments of international trade not usually covered in trade negotiations and the other was to find some way of relating the rules of international trade to the domestic policies of a group of diverse countries.

To do these things it was necessary to break new ground in international economic relations and also to permit international agreements to influence domestic economic measures to an unprecedented degree. The resulting problems were bound to prove difficult to solve, both intellectually and in practice. Not surprisingly, the results were not altogether satisfactory and were more promising in some fields than others.

The efforts to go beyond traditional areas of agreement led to what I regard as a fairly promising chapter about international commodity agreements, a weak one on private business practices, and what turned out to be disastrous provisions about economic development and private investment.

The effort to relate foreign trade policy to domestic economic measures produced a chapter that was quite inadequate for its purpose, potentially quite troublesome, and yet inescapable. The real defense for accepting this outcome was stated by Clair Wilcox, one of the chief American negotiators, a good economist, and one of my teachers, in what is still the best book on the ITO: "There is no hope that a multilateral trading system can be maintained in the face of widespread and protracted unemployment. Where the objectives of domestic stability and international freedom come into conflict, the former will be given priority."¹

He was, of course, reciting one of the lessons of the Great Depression and reflecting a concern that touched all of the international negotiations at that time. The fear of a postwar depression was quite general and, so far as the long run was concerned, the rest of the world worried about being exposed to the impact of what was thought to be the exceptionally unstable American economy. While many of us thought we knew how to avoid depressions, or at least cope with them, most of what we had learned focused on national measures and no one had any really convincing international prescriptions—although there were many proposals.

There is no time to discuss the strengths and weaknesses of each chapter of the ITO Charter. Most of the weaknesses stemmed, in proportions that varied from case to case, from the inability or unwillingness of enough governments to agree on new measures; uncertainty about the effectiveness of unprecedented arrangements; and the inability to work out better formulas. No one was more aware of these weaknesses than the officials of the United States government who largely led the efforts to break new ground. Almost every day they had to try to figure out how to satisfy three sets of conflicting criteria. To start with, there were the views of whichever key foreign governments were essential for a given measure (and most of these governments were less interested in trade liberalization than the United States). Second, there were the criteria of Congress where international measures took second place after domestic considerations and the reduction of tariffs was still a highly controversial matter. Finally,

1. CLAIR WILCOX, *A CHARTER FOR WORLD TRADE* 131 (1949).

the officials had to cope with their own individual and professional intellectual judgments and integrity.

Those of us who were hopeful about this whole process of creating a new system of international trade cooperation thought that setting it in motion would help bring about the development of new practices and standards that would overcome some of the weaknesses in GATT and the ITO and probably pave the way for further agreements. We expected this process to center in the ITO which naturally had more elaborate structures and procedures than the supposedly temporary GATT. Perhaps the differences look more significant now than they really were, but that is a matter to which I shall return later.

II. THE FAILURE

As some of you know, it is over forty years since I published a paper called "The End of the ITO."² In the intervening decades, I have encouraged other scholars to take a critical look at that paper and test its interpretations. They have archives to look into, I did not. I was four or five years out of the government and had no inside information though I had always been in touch with the people most involved with trade policy. I don't think there were any great secrets. Still, there are matters on which it would be nice to know specifics. When the Charter was withdrawn from Congress in December 1950, did anyone in the executive branch argue against that course? When the votes in Congress were counted what was assumed about the pressures the executive branch could mobilize? Looking back to 1948 and 1949 when business organizations were taking positions on the Charter and their opinions were divided, I would like to know who had said what and why did the victors carry the day? So far as I know, few people have dug into these questions. If there are any interesting results, I have not heard of them and would love to know about them.

Absent better work by others, I have had to reread my own and look at a few things I found in my files. However, I have not done any new research. You will not be surprised to hear that I have come out of that process thinking that what I said at the time was about right. To be sure, I would say some things a bit differently and amend my statements on some points but I see no reason to change the fundamentals. These can be put quite briefly; for support and qualifications, you will have to read the essay yourselves.

2. William Diebold, *The End of the ITO*, in 16 ESSAYS IN INT'L FINANCE (International Finance Section, Princeton University, 1952).

As I have explained, the effort to write the ITO Charter in a way that dealt realistically and comprehensively with the problems of making rules for world trade and also liberalizing it produced a complicated document with novel provisions that were, inevitably, of uncertain purport. Different parts of the Charter were attacked by people holding quite different points of view. In the end, as I said in my essay, the Charter was “whipsawed between protectionists and perfectionists” in the United States. What happened in the United States was decisive for the world.

