Expanding Frontiers of Global Trade Rules

The political economy dynamics of the international trading system

Nitya Nanda
Expanding Frontiers of Global Trade Rules

This book analyses one of the most controversial areas in the political economy of international trade, namely the issues surrounding the creation of new ‘trade rules’. Various concerns are addressed, including the environment, labour standards, intellectual property rights, trade facilitation, competition policy, investment and government procurement, to many conventional trade topics including the trade and development linkage.

Nanda combines theoretical analysis with valuable insights derived from interactions with trade negotiators, politicians and activists, arguing for a dynamic policy framework, particularly in developing countries, with regular upgrading. He questions the effectiveness of the current global trade order in promoting development, highlighting not only the inability of conventional economics to capture the reality of international trade but also the neglect of some basic principles of economics. Nanda also argues that the WTO is not the right forum for addressing development issues because trade liberalization has traditionally been its objective.

The contemporary issues raised in this book would be of interest to students and researchers engaged with international economic relations and economic law. It is also useful reading for policy makers and non-governmental agencies concerned with international trade.

Nitya Nanda is Fellow with the Centre for Global Agreements, Legislation and Trade at The Energy and Resources Institute (TERI) in New Delhi.
1 Interest Rates and Budget Deficits
A study of the advanced economies
Kanhaya L. Gupta and Bakhtiar Moazzami

2 World Trade after the Uruguay Round
Prospects and policy options for the twenty-first century
Edited by Harald Sander and András Inotai

3 The Flow Analysis of Labour Markets
Edited by Ronald Schettkat

4 Inflation and Unemployment
Contributions to a new macroeconomic approach
Edited by Alvaro Cencini and Mauro Baranzini

5 Macroeconomic Dimensions of Public Finance
Essays in honour of Vito Tanzi
Edited by Mario I. Blejer and Teresa M. Ter-Minassian

6 Fiscal Policy and Economic Reforms
Essays in honour of Vito Tanzi
Edited by Mario I. Blejer and Teresa M. Ter-Minassian

7 Competition Policy in the Global Economy
Modalities for co-operation
Edited by Leonard Waverman, William S. Comanor and Akira Goto

8 Working in the Macro Economy
A study of the US labor market
Martin F. J. Prachowny

9 How Does Privatization Work?
Edited by Anthony Bennett

10 The Economics and Politics of International Trade
Freedom and trade: volume II
Edited by Gary Cook

11 The Legal and Moral Aspects of International Trade
Freedom and trade: volume III
Edited by Asif Qureshi, Hillel Steiner and Geraint Parry

12 Capital Markets and Corporate Governance in Japan, Germany and the United States
Organizational response to market inefficiencies
Helmut M. Dietl

13 Competition and Trade Policies
Coherence or conflict
Edited by Einar Hope

14 Rice
The primary commodity
A. J. H. Latham

15 Trade, Theory and Econometrics
Essays in honour of John S. Chipman
Edited by James C. Moore, Raymond Riezman and James R. Melvin

16 Who Benefits from Privatisation?
Edited by Moazzem Hossain and Justin Malbon
17 Towards a Fair Global Labour Market
Avoiding the new slave trade
Ozay Mehmet, Errol Mendes and Robert Sinding

18 Models of Futures Markets
Edited by Barry Goss

19 Venture Capital Investment
An agency analysis of UK practice
Gavin C. Reid

20 Macroeconomic Forecasting
A sociological appraisal
Robert Evans

21 Multimedia and Regional Economic Restructuring
Edited by Hans-Joachim Braczyk, Gerhard Fuchs and Hans-Georg Wolf

22 The New Industrial Geography
Regions, regulation and institutions
Edited by Trevor J. Barnes and Meric S. Gertler

23 The Employment Impact of Innovation
Evidence and policy
Edited by Marco Vivarelli and Mario Pianta

24 International Health Care Reform
A legal, economic and political analysis
Colleen Flood

25 Competition Policy Analysis
Edited by Einar Hope

26 Culture and Enterprise
The development, representation and morality of business
Don Lavoie and Emily Chamlee-Wright

27 Global Financial Crises and Reforms
Cases and caveats
B. N. Ghosh

28 Geography of Production and Economic Integration
Miroslav N. Jovanović

29 Technology, Trade and Growth in OECD Countries
Does specialisation matter?
Valentina Meliciani

30 Post-Industrial Labour Markets
Profiles of North America and Scandinavia
Edited by Thomas P. Boje and Bengt Furaker

31 Capital Flows without Crisis
Reconciling capital mobility and economic stability
Edited by Dipak Dasgupta, Marc Uzan and Dominic Wilson

