Policy Space for Industrial Development Part 1: Restriction of Policy Space during the heyday of Hyperglobalization and neoliberalism

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By

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Purpose of Presentation

- This presentation and the next will examine how policy space for development was progressively restricted during the era of hyperglobalization and neoliberalism, and now is potentially being expanded as some developing countries seize space inadvertently created by the actions of powers in the Global North.
- This presentation will focus on the progressive constriction of policy space during the period *circa* late 1980s to 2010s.
- It will begin with a recap on the importance of industrialisation and ITT policies as outlined by heterodox economists and economic historians.
- It will then examine the way in which multilateral trade rules, bilateral trade agreements (both those envisaged and those actually implemented) between power blocs in the Global North and developing countries, as well as the Investor State Dispute System (ISDS) incorporated into a variety of investment protection agreements all progressively restricted developmental policy space.

Section 1 Recap: The interconnected dual meaning of Economic Development

- Economic Development is a term generally used in two interconnected ways. First, it refers to "human development" – an improvement in the material conditions of people. Second, it refers to "development of productive forces" – an improvement in productive capacity that raises output and productivity.

- Every year since 1997, the United Nations Development Programme has compiled a "Human Development Index" (HDI) using a number of indicators –beginning with per capita Gross National Income (GNI/capita) and modifying this by indices of life expectancy, income distribution, employment, health, gender equity, education levels. This is then used to rank countries by their HDI scores.

- The HDI rankings record significant cases of deviation from the rank based on per capita income alone. Countries that have prioritised public health programmes, education, gender equity etc. have significantly raised their HDI ranking above that based on per capita income alone. For example, in the 2021/2 Report, Cuba was ranked 37 places higher on its HDI than on its per capita income. South Africa, by contrast, with its high levels of unemployment and inequality, was ranked 17 places lower than its GNP/capita ranking.

UNDP HDI Rankings

- Countries with large resource endowments and small populations – e.g. Gulf oil producers and Australia- have also been able to generate high per capita incomes and use resource rents to support human development programmes. Several of these are in the "Very High Human Development" category.

- With such exceptions, countries with the highest levels of Human Development are the advanced industrialised or developed countries of the "Global North" and the industrialised countries of Asia (Japan, Korea, Taiwan). Although China still not in the "Very High Human Development" category, it has significantly improved its HDI ranking.

- Deviations from per capita GNI ranking are, of course, observable among countries in this category pointing to significance of social programmes e.g the USA is ranked 21^{st} by HDI, 14 places below its GNI/capita ranking and behind several Scandinavian and European countries.

Significance of Industrialisation

- The UNDP HDI rankings confirm the strong correlation between human development (the ultimate goal of any progressive economic policy) and level of industrialisation.
- The vast majority of countries that are now "rich" have transitioned through a stage of economic diversification involving a shift to higher value-added production. In other words, they industrialised.
- The vast majority of the very few developing countries that have successfully transitioned from "poor" to "rich" or "moderately prosperous" have likewise industrialised.
- Manufacturing is the process through which value is added to raw materials as they are turned into finished products.
- The value addition in manufacturing typically adds multiples of the value of raw materials in the final price of the product – and manufacturing is a much more lucrative place than raw material production in value chains – e.g. Africa produces and exports coffee to the value of US $ 6 bn, but this is transformed into finished products outside the continent that are sold for $ 100 bn, with high technology products the contrast is even starker – the value of the raw materials used in the manufacture of the i Phone 6, which retailed for around US $600 , was just over US $ 1.

Significance of Industrialisation ctd

- Industrialisation also has significance beyond the development of a manufacturing sector (although that is a key part). It is associated with development of new technologies and skills.

- It also increases demand for higher quality services and infrastructure and all of this results in a general rise in incomes – of course the policies and programmes of individual developed countries determine how inclusive this is and it is this that underpins the different rankings of developed countries on the HDI tables.