The specifics behind these generalizations boil down to a few key points. Changes in the world lowered the importance of the ITO compared to such matters as the Marshall Plan, North Atlantic Treaty Organization (“NATO”), and the Korean War. There were developments in domestic politics and economics that increased protectionist pressures and weakened the ability of the executive branch to get what it wanted from Congress. It had to concentrate on the more urgent issues. The task of getting adequate support for the ITO became more difficult when the most influential segments of business opinion turned against it.

At the time, this last development seemed to me to be the crux of the matter and it still does. I believe that the other sets of problems could have been overcome if there had been strong business support for ITO, or maybe even the kind of moderate support that business, taken as a whole, had usually given to the renewals of the Trade Agreements Acts.

Much of the argument made by business groups against the ITO was the usual mix: it doesn't do enough to get down foreign barriers; the United States will stick to rules but others will not; there were too many exceptions or escape clauses that applied to foreign countries but not the United States; and directly, or by implication, the Charter sanctioned too much government intervention in the economy. There was something to be said for many of these contentions. Certainly the Charter was full of weaknesses and imperfections but, said supporters of the Charter, that was bound to be so as long as so many countries were in great economic difficulty and the future was so uncertain. As recovery advanced and balances of payments improved, there would be less use of escape clauses and exceptions. When confidence in the future grew, the Charter could be strengthened. Meanwhile, there were safeguards for the United States against the abuse of escape clauses. In looking at other measures, business people had swallowed comparable objections and one might have thought they would accept the government's argument that the Charter was the most that could be extracted from other countries at the time.

Major business groups, however, refused to go along with these arguments and said the United States should reject the Charter it had done so much to shape. In my view, the breaking point was the investment chapter. As many businessmen saw it, the provisions on development and investment not only offered no gain but also sanctioned behavior by foreign governments that the United States had long tried to change. The irony of the situation was that most of the offending features would not have appeared in the Charter if business groups had not pushed so hard for expanding the brief references to investment in earlier drafts.

One could foresee at the time that the results would be poor. The State Department argued that modernized versions of traditional Treaties on Foreign Commerce and Navigation provided a better way of dealing with investment issues country by country. In the Charter negotiations, it was almost a case of the United States against the rest of the world. It was a late stage of the Charter negotiations and the American bargaining position was weak; the United States had obtained much of what it wanted but had made almost all the concessions that were acceptable. Nevertheless, the government followed the course the businessmen wanted.

No one on the American side was satisfied with the outcome. Those who advocated accepting the Charter, in spite of these and other deficiencies, offered weaker defenses for the investment provisions than for anything else—as can be seen in Wilcox's book and a pamphlet that Percy Bidwell and I wrote at the time.³ Some businessmen took the same view. I heard some of the echoes of serious arguments about what position various organizations should take. In the end, most of them used very strong language when they came out against the Charter; they leaned toward negative interpretations on a range of issues and often condemned the Charter in rather sweeping terms. I thought at the time that one important factor in this process was that it looked as if the National Foreign Trade Council, one of the traditional major supporters of the trade agreements program, was no longer dominated by the concerns of merchants but by large companies that saw direct foreign investment as the key to their future international business. I would like to know more about that.

Indeed, I would like to have someone find out whether I was right or wrong in what I said about the investment issue in 1952

3. Percy W. Bidwell & William Diebold, Jr., *The United States and the International Trade Organization*, in 449 INTERNATIONAL CONCILIATION at 208-12 (Carnegie Endowment for International Peace, March 1949).

because I thought that it was probably the crucial factor leading to the demise of the ITO. Until that happens, I can see only three major points on which I would amend my old essay.

It was clear at the time that the ITO promised mainly longrun gains; any shortrun gains in opening the American market and liberating trade in the rest of the world to help European recovery would have to come largely through GATT and the Marshall Plan. Does that mean that GATT's early start weakened the case for the ITO? I don't remember anyone saying that at the time but the point seems worth some discussion. Has anyone argued it since?

As a second amendment, I would underline the fact that the ITO no longer had any champions in the State Department, or elsewhere in the government, who had much power and influence. Clayton had gone, as had Wilcox. Nitze was doing other things. Acheson was back but he never put a very high priority on trade matters except as part of larger issues. I think he regarded trade liberalization as kind of a hobby of Cordell Hull's and he did not have a lot of respect for Mr. Hull's political judgment—at least on international matters. Raymond Vernon has put forward the idea of "policy entrepreneurs" and I wonder whether the absence of one may not have contributed to the Truman administration's dropping of the ITO.⁴ Time was doing its work.

Finally, I think the ITO's loss of priority needs more discussion than I gave it in 1952. The main point seems obvious enough, and yet could one not argue that the ITO would have helped promote the objectives of the Marshall Plan and NATO? As a matter of fact, in his foreword to the Wilcox book, Will Clayton said, "The program that is embodied in the *Charter* provides a necessary sequel to the program for European recovery on which the United States is now embarked. The two are interdependent; neither can be wholly successful without the other. . ."⁵ If that was right in 1949, it could hardly have been wrong in 1950.