32 International Trade and National Welfare
Murray C. Kemp

33 Global Trading Systems at Crossroads
A post-Seattle perspective
Dilip K. Das

34 The Economics and Management of Technological Diversification
Edited by John Cantwell, Alfonso Gambardella and Ove Granstrand

35 Before and Beyond EMU
Historical lessons and future prospects
Edited by Patrick Crowley

36 Fiscal Decentralization
Ehtisham Ahmad and Vito Tanzi

37 Regionalisation of Globalised Innovation
Locations for advanced industrial development and disparities in participation
Edited by Ulrich Hilpert

38 Gold and the Modern World Economy
Edited by MoonJoong Tcha

39 Global Economic Institutions
Willem Molle
40 Global Governance and Financial Crises
   Edited by Meghnad Desai and Yahia Said

41 Linking Local and Global Economies
   The ties that bind
   Edited by Carlo Pietrobelli and Arni Sverrisson

42 Tax Systems and Tax Reforms in Europe
   Edited by Luigi Bernardi and Paola Profeta

43 Trade Liberalization and APEC
   Edited by Jiro Okamoto

44 Fiscal Deficits in the Pacific Region
   Edited by Akira Kohsaka

45 Financial Globalization and the Emerging Market Economies
   Dilip K. Das

46 International Labor Mobility
   Unemployment and increasing returns to scale
   Bharati Basu

47 Good Governance in the Era of Global Neoliberalism
   Conflict and depolitization in Latin America, Eastern Europe, Asia and Africa
   Edited by Jolle Demmers, Alex E. Fernández Jilberto and Barbara Hogenboom

48 The International Trade System
   Alice Landau

49 International Perspectives on Temporary Work and Workers
   Edited by John Burgess and Julia Connell

50 Working Time and Workers’ Preferences in Industrialized Countries
   Finding the balance
   Edited by Jon C. Messenger

51 Tax Systems and Tax Reforms in New EU Members
   Edited by Luigi Bernardi, Mark Chandler and Luca Gandullia

52 Globalization and the Nation State
   The impact of the IMF and the World Bank
   Edited by Gustav Ranis, James Vreeland and Stephen Kosak

53 Macroeconomic Policies and Poverty Reduction
   Edited by Ashoka Mody and Catherine Pattillo

54 Regional Monetary Policy
   Carlos J. Rodríguez-Fuentes

55 Trade and Migration in the Modern World
   Carl Mosk

56 Globalisation and the Labour Market
   Trade, technology and less-skilled workers in Europe and the United States
   Edited by Robert Anderton, Paul Brenton and John Whalley

57 Financial Crises
   Socio-economic causes and institutional context
   Brenda Spotton Visano

58 Globalization and Self Determination
   Is the nation-state under siege?
   Edited by David R. Cameron, Gustav Ranis and Annalisa Zinn

59 Developing Countries and the Doha Development Round of the WTO
   Edited by Pitou van Dijck and Gerrit Faber

60 Immigrant Enterprise in Europe and the USA
   Prodromos Panayiotopoulos

61 Solving the Riddle of Globalization and Development
   Edited by Manuel Agosín, David Bloom, George Chapelier and Jagdish Saigal
62 Foreign Direct Investment and the World Economy
Ashoka Mody

63 The World Economy
A global analysis
Horst Siebert

64 Production Organizations in Japanese Economic Development
Edited by Tetsuji Okazaki

65 The Economics of Language
International analyses
Edited by Barry R. Chiswick and Paul W. Miller

66 Street Entrepreneurs
People, place and politics in local and global perspective
Edited by John Cross and Alfonso Morales

67 Global Challenges and Local Responses
The East Asian experience
Edited by Jang-Sup Shin

68 Globalization and Regional Integration
The origins, development and impact of the single European aviation market
Alan Dobson

69 Russia Moves into the Global Economy
Breaking out
John M. Letiche

70 The European Economy in an American Mirror
Barry Eichengreen, Michael Landesmann and Dieter Stiefel

71 Working Time Around the World
Trends in working hours, laws, and policies in a global comparative perspective
Jon C. Messenger, Sangheon Lee and Deidre McCann

72 International Water Treaties
Negotiation and cooperation along transboundary rivers
Shlomi Dinar

73 Economic Integration in the Americas
Edited by Joseph A. McKinney and H. Stephen Gardner

74 Expanding Frontiers of Global Trade Rules
The political economy dynamics of the international trading system
Nitya Nanda
Expanding Frontiers of Global Trade Rules
The political economy dynamics of the international trading system