- This also accounts for different wages paid for similar work in developed and "developing" countries. Erik Reinart argues that the reason luggage handlers, bus drivers, hotel personnel, barbers and shop attendants in Peru are paid less than their counterparts in Norway has nothing to do with lesser abilities or the nature of the work they perform. Both do the same job, and indeed those in Peru probably work longer hours than their counterparts in Norway. The reason for their different incomes lies in the fact that industrialisation in Norway generated an overall increase in incomes in that country.

- Poor countries, by contrast, have stayed poor because they have remained trapped in the much lower value-added production and export of some primary product or products- agricultural or mineral. Most of these countries were at some stage in their history colonised. Several were subject to colonial laws explicitly preventing their development of industries – particularly those that could compete against industries in the "mother country".

How did today's rich countries become rich?

- The fundamental proposition of heterodox economists and economic historians is that "developed countries did not get where they are now through the policies and institutions that they are recommending to developing countries today" (Ha Joon Chang) or that "to date not one successful developing country has pursued a purely free market approach to development" (Joseph E Stiglitz and Andrew Charlton).
- Through detailed historical analysis writers like Erik Reinart and Ha Joon Chang have sought to establish that at the initial stages of industrialisation all of today's developed countries, without exception, actively engaged in Infant Industry Promotion and deployed interventionist Industrial, Trade and Technology (ITT) policies.

Content of ITT Policies

- These varied country by country and by time period but included:
  - Public investment in both infrastructure and manufacturing.
  - The acquisition of foreign technology (both legally and illicitly) – "continuous improvement' and "adaptive manufacturing" both depended on "reverse engineering" existing products and improving them.
  - Public support for Research and Development.
  - Deployment of subsides (incentives) and/or duty drawbacks on inputs for export product.
  - Localisation (including of both purchases by public entities and outright prohibitions on sale of foreign products).
  - Alignment of macro-economic policy to the goals of supporting ITT policies, including use of exchange rate policy to create favourable environment for locally manufactured products on both domestic and export markets.

Trade Policy stances at early stage of Industrialisation – the case of the Global North…

- Critically also the trade policy stance and attitude to "Free Trade" varied with the stage of industrialisation.
- At early stages of industrialisation, during the phase when focus was on infant industry promotion, all of today's industrialised countries deployed some level of tariff protection and eschewed calls to adopt "Free Trade" policies.
- This applied to both first movers and catch up countries in Global North.
- Britain, for example only adopted as official policy free market ideas of Adam Smith or David Ricardo's theories of free trade when it was already a competitive and leading producer of manufactured products. Before that writers like Erik Reinart and Ha Joon Chan show through careful historical research that it deployed a host of restrictions on entry of competing foreign products.
- Other "catch up" countries in North America and Europe decidedly resisted overtures to adopt such ideas as they themselves began industrialising e.g. in the late C19 a member of the US Congress famously responded to overtures from Britain to adopt free trade saying "We will do what England did, not what England says".

…and of Asian Industrialisers

- The same was true of later Asian industrialisers e.g. Japan and later Korea, Taiwan and other South East Asian Tigers all restricted access to their domestic markets as they applied ITT programmes - even though they sought to take advantage of openings on global markets to promote export.
- The "opening up" of China in the years following the rise to power of Deng Xiao Peng in 1976 involved introduction of "market reforms" but not of "free trade" policies. Trade and investment liberalisation of domestic market was "strategic" – carefully calibrated with progress of ITT programmes (which at one stage imposed 70% local content requirements). Liberalisation began in special economic zones, initially restricted to allowing in FDI and only later allowing access of foreign products. China, however, took advantage of openings for its products on global markets – arising from phase out of Multi-Fibre Agreement and Uruguay Round multi-lateral tariff reductions. In other words , it adopted a strategic approach that sought access to global markets while limiting and restricting access to its domestic market and applying strong ITT policies.