Nevertheless, there is not much doubt that an important factor in the Truman administration's withdrawal of the ITO Charter from Congress was that so many other, and often more urgent and sometimes highly controversial, matters had to be dealt with. Does that mean the ITO was "a victim of the cold war?" I was startled when I first heard that said because I had never seen the issue that way. I

4. RAYMOND VERNON & DEBORA SPAR, *BEYOND GLOBALISM: REMAKING AMERICAN FOREIGN ECONOMIC POLICY*, Ch. 1 *passim* (1989).

5. WILCOX, *supra* note 1, at x.

am still worried by the ease with which that bit of shorthand can be used and misunderstood.

It would, for example, be a misunderstanding to think that the ITO was a victim of the cold war because the Soviet Union ("USSR") did not join. That loss was unimportant as seemed clear at the time and as has been borne out by the history of GATT. No great amount of trade was involved and not too much could be expected of the Charter's devices for linking centrally planned economies with market systems. Had the USSR joined, the cold war would have fueled Congressional, and other, resistance to full American support for the ITO and perhaps blocked other trade measures as well. As it was, the obstacles to the adoption of the ITO that proved impossible to overcome were rooted in American relations with the rest of the world, not the Communist countries.

It would be a considerable misunderstanding to suppose that even though the ITO was the "victim of the cold war" in the limited sense I have allowed for above, the end of the cold war means that the ITO can be resurrected or even that it is needed more than it was before. The need for new measures of international trade cooperation and a strengthening of many of the past arrangements is real enough, but that need was there before the cold war ended and was created by quite different issues from those most directly related to the cold war. How the end of the cold war might have increased the chances for improving and widening cooperation on the major problems of world trade is hard to see—except, perhaps, in the fact that more people seem willing to think about finding ways to reorder international relationships more generally.

III. MIGHT HAVE BEENS

Where would we be if we had the ITO? This third question has to be dealt with even more informally than the first two. As a venture in speculation, it is not worth a great deal of weight or time.

A few years ago—at one of the times people thought the Uruguay Round was about to end—there was a surge of interest in the ITO as a successor to GATT. People thought it would be stronger and more capable of dealing with the new world. It seemed to me that to reach that conclusion you had to answer two questions: Would the ITO have worked? If it did, would it have been able to deal with the main trade problems that were besetting GATT? Underlying both questions was a third: Would governments yield to international rules and decisions under the ITO more than they have to GATT?

I see no way to answer this third question without piling one historical hypothesis on another. In thinking about the matter, it

helps to keep two points in mind. The ITO, like GATT, was to be an intergovernmental organization, not some supranational or autonomous body. The United States was as strong as any country in resisting the idea of giving the ITO great powers. Have we changed much?

To get an idea of whether the ITO would have worked better than GATT, one could systematically compare the procedures under both agreements and try to assess the degree to which international constraints would have been put on national decisions. Probably the "strength" of the ITO would look greater—but not as much as many people imagine. I suspect that most of the time one would sense that the real meaning of the verbal formula would depend on how both governments and the international agency had dealt with changing circumstances over time. Might dispute settlement procedures have worked differently? Would there have been great differences in the way international decisions were made? Nominally a one-country, one-vote organization, GATT, in fact, could only do what a combination of key countries agreed on. Would that not also have been true of the ITO? Could the ITO have gained the status of the Fund and Bank if it had no money to dispense? Would international supervision of the use of "temporary" safeguards have developed strengths under the ITO that it did not in GATT? Would GATT's influence have been much greater if the innovation of relatively quiet country policy reviews had been introduced much earlier? The list of questions can be expanded indefinitely. The answers lie not so much in the text of the Charter as in whatever the result would have been of forty years of experience with the ITO.

In imagining that experience, one would pay attention to the differences in the substantive provisions of the two agreements. The Charter paid more attention than the GATT ever did to the way protection could be provided for infant industries. Suppose that had become the focus for reconciling the principles of GATT with the needs—or wishes—of the LDCs. Might better ideas have been built up about constructive trade policies for developing countries than the combination of virtually exempting them from most obligations while giving them limited preferences but frequently treating them less favorably than the industrial countries treated one another?

Commodity agreements and cartels have been a good deal less important in postwar international trade than was expected when they were given their own chapters in the Charter. Perhaps, though, it would have been useful to have had established arrangements for negotiating about OPEC when it became important. Even a weak cartel chapter might have done more than GATT has done to lay the

groundwork for analyzing questions about global oligopoly inherent in joint ventures, patent swaps, or other kinds of industrial agreements in fields where only a few firms really count. Also, there might have been more progress in dealing with the problems of harmonizing national anti-trust measures that Professor de Seife has written about.⁶ It is even possible that developing standards for international agreements about agricultural commodities would have saved years of frustration in dealing with agricultural trade by leading countries a long time ago to the experiment they are now making in negotiating about national farm policies and not just recalcitrant trade barriers.