Nitya Nanda
To
my mother
Kanaklata Devi
## Contents

*List of figures*  
xii  
*List of tables*  
xiii  
*List of boxes*  
xiv  
*Preface*  
 xv  
*List of abbreviations*  
xvii  

1  Introduction  

2  WTO and development: it is all about mercantilist game  

3  Liberalization of agricultural trade: path to development or chasing a mirage?  

4  Deepening of the GATS: need for cautious treading  

5  WTO and trade facilitation: some implications  

6  Competition policy at the WTO: right diagnosis but wrong prescription  

7  Multilateral framework on investment: much pain without gain!  

8  As if TRIPS was not enough  

9  WTO and environment: think locally, act globally?  

10  Resisting the expansion: experiences and possible implications  

11  Evolving a trade regime for development: some considerations  

*Notes*  
167  
*Bibliography*  
175  
*Index*  
187
Figures

2.1 Trade/GDP 14
2.2 Average tariffs 15
2.3 Real per capita GDP growth 16
3.1 The global coffee bottleneck 36
4.1 Structure of MA commitments by mode 50
7.1 Share of different groups of countries in total FDI inflow 102
7.2 FDI inflow in different groups of countries 103
7.3 Total GFCF and total FDI inflow 104
10.1 Spread of RTAs 146
11.1 Actual and trend growth rates of global GDP 157
Tables

3.1a Regional distribution of crop area and agricultural inputs, 1995–97 average
3.1b Regional distribution of value of crops, productivity and population, 1995–97 average
3.2 Shares of developing and industrial countries in agricultural exports, 1980–81 to 2000–01
4.1 Trade in services by mode of supply
5.1 Impact of improvement in trade facilitation on trade flows
5.2 Expected implementation costs of different proposals
6.1 Stages of institutional development of competition regimes
6.2 Stages of institutional development and the cooperation agenda
7.1 FDI-related regulatory changes 1996–2004
9.1 Growth in FDI stock in select polluting industries
11.1 Some indicators of global integration
Boxes

2.1  The US trade regime – favouring developed countries!  
3.1  Upgrading standards: a fact sheet  
3.2  Indian Amul Dairy – a farmer’s success story  
5.1  Trade facilitation – existing WTO commitments  
5.2  Trade facilitation in the July Package  
6.1  The Doha mandate on trade and competition policy  
7.1  The Doha mandate on trade and investment  
8.1  TRIPS-plus commitments in EU FTAs  
11.1  The development experience of South Korea
The issue of expanding the frontiers of trade rules is, undoubtedly, one of the most controversial and interesting areas in the political economy of international trade. Though discussions on some of the issues have now been dropped from the Work Programme on the Doha Round of negotiations of the WTO as agreed under the so-called July Package of 2004, they remain as relevant as they continue to appear in most bilateral and regional trading arrangements with similar implications. Moreover, they may appear at the WTO as well at some future date. In fact, many experts believe that getting them included in bilateral and regional arrangements is nothing but preparing the ground for bringing them up at the WTO.

By and large, developed countries have been pushing for expanding the frontiers of trade rules by bringing in new issues into the fold of the WTO, while developing countries have been opposed to such initiatives. It is also believed that such issues have played a significant role in the two most talked about Ministerial Conferences that collapsed. If the issues of labour standards and the environment were controversial at Seattle, the Singapore issues played the spoiler at Cancun, though agriculture is another issue that played an important role in both these Conferences. Interestingly, agriculture is also a relatively new issue at the WTO, and on this, it is the developed countries that are on the defensive.

Trade liberalization under the GATT/WTO, particularly during the Uruguay Round, has made it difficult for developing countries to use ‘strategic trade policy’ that had been used by most developed countries in their process of development. Moreover, the Uruguay Round also brought in several ‘behind the border’ measures that touch upon domestic public policy and governance issues – developing countries are yet to come to terms with them. More such commitments will leave very little policy space for national governments, as they will encroach upon domestic policy issues in a ‘one-size-fits-all’ manner, and of course from a developed world perspective. Thus, developing countries may be forced to follow economic policy regimes that may be good for developed countries but not necessarily appropriate for, maybe even harmful to, developing countries.

This book touches upon several issues ranging from environment, labour
standards, intellectual property rights, trade facilitation, competition policy, investment and government procurement to many conventional trade topics including the trade and development linkage. However, it gives more elaborate treatment to trade in agriculture, trade facilitation, competition policy, investment and intellectual property rights. Predominantly, this book is about the potential impacts of new or additional rules in these areas. This book also provides detailed accounts of the discussions on these issues at the WTO or other related fora, particularly since the Doha Ministerial Conference of the WTO. However, it often peeps into the more distant past as well, wherever felt necessary.

This book has been written over a period of time, and expectedly, I benefited from several individuals and institutions in writing them. Some of them had given comments and suggestions on specific issues, which helped me in forming and refining ideas.

First and foremost, I would like to thank Muchkund Dubey and Deepak Nayyar who initiated my interest in the subject. The former also took the pain of going through the entire manuscript and came out with several useful suggestions. I also must thank R. K. Pachauri, Director General, The Energy and Resources Institute (TERI); Ligia Noronha, Director, Resources and Global Security Division, TERI; Prabir Sengupta, Distinguished Fellow, TERI; Pradeep S. Mehta, Secretary General, CUTS International; and other colleagues at CUTS and TERI; in particular, Sheetal Bharat, Bipul Chatterjee, Pranav Kumar, Prabhash Ranjan, Gaurav Saroliya, Diana Montero Melis, Alice Pham, Joie Chowdhury, Anandajit Goswami and Nidhi Srivastava for their encouragement and support. There are many others, and it is indeed difficult to recall all of them; however, I must express my sincere gratitude to Ratnakar Adhikari, Aditya Bhattacharjea, Lucian Cernat, Ha-Joon Chang, Giovani Andrea Cornia, Peter Drahos, Simon Evenett, Bernard Hoekman, Faizel Ismail, Janet Tay Swee Lian, Malathy Knight-John, James Love, Petros Mavroidis, S. Narayanan, Gesner Oliveira, Manoj Pant, Atiur Rahman, Manoj Sanyal, Pierre Sauve, Gregory Shaffer, Ajit Singh, M. A. Taslim and Samar Verma in this regard.

Needless to say, I am solely responsible for any remaining errors and omissions as well as the views expressed in this book.

Nitya Nanda
Abbreviations

ACP African, Caribbean and Pacific
ANSAC American Natural Soda Ash Corporation
AoA Agreement on Agriculture
APEC Asia-Pacific Economic Cooperation
ASCMA Agreement on Subsidies and Countervailing Measures
ASEAN Association of South East Asian Nations
ATA Admission Temporaire-Temporary Admission
BIT bilateral investment treaty
BNDES National Bank of Economic and Social Development (of Brazil)
CAFTA Central American Free Trade Agreement
CAP common agricultural policy
CARICOM Caribbean Community
CBD Convention on Bio-Diversity
CEMAC Economic and Monetary Community of Central Africa
CGE computable general equilibrium
COMESA Common Market for Eastern and Southern Africa
CUTS Consumer Unity and Trust Society
DDA Doha Development Agenda
DR Doha Round
DSB Dispute Settlement Body
EAC East African Community
EC European Commission
ECLAC Economic Commission for Latin America and the Caribbean
ECOWAS Economic Community of West African States
ECT Energy Charter Treaty
EPA economic partnership agreement
EPO European Patent Organization
EU European Union
FAO Food and Agriculture Organization
FDI foreign direct investment
FTA Free Trade Agreement
FTAA Free Trade Area of the Americas
GATS General Agreement on Trade in Services
Abbreviations

GATT General Agreement on Tariffs and Trade
GDP gross domestic product
GFCF gross fixed capital formation
GI geographical indication
GPA government procurement agreement
ICAO International Civil Aviation Organization
ICC International Chamber of Commerce
ICN International Competition Network
ICSID International Centre for Settlement of Investment Disputes
IFAD International Fund for Agricultural Development
ILO International Labour Organization
IMF International Monetary Fund
IMO International Maritime Organization
IPR intellectual property right
IRU International Road Transport Union
ITO International Transport Organization
LDC least-developed countries
M&A mergers and acquisitions
MAI Multilateral Agreement on Investment
MEA Multilateral Environmental Agreement
Mercosur *Mercado Común del Sur* (The Southern Common Market)
METI Ministry of Economics, Trade and Industry (of Japan)
MFI Multilateral Framework on Investment
MFN most-favoured nation
MIGA Multilateral Investment Guarantee Agency
MRTPC Monopolies and Restrictive Trade Practices Commission (of India)
NAFTA North American Free Trade Area
NT national treatment
NTB non-tariff barriers
ODA official development assistance
OECD Organization for Economic Cooperation and Development
PCT Patent Cooperation Treaty
PLT Patent Law Treaty
PPM Parts Per Million
PTA preferential trade agreement
R&D research and development
RBP restrictive business practice
RIA regional investment agreement
RTA regional trade agreement
S&DT Special and Differential Treatment
SADC Southern African Development Community
SCP Standing Committee on the Law of Patents
SP special product
SPLT Substantive Patent Law Treaty
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>SPS</td>
<td>Sanitary and Phytosanitary</td>
</tr>
<tr>
<td>SSM</td>
<td>special safeguard measure</td>
</tr>
<tr>
<td>TBT</td>
<td>Technical Barriers to Trade</td>
</tr>
<tr>
<td>TED</td>
<td>Turtle Excluder Device</td>
</tr>
<tr>
<td>TERI</td>
<td>The Energy &amp; Resources Institute</td>
</tr>
<tr>
<td>TIR</td>
<td><em>Transit International Routier</em> (International Road Transit)</td>
</tr>
<tr>
<td>TNC</td>
<td>transnational corporation</td>
</tr>
<tr>
<td>TRIMS</td>
<td>Trade-Related Investment Measures</td>
</tr>
<tr>
<td>TRIPS</td>
<td>Trade-Related Aspects of Intellectual Property Rights</td>
</tr>
<tr>
<td>TRQ</td>
<td>Tariff Rate Quota</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UN/DESA</td>
<td>United Nations Department of Economic and Social Affairs</td>
</tr>
<tr>
<td>UN/ESC</td>
<td>United Nations Economic and Social Council</td>
</tr>
<tr>
<td>UNCHE</td>
<td>United Nations Conference on the Human Environment</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
</tr>
<tr>
<td>UNCTC</td>
<td>United Nations Centre for Transnational Corporations</td>
</tr>
<tr>
<td>UNECE</td>
<td>United Nations Economic Commission for Europe</td>
</tr>
<tr>
<td>UNESCAP</td>
<td>United Nations Economic and Social Commission for Asia and the Pacific</td>
</tr>
<tr>
<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
</tr>
<tr>
<td>UPOV</td>
<td>International Union for the Protection of New Varieties of Plants</td>
</tr>
<tr>
<td>UR</td>
<td>Uruguay Round</td>
</tr>
<tr>
<td>USTR</td>
<td>United States Trade Representative</td>
</tr>
<tr>
<td>WCO</td>
<td>World Customs Organization</td>
</tr>
<tr>
<td>WEF</td>
<td>World Economic Forum</td>
</tr>
<tr>
<td>WEO</td>
<td>World Economic Outlook</td>
</tr>
<tr>
<td>WIPO</td>
<td>World Intellectual Property Organization</td>
</tr>
<tr>
<td>WWF</td>
<td>World Wide Fund for Nature</td>
</tr>
</tbody>
</table>
1 Introduction

Since the beginning of the Uruguay Round (UR) of trade negotiations under the General Agreement on Tariffs and Trade (GATT), the global trade body has been on an expansion mode. Though developing countries wanted agriculture and textile and clothing, which were not included in the GATT framework, to be brought under multilateral rules, they had to pay a heavy price for it as the developed countries pushed several new issues into the multilateral trade framework. Thus, came global rules on trade in services, intellectual property rights (IPRs) and investment measures.

However, even before most member countries of the GATT (now WTO) could appreciate the possible implications of an expanded global framework of trade that they had got out of the UR of negotiations, several other new issues were brought onto the table. Interestingly, this was done in the name of ‘putting development first’ at the WTO, as all these have implications for development. A belief, considered to be misconceived by many, was propagated that the WTO should have a proactive agenda to promote development and hence should make rules on every possible issue that has implications for development. Concerns have also been expressed that the inclusion of social and environmental issues in the WTO implies opening the window for never ending non-trade issues, including gender, human rights, animal welfare and social development, all of which fall in the purview of sustainable development. Nevertheless, all these issues have significant bearing for market access (MA), and indeed, this is the primary reason for bringing them for discussion or negotiation at the WTO. These are also expected to affect developing countries more than their developed counterparts.

The issues at stake

The issues brought in are of three types: the first type of issues will restrict MA of developing countries in the developed world, while the second type of issues will, by and large, lead to greater market opening for the developed world in developing country markets. The first category includes issues like environment and labour standards, and the second category includes issues like investment, competition policy, trade facilitation and government procurement which later