Trade Policy Shifts as competitiveness is built

- Heterodox economists argue that as industrial sectors become mature, products competitive and access to export markets an increasingly significant issue, the stance on trade policy shifts and ideas and theories of free trade come to be adopted as national policy.
- It is thus no accident that the liberal "free market" ideas of Adam Smith (that markets produce optimum outcomes) of of David Ricardo (that countries should discover and concentrate on producing and exporting products reflecting their "comparative advantage" – his example was Portugal on wine and Britain on textiles – and allowing the entry of imports of products from other countries that have a better "comparative advantage", began to inform official policy at a time when England had emerged as the pre-eminent manufacturing power
- German economist, Friedrich List, argued in the 1840s that this shift eventually reaches the point of disowning the very policies that made these countries competitive and seeking to deny others access to the same policy tools – a phenomenon he called "kicking away the ladder" – also the title of Ha Joon Chang's classic book.
- As countries of the Global North became industrialised an architecture of economic governance emerged, that later became entrenched in rules of multi-lateral bodies, including IMF, World Bank, WTO,

Not practicing what is preached and not preaching what is practised

- It is important to note, however, that the ideology of “free trade” has never been implemented absolutely by any country or bloc – even those most ardently preaching it.
- All have had areas of lesser competitiveness where the appetite for “free trade” is much less evident.
- An example is the stance on agricultural trade – many countries of the Global North are less competitive in agriculture than several countries in the southern hemisphere and have depended on subsidies and tariffs to defend their agricultural sectors. To this day a much more protective regime for agricultural trade is in place in the Multi-lateral Trading System than is permitted in industrial trade, and the appetite for “reform” by developed countries is much less evident in agriculture.
- Another example is the changing narrative on China as it has emerged as a major peer competitor to the Global North in digital products and “green technologies”. With both the EU and US lagging China in several areas of “green technologies” just as an accelerated transition to a lower carbon economy is underway, the US in particular has introduced extensive subsidies and localisation requirements, following on “national security” justified exclusions of Chines tech companies.
- Amounts to something of a case of not practicing what is preached, and not preaching what is practiced.

Why poor countries have remained poor?

- Poor countries have remained poor because they remain integrated into the world economy largely as producers and exporters of primary raw materials used in industrial processes elsewhere. Most of today's poor countries were colonised.
- As today's developed world industrialised and diversified its manufacturing base in various Industrial Revolutions, it sought access to raw materials it itself did not produce.
- Colonialism was in part a scramble for access to such resources, and led to investments in mines and plantations (where the workforce initially was often slaves from Africa) in colonies as well as infrastructure to support export of raw materials to "mother country".
- But colonies were not "encouraged", indeed often actively "discouraged" from themselves industrialising. A major example is the case of India. Before colonialism, India was a major global producer and exporter of textiles. Under colonial rule, its textiles were denied access to Britain, even as it was obliged to accept imports of British made textiles.
- Other colonies were subject to specific regulations prohibiting manufacturing that would compete with imports from the "mother country", for example the British Prime Minister, William Pitt, declared that the colonies of America should not manufacture as much as a horseshoe nail.
- Where there was some level of industrial development it was usually in cases where former colonies won independence (the USA) or some level of settler self government (e.g. British dominions).
- Seeking access to raw materials in the Global South remains a major objective of policy of developed world today – though through more subtle means - financial and investment flows are a key instrument (finance is more available for extractive industries), trade rules (such as though preventing restrictions on export of raw materials) and measures like EU's Raw Materials Initiative (that seeks to resist efforts to impose forced beneficiation measures or export taxes).