You would have to draw a pretty long bow to persuade anyone that the ITO's provisions on investment would have made a great deal of difference to the postwar history of that issue. In the hopes of making the best of the Charter's poor provisions, Bidwell and I said at the time that "International investment deserves a code in its own right."⁷ Others have agreed; there have been proposals, drafts, and negotiations. The results have been meager except as national governments have come to want foreigners to invest on terms that proved acceptable to the investors.

One can go on asking whether a very long list of trade problems would have been dealt with differently under the ITO than has happened in GATT. The Charter had the same omissions that are now being partially filled in GATT, such as services, the environment, and intellectual property. There are old questions like regionalism, dumping, and national treatment. There are newer problems such as rules of origin, the differences, if any, between high-tech and other industries, the public financing of Research and Development, and fluctuating exchange rates. Would the ITO have equaled GATT's relative neglect of state trading, "voluntary" export restraints, and defining the many varieties of subsidies? As the list grows, one can see that the question can also be put in a short form: Would the existence of the ITO have prevented the deterioration of the international trading system that has gone on since the early 1970s?⁸

One can spin out possibilities, with here and there a core of plausibility, but for the most part there is no evidence. If one asks

6. Rodolphe J.A. De Seife, *French and EEC Competition Law: GATT and U.S. Foreign Trade Policy Post-1992*, 71 NEB. L. REV. 488 (1992).

7. Bidwell & Diebold, *supra* note 3, at 212.

8. For an account of the deterioration and some suggestions for checking it, see MIRIAM CAMPS & WILLIAM DIEBOLD, JR., *THE NEW MULTILATERALISM: CAN THE WORLD TRADING SYSTEM BE SAVED?* (1986).

what relevance the broad question has to where we stand today, two parts of an answer can be given, one positive and one negative. Something like the approach that underlay the drafting of the ITO Charter is needed today—the problems of international trade cannot be adequately dealt with, and further major liberalization achieved, except by agreements that deal with subjects going beyond the traditional scope of trade policy and that also relate international to domestic policies. It is not, however, the ITO of 1947 that is wanted.

IV. TWO FINAL WORDS

This is not the place to say what a new ITO—or a new anything—ought to be. The discussion of the old one and how the world has managed without dues, however, prompts two lines of further inquiry.

Do we live in the kind of world for which even a new model ITO would be suited? The old ITO, GATT, and the other forward-looking institutions and arrangements of the Bretton Woods world were based on the idea that if the problems of the world economy were to be dealt with better than in the past, people would have to accept a higher degree of international interdependence than they had been used to. It seems clear that today this is more true than ever but the question is whether past concepts of interdependence are adequate to the modern world. Bretton Woods thinking assumed that each country should more or less manage its economy so long as it met common standards in its relations with others. However, the developments of the last fifty years such as the great growth of trade and investment, the almost free movement of money, the internationalization of business, and other related processes, have produced a world economy that is not only highly interdependent but what one might better call “interpenetrated.” As the lines between national economies are blurred—and the very concept of a national economy changes—new methods and areas of international cooperation will have to be found if the problems of the new circumstances are to be coped with in an adequate manner. But it is also true that governments, responsible primarily to their own people, will try to continue to have as much autonomy as they can and will pursue it in the old-fashioned way. As these contradictory forces play against one another, it will take a good bit of new thinking to work out new ways of dealing with the issues of trade and the other elements of the world economy. One may be sure that a modern prescription that has any real promise will have to go well beyond the ambitious ITO Charter of 1947.

The second line of inquiry reflects on the reason the old ITO failed. The special promise of the ITO lay in its comprehensiveness

and novelties. Those will certainly have to be characteristics of any new ITO approach if it is to succeed. But a new ITO, like the old one, will have to be accepted by independent governments with diverse economies and different interests. Therefore, it has to promise benefits to all. Specific and concrete obligations will be called for along with the acceptance of strong principles. It will also be necessary to permit occasional departures from the rules, usually temporary and subject to the consent of others. It was features such as these that made the Charter seem "realistic" to some people. But the same features made it unacceptable to others. Surely, something of that sort will be true of any major, ambitious, new proposal. In the case of the ITO, the differences proved fatal because of the key position of a group of reputed "realists"—organized American business. Thus, the virtues of the ITO were also its weakness. Is there any formula—incremental change, a reduction of aims, partial measures known to be inadequate, more selectivity in membership, shrewder management, better education, or greater fear—that may offer better prospects to new efforts?