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The International Monetary Fund's Influence on Trade Policies of Low-income Countries: A Valid Undertaking?

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This article explores the involvement of the IMF in influencing the setting of trade policy and tariff regimes of low-income countries, in the specific context of the HIPC (Heavily Indebted Poor Countries) initiative and the related PRGF (Poverty Reduction and Growth Facility) lending mechanism. The authors begin by discussing, in brief terms, the prominence of Washington Consensus considerations on the guidance provided by the Fund, followed by a legal critique of the Fund's mandate on trade, notably in what pertains to surveillance activities and conditionality; in this section, the authors analyse whether the broadening of the Fund's traditional focus from monetary and fiscal policy to trade policy is truly within the boundaries of its mission.

The authors tackle the issue of direct and indirect influencing by the IMF of poor countries' trade policies and tariff regimes, and how such influencing may occur as part of traditional interactions between the Fund and these countries, with special emphasis on the HIPC initiative, PRSPs (Poverty Reduction Strategy Papers) and the related provision of financial resources through the PRGF lending facility.

Given the lack of consensus on the assumed benefits of trade liberalization for poorest countries as far as poverty reduction and economic growth are concerned, the authors discuss whether such an IMF *ingérence* in trade policy matters is appropriate for HIPC/PRGF countries. The article concludes with a short discussion on whether a redirecting of IMF towards its core business and away from influencing trade policy and tariff regimes would also help improve coherence among the international institutions involved with poverty reduction efforts, economic development and trade policy reforms in heavily indebted poor countries.

I. INTRODUCTION

Having been conceived in 1944 at the Bretton Woods Conference, the International Monetary Fund (IMF)[1] reflected, at that time, the hope of the Allied

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[1] Hereinafter also "Fund".

powers (and soon-to-be victors of the Second World War) to, in the words of Krugman, "design an international monetary system that would foster full employment and price stability while allowing individual countries to attain external balance without imposing restrictions on international trade".[2]

Even though it seems trite to discuss the importance of the IMF as a focal point of the international monetary system, one cannot deny the level of criticism directed at the Fund, as far as its oversight activities on a country's financial sector and macroeconomic policies are concerned. In fact, as one may realize from Article 1 of the Fund's Articles of Agreement, its statutory purposes reside mainly on the pillars of a balanced expansion of world trade, stability of exchange rates, avoidance of competitive currency devaluations and proper correction of balance of payments problems in countries.

However, the original role of the Fund as a global custodian of financial, monetary and exchange rate stability should not be equated to the role of a direct international trade regulator. The aim of this paper is, thus, to explore the involvement of the Fund in influencing the setting of trade policy and tariff regimes of low-income countries, more specifically in the context of Poverty Reduction Strategy Papers (PRSPs), the Heavily Indebted Poor Countries (HIPC) initiative and the Poverty Reduction and Growth Facility (PRGF) lending mechanism.

In section II, the authors begin by discussing the ordinary trade policy recipe of the Fund, along with the prominence of Washington Consensus considerations on the guidance provided by the Fund; section III follows with a legal critique of the Fund's mandate on trade, notably in what pertains to surveillance activities and conditionality; this section analyses whether the broadening of the Fund's traditional focus from monetary and fiscal policy to trade policy is truly within the boundaries of its mission.

The authors then proceed to tackle, in section IV, the issue of direct and indirect influencing by the Fund of poor countries' trade policies and tariff regimes, and how such a leverage may occur as part of traditional interactions between the Fund and these countries; emphasis is given here to HIPC and PRSP documents, Fund Article IV consultations and the consequent provision of Fund conditionalities through the PRGF lending facility (or former SAF/ESAF programmes). Given the lack of consensus on the assumed benefits of trade liberalization, as far as poverty reduction and economic growth are concerned, the authors discuss whether such an IMF intervention in trade policy matters is appropriate for poor countries.

Section V complements the study on the Fund's influences with a few remarks on the potential impacts of the Fund's policies on a country's negotiating position in trade, notably in what pertains to WTO multilateral negotiations and accession processes, paying attention to the current WTO framework and its potential political and systemic implications.

Section VI concludes with a short discussion on whether a redirecting of IMF towards its core business and away from influencing trade policy and tariff regimes

[2] See P.R. Krugman and Obstfeld, M., *International Economics – Theory and Policy* (2003), p. 546.

would help improve coherence among the international institutions involved with poverty reduction efforts, economic development and trade policy reforms in the poorest developing countries.

It is not the authors' objective to put forward yet another position on the extensively studied theme of trade liberalization as such, either in terms of its social or economic outcomes; the scope of this article is to specifically analyse the Fund's activities and influence on trade policy in the poorest developing countries, as well as to present a few recommendations as regards the coherence mandate jointly devised by Bretton Woods institutions.