Section 2: The Narrowing of Policy space from 1980s to mid 2010s

- Policy space is defined in Google as "the freedom and ability of a government to choose and implement policies that best suit its national context and goals, particularly in areas like economic and social development, while balancing international obligations". More specifically for our purposes, it means "the freedom and ability" of developing countries to implement ITT policies to promote industrial development.
- The period from around the mid1980s to the 2010s saw developmental policy space being progressively restricted by a combination of multi-lateral trade rules, provisions in bilateral trade agreements and Investor-State Dispute System (ISDS) provisions in bilateral investment protection agreements, investment chapters in so-called modern C21 style Free Trade Agreements and some other agreements such as the Energy Charter Treaty.
- All of this occurred during the heyday of hyperglobalization and neo-liberalism..
- This began to unfold in the aftermath of the Global Recession of the 1970s. Previously dominant Keynesian policies seemed unable to end the "stagflation" which emerged at the end of the long period of expansion after the end of World War II. In the aftermath of social unrest in several countries of the Global North, right wing governments were elected (notably that led by Margaret Thatcher in the UK, and Ronald Reagan in the US). These began to implement "free market" fundamentalist policies – including widespread privatisation, liberalisation, and the replacement of ideas of Keynesian deficit finance with the prescribing as apex priority the achievement of pre-defined macro-economic ratios held to be applicable to all countries under all circumstances – budget deficit below 3% of GDP and reducing; inflation never to be above single digits and always declining dealt with by a single instrument – interest rate adjustments etc.
- This trend was greatly accelerated after collapse of the Soviet Union in 1991 and the end of the Cold War. The US became the undisputed hegemon in a unipolar world order and its policy prescriptions (dubbed the Washington consensus) were promoted as universally applicable to all countries at all stages of development. (The term "Washington consensus" meant that these policy prescriptions were promoted not just by the US but also by the Washington-based multilateral institutions – the IMF and the World Bank.)

Hyperglobalization and neoliberalism

- The period is well known for having undergone extensive globalization.
- Globalization in the abstract can be recognised as a process in which economic activity takes place increasingly on a world-wide basis and in which national economies and state jurisdictions are increasingly integrated into a global system operating according to globally defined rules and norms.
- In 2011 Dani Rodrick coined the term “hyperglobalization” to describe the process underway in late C20/early C21, arguing that it was a “period of [particularly]intense economic integration” which created tensions and divisions within societies and widened inequality, and which he argued needed to be replaced by a more inclusive form of globalization.
- The late C20/early C21 Hyperglobalisation was driven by a number of interconnected objective factors, including:

Objective drivers of hyperglobalization

- The rise of Trans National Corporations from the Global North for whom state boundaries were no longer the major locus of activity but often complicating factors;
- The restructuring of productive activity into leaner specialised units linked (often across national borders) to other units in Global Value Chains.
- Financialisation, a process in which financial motives and practices dominated other considerations and in which engagement in financial activities became an increasingly important part of profitability even for non-financial enterprises.
- All of this was enabled by the development of Information and Communications Technology in the "3rd Industrial Revolution) (personal computing and the internet)

Policy Shifts associated with Globalisation

- Those forces driving globalisation sought significant policy changes in both developed and developing countries, including:
  - Opening domestic goods and service markets to cross border trade as well as promoting uninterrupted financial and capital flows (but significantly not flows of labour) across national boundaries;
  - Radically redefining the role of the state in the economy – it would withdraw from ownership and direct provision of services through privatisation and deregulation, become an enforcer of global liberalisation rules and norms, guarantee favourable conditions for transnational corporations and act to compete for their presence in domestic economies by creating a "conducive environment".
- These developments spawned a new economic narrative – called by its adherents the Washington consensus and by others neo-liberalism. In 1999, US journalist, Thomas Friedman, published a book entitled, *The Lexus and the Olive Tree,* in which he offered a "popular" presentation of some of the key ideas and policy prescriptions.

Quotations from Thomas Friedman

- “When it comes to the question of which system is most effective at raising living standards, the historical debate is over. The answer is free-market capitalism…When your country recognizes this fact, when it recognizes the rules of the free-market in today’s global economy, and decides to abide by them, it puts on what I call the Golden Straightjacket. The Golden Straightjacket is the defining political-economic garment of this globalization era…To fit into the Golden Straightjacket a country must either adopt, or be seen to be moving toward the following golden rules: making the private sector the primary engine of economic growth, maintaining a low rate of inflation and price stability, shrinking the size of its state bureaucracy, maintaining as close to a balanced budget as possible, if not a surplus, eliminating and lowering tariffs on imported goods, removing restrictions on foreign investment, getting rid of quotas and domestic monopolies, increasing exports, privatizing state-owned industries and utilities, deregulating currency markets, making its currency convertible, opening its industries, stock and bond markets to direct foreign ownership and investment, deregulating its economy to promote as much competition as possible, eliminating government corruption, subsidies and kickbacks as far as possible, opening its banking and telecommunications to private ownership and competition and allowing its citizens to choose from an array of competing pension options and foreign-run pension and mutual funds. When you stitch all of these pieces together you have the Golden Straightjacket. Unfortunately, this Golden Straightjacket is pretty much ‘one size fits all’. So it pinches certain groups, squeezes others and keeps a society under pressure to constantly streamline its economic institutions and upgrade its performance. It leaves people behind quicker than ever if they shuck it off, and helps them catch up quicker than ever if they wear it right. It is not always pretty or comfortable. But it’s here and it’s the only model on the rack this historical season. As your country puts on the Golden Straightjacket, two things tend to happen: your economy grows and your politics shrinks”. (pp 104-5)

A Strengthened Multilateral Trading System drives cuts in industrial tariffs…

- The hyperglobalization of the late C20/early C21, shaped as it was by the above described ideology and policy prescriptions, was driven by a combination of TNCs, financial institutions, governments of the Global North led by the undisputed hegemon, the United States, and the multilateral bodies created by the Bretton Woods conference at the end of the Second World War – which made adherence to neoliberal "structural adjustment" programmes a condition for accessing funding.
- Another critical driver was the World Trade Organisation (WTO). The WTO was established in 1995, replacing the General Agreement on Tariffs and Trade (GATT) which was set up following a decision of the 1944 Bretton Woods conference.
- The WTO's establishment was mandated by the Marrakesh Agreement giving effect to decisions emanating from the 1987-1993 Uruguay Round of negotiations conducted under the auspices of the GATT. The WTO rapidly became a much more powerful body than GATT had ever been presiding over a much strengthened framework of multilateral trade rules – now much more enforceable.
- The Uruguay Round drove the most ambitious and extensive "round" of industrial tariff cuts at any time in the history of GATT. Although Least Developed Countries were exempted, and developing countries that had not previously "bound" their industrial tariffs were obliged to do so (by setting a ceiling through defined processes above which such tariffs could not rise), other developing countries had to reduce many tariffs to levels significantly below pre-existing applied rates. One, South Africa, was indeed obliged to implement the same tariff cuts (with a few small exception) as the developed countries, because its apartheid rulers had defined the country as "developed" within the GATT.
- These tariff cuts reduced policy space by limiting the ability of countries implementing them to support nascent industries, and this along with other neoliberal measures, contributed to premature deindustrialisation in several countries.

…while largely exempting agriculture for the benefit of the Global North…

- Agricultural trade, however, was largely excluded from Uruguay Round commitments – along with Trade in Services it was declared to be part of a "built in" agenda for future negotiations.
- This meant that countries of the Global North, which were less competitive than several developing countries in agriculture, were legally entitled to deploy extensive subsidies and high tariffs even as similar measures were being "decommissioned" for the developing world in industrial products. Only very slight adjustments have been made since then, meaning that a massive imbalance between the disciplines on industrial tariffs and subsidies and the lack of disciplines on agricultural tariffs and subsidies remains intact to this day.

Tbts and SPS

- Rules on what were called Technical Barriers to Trade (tbts), matters of standards and technical regulation, including Sanitary and Phytosanitary Standards (SPS) on agricultural products, were also somewhat tightened – though not to the extent of preventing the EU in particular from applying SPS, food safety and chemical regulations as tools to limit competition from competitive products from the Global South.
- More importantly, these rules, along with all others, were made enforceable through the WTO's Dispute Settlement Mechanism, at the apex of which stood an Appellate Body.

Trade Related Rules

- In addition to the above, the Marrakesh Agreement introduced important new rules on "trade related" matters. These included"
  - An Agreement on Subsidies and Countervailing Measures, articles 3 and 5 of which proscribed many forms of performance based industrial subsidies as well as direct subsidies on exports.
  - The Trade Related Investment Measures (TRIMS) Agreement, article 2 of which prohibited many forms of local content requirements including effectively prohibiting any regulations imposing or incentivising local content requirements on private sector transactions.
  - The Trade Related Intellectual Property (TRIPS) Agreement required all WTO members to provide an expansive platform of recognition of Intellectual Property Rights cutting away the pathway followed by many industrialised countries who had benefitted from open access and the ability to reverse engineer and "continuously improve" existing products and technologies .
- The rationale for the limitation of policy space emanating from such "trade related" rules , which later became significantly amplified in subsequent bilateral and plurilateral trade agreements, was that without disciplining so-called "behind the border" regulations, the value of tariff reductions would be eroded. A related idea was that no regulation or law should be "trade distorting", and if any was judged in WTO processes to be so, it was deemed to require amendment or abolition as part of "reform".

Discourse on the narrowing of policy space

- It was sometimes acknowledged that these multilateral trade rules did reduce policy space, but it was argued that the benefits of a growing global economy would outweigh these restrictions, that a multi-lateral rules based system was better than power based negotiations and that multi-lateral negotiations offered the only chance to address issues of interest to developing countries – including reform of agricultural trade.
- Besides, Industrial Policy was deemed undesirable in the ideology of neoliberalism, leading writers like Joseph Stiglitz and Dani Rodrick to argue that the doctrine effectively reduced all the issues and challenges of development to a simplistic process of trade liberalisation.
- Within this framework it was sometimes asserted that the policy space that was being restricted was the space to pursue “wrong policy” and that these restrictions were then positive for development.

Other narratives emerging within the WTO

- As part of this argumentation a number of additional narratives emerged within the WTO, including:
  - “Autonomous trade liberalisation” – national governments were encouraged and persuaded, allegedly as part of “reform” and building credentials, to lower their applied tariffs below their bound rates and refrain from raising any applied tariffs even if they had space between their applied and bound rates.
  - “Bicycle Theory” – “to keep trade open requires keep opening trade” a slogan calling for frequent negotiations and unilateral liberalisation.
  - Opening up to GVCs – the emergence of GVCs was held out as offering developing countries a path to industrialisation without industrial policy. It was argued that by liberalising and “opening” domestic economies to GVCs, developing economies could become “integrated” into GVCs and thereby prosper (ignoring reality that most were already “integrated” at bottom of GVCs and that the critical developmental issue was to diversify and move into higher value added production).

The emergence of even stronger "trade related" restrictions in plurilateral agreements – "mega-regionals", proposed alternative to AGOA, and EPAs

- Although at its height, the WTO became something of a "super" multilateral organisation, it failed in its quest to promote successive rounds of multilateral trade negotiations.
- The Ministerial Conference in Doha in 2001 mandated a process to launch a new "round" which was supposed to prioritise the needs and interests of developing countries and focus in particular on the matters left over from the Uruguay Round – agriculture and services.
- In the end, what was called the Doha Development Round failed - fundamentally because of the huge imbalance between what the Global North was demanding in Non-Agricultural Market Access (NAMA) and what it was offering in agriculture. This led to a long impasse and little further progress in multilateral trade negotiations.
- In this context, several power blocs in the Global North began to promote what they called "mega regionals" – the establishment of "free trade areas" among several partners in large regional groupings.
- Such mega regionals included the Trans Pacific Partnership between 12 Pacific Rim countries and the US (signed in 2016 but never ratified by the US Congress and now operating as a Comprehensive and Progressive Agreement for Trans Pacific Partnership (CPTPP) between 11 countries, and the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US, which was suspended in 2019 and never completed.

Mega Regionals as possible model for future trade deals between US and African countries…

- Mega-regionals were touted as “high quality” C21 Free Trade Agreements, forging a new trade architecture for the digital age.
- A feature of them was a strong emphasis on “behind the border” matters.
- They included, *inter alia* Chapters on (i)Investment providing a “right to establish”, guaranteeing “national treatment” and providing investment protection with ISDS (see below), (ii) digital trade including provisions prohibiting the imposition of levies on digital transactions, (iii) Intellectual Property going further than TRIPS (TRIPS plus).
- An agreement along these lines was proposed by the Obama administration to African countries as a possible replacement for the non-reciprocal African Growth and Opportunity Act (AGOA).

…and by EU in Economic Partnership Agreements (EPAs)

- The EU in the end went further than the US in actually transforming the non-reciprocal trade preferences (requiring no corresponding concessions by beneficiary countries) it had earlier provided to African, Caribbean and Pacific (ACP) former colonies into reciprocal FTAs with significant “behind the border” commitments.
- In the 2010s Economic Partnership Agreements began to replace the non-reciprocal tariff concessions provided for in a succession of Lome and Cotonou agreements – which critics argued mostly covered raw materials and unprocessed products, with steep tariffs levied on higher value added products.
- The justification for the passage from Lome/Cotonou to EPAs was that EPAs as FTAs would be more secure in the WTO than the Lome/Cotonou provisions which operated through a waiver subject to periodic review. It was argued then that EPAs would provide more secure full duty free access to the EU market, and that the policy commitments would promote good economic governance in ACP countries.
- More concretely the EU envisaged that after a period of transition during which “provisional” EPAs, covering just trade in goods, would apply, a Stage 2 negotiation would lead to “full EPAs” that would include commitments on many of the issues included in the “trade related” chapters of so-called “high quality” C21 trade agreements.
- Less evident were more direct and partisan interests around which commitments were sought– these included recognition by the by the separate ACP regions participating in the EPA process of EU “geographic indications” (GIs) and refraining from policy interventions that might “deprive EU industries” of access to raw materials.

GIs and Raw Materials Initiative (RMI)

- GIs are names of products (typically agricultural) which are reserved exclusively for producers from the geographic area from which the name derives. Examples are the reservation of the name Champagne for sparking wine from a specific region of France, Parma ham as a name for ham from a region of Italy etc. By granting such exclusive recognition for such names, many of which have over centuries actually become generic terms for similar products produced all over the world, the EU sought to entrench a competitive advantage for its own producers both in the EU and ACP markets – as well as establish a precedent for their recognition globally.
- With regard to raw materials, the EU's RMI, first adopted in 2008, was presented to ACP countries as a measure provide financial support and investment in mining in the Global South, even though the EU itself described it as an "integrated strategy to face the challenges related to access to non-energy and non-agricultural raw materials and facilitate sustainable supplies of raw materials [for EU industries]".
- Most of the EPAs, in fact all except that with the Caricom, in the end did not include most of the "trade related" chapters of the mega regionals. But several included commitments on GI recognition and raw materials.
- For example, the 1996 bilateral Trade Development and Cooperation with South Africa, initially proclaimed as a WTO legally secure way to offer a non-typical ACP country preferential access to the EU market, but later cited as a model arrangement for typical ACP countries, included a specific commitment by South Africa to levy no new export taxes on exports of raw materials. This was slightly modified after much effort by South Africa in the negotiations transitioning the TDCA into the SADC EPA (which only included 7 SADC member countries). Commitments to recognise a long list of EU GIs were also included both in the TDCA and the SADC EPA.

Investor –State Dispute Settlement (ISDS) provisions in various agreements

- A further restriction on the right to regulate arose from ISDS provisions included in the proliferation of agreements on investment protection agreements during the 1990s-2010s.
- Bilateral investment protection agreements were promoted as a means of attracting Foreign Direct Investment (FDI) and rapidly became a norm in establishing or deepening bilateral relations between many countries.
- The standard (OECD) investment protection agreement widely promoted during the time and now encapsulated in over 2.500 bilateral agreements alongside the Investment chapters of some C21 FTAs, and other agreements like the Energy Charter Treaty, typically included:

Expansive Definitions of Investment, national treatment and physical protection (quotations from now lapsed SA-Germany agreement)

- *Expansive Definitions of Investment,* "…covers every kind of asset".
- *Definitions of "national treatment" that can be interpreted as a right to access most lucrative benefits available,* "…shall provide treatment no less favourable than it accords to its own nationals or companies".
- *Broad provisions on physical protection,* "nationals or companies…shall enjoy full protection and security".

Definitions of Expropriation allowing Investors to challenge public policy

- *Expansive definitions of expropriation, including "indirect expropriation"*, "Investments by nationals or companies…shall not be expropriated, nationalised or subject to any other measure the effects of which would be tantamount to expropriation or nationalisation". This subject to interpretation as a guarantee against any policy changes that alter conditions for expectation of profit. In the event of any such direct or indirect expropriation investors would be entitled to "be paid without delay" at the full market value of the investment before the event.
- *Unqualified right to "free transfer of payments" abroad.*

Recourse to Investor-State Dispute Settlement

- In the event of dispute that cannot be settled amicably, "at the request of the national or company of the other contracting party" an international arbitral panel would be convened under the terms of the 1965 "Convention on the Settlement of Investor Disputes…", (managed by the World Bank). This essentially allows private investors to initiate litigation against allegedly defaulting governments and requires the governments of aggrieved investors to facilitate this.
- "The award [of an arbitral panel] shall be binding and shall not be subject to appeal"

Litigation and Rulings under ISDS

- By 2022 a total of 1.200 cases had been lodged against various governments with around 68 new referrals each year; the average cost of litigation had risen to between $ 4 and 10 mn, and the value of awards rising to an average of $ 500 mn with several exceeding $ 1 billion and at least one case $ 50 bn.
- African countries have faced at least 182 ISDS cases, 108 of them initiated by investors from Europe. Investors claimed at least $ 213 bn and awards totalling $ 5,6 bn have been made thusfar.
- Increasingly cases have challenged public policy in areas as diverse public health regulations to promote generics or to curb smoking, land and mineral rights and policies recognising rights of indigenous communities, minimum wage laws, environmental and climate change related laws and changes in taxation policy.

Conclusion: The Progressive Restriction of Developmental Policy Space

- Multilateral, bilateral and plurilateral trade arrangements, along with ISDS provisions in Investment Protection agreements have significantly limited and restricted actual or potential policy space to promote industrialisation and development in the Global South
- At the same time, governments have been placed under intense ideological and policy conditionality pressure both to abandon Industrial Policy and refrain from deploying a range of measures applied by the countries of the Global North as they industrialised.
- However, the measures outlined did not entirely cut off all policy space.
- Many countries of the Global South demanded policy space and pushed with varying degrees of success for “less than full reciprocity” and “Special and Differential Treatment”.

- China, in particular, found creative ways to deploy a range of ITT policy tools and govern its emerging market, becoming arguably the biggest beneficiary of the opening up of global markets in the era of hyperglobalization.
- As indicated earlier, China's embrace of "market reforms" did not, as it was still industrialising, include adopting "free market" reforms. Its liberalisation was strategic – guided by its industrial policy – State Owned Enterprises played a critical role, and it disciplined its financial sector (not allowing its institutions to become the traders in financialised securities its western counterparts became). It also subordinated its macroeconomic policy to its Industrial Policy e.g. by ensuring a competitive exchange rate to support its exports while simultaneously providing a measure of protection to producers for its domestic market. In short, China's industrialisation followed a path recognisable as similar to that of earlier industrialisers, despite the ongoing restriction of policy space.
- In the next session, we examine how various dimensions of the gathering crisis of the system have created a new reality in which policy space previously restricted can now potentially be enlarged by developing countries.