II. Preferred Fund Trade Reforms and their Relationship with Washington Consensus Prescriptions

When looking at IMF policies that have been most frequently recommended to LDCs, the link with trade becomes apparent. The idea of a so-called Washington Consensus, introduced by Williamson as a response to the call for debtor countries to "set their houses in order",[3] generated a set of economic policy reforms which, purportedly, mustered a reasonably high degree of consensus among US government members, international financial institutions such as the IMF and the World Bank, the US Federal Reserve Bank and most of the related think tanks in that country.

Mirroring some of Williamson's ideas, the Fund's official policy advice, to be commented in more detail below, encompassed the following guidelines:

- Quantitative restrictions should be replaced by temporary tariffs;
- Tariff reform should be aimed at simple, transparent regimes, with low uniform statutory and applied rates, ideally between 5 and 10 percent;
- Transparent and non-discriminatory customs, standards and regulatory procedures;
- Trade reform should be accompanied by complementary macroeconomic and other policies;
- Some actions may be taken to offset costs of trade reform, such as safety nets and fiscal reforms;
- MFN-based liberalization is preferred, instead of regional trade agreements;
- Fund-supported policies should be in accordance with WTO rules, with no cross-conditionality.

Similarly, Williamson further expressed in a critical recollection of the term "Washington Consensus",[4] the reforms would elicit orthodox responses based on the

[3] See J. Williamson, "What Washington Means by Policy Reform", *in* "Latin American Adjustment: How Much Has Happened" (1990); online version Institute for International Economics (2002), available at: <www.iie.com>, accessed 10 January 2006.

[4] See J. Williamson, *Did the Washington Consensus Fail?*, outline of the speech at the Center for Strategic & International Studies (2002), available at: <www.iie.com>, accessed 10 January 2006.

pillars of macroeconomic discipline, market economy and openness, as opposed to high inflation economies, state enterprises and import substitution. In summary, the ten policy instruments depicted by Williamson as "common gospel" in Washington were:

- Fiscal discipline
- Reordering of public expenditure priorities
- Tax reform
- Liberalization of interest rates
- Competitive exchange rate
- Liberalization of trade policy
- Liberalization of inward foreign direct investment (FDI)
- Privatization
- Deregulation of productive activity
- Property rights

Many such policy instruments have had a direct impact on trade policy in developing countries, as they were not only embraced by international financial institutions such as the IMF and the World Bank, but, to a certain degree, incorporated into multilateral or plurilateral WTO instruments for issues related to trade in goods and services, trade and intellectual property rights, trade and investment and government procurement.

A. Fiscal discipline and reordering of public expenditure priorities

Williamson mentioned[5] that the belief in fiscal discipline is given by common understanding, among Washington institutions, that large and sustained fiscal deficits, broadly defined as the difference between a government's total expenditures and its total receipts, are a main source of macroeconomic imbalances such as inflation, payments deficits and capital flight. He then emphasized that public expenditures should be matched with the resources available to finance them.

However, in order to cut fiscal deficit, a choice has to be made as to whether a country increases revenue or reduces expenditures; and this is where trade policy may have a twofold influence on both sides of the equation, notably when subsidy expenditures, *lato sensu*, are employed by governments to foster specific sectors of their economies, or when revenues traditionally arising from import tariffs have to be lowered under trade liberalization packages, as described further below.

B. Tax reform

Though not at first sight a direct offspring of trade policy, it seems clear that the Washington-led methodology to leverage tax revenues was based on the principles of a

[5] As note 3 above.

broad tax base and moderate marginal tax rates on income.[6] However, the joint agenda of tax reform and trade liberalization (to be commented further below) led to considerable changes in the paradigm of strong reliance of LDCs on import tariff revenues and in favour of a VAT-like taxation with undesirable regressive features, as described by Williamson in 2004:[7]

> The dominant form of tax reform was the introduction or extension of VAT, driven by a desire for a resilient, broad-based (thus relatively nondistortive) revenue source, in part to offset the loss of revenue occasioned by tariff reductions. The main problem with VAT is that it is regressive, and for reasons I have never understood the IFIs have tended to be hostile to correcting this by exempting basic necessities like food and medicines.

The same author acknowledged, in the same document, that a good policy agenda for development "should [focus] on the issue of how additional revenue should be raised, given the combination of the need to correct budget deficits, increase public expenditures (in many countries), and replace the revenue lost by trade reform". The problem of reduced tariff-related government revenues is expressly admitted by the IMF as one of the challenges regarding trade liberalization, "as many countries have few other instruments to rely on".[8]

As a result, tax reform in many LDCs was a direct reflection of trade liberalization measures, where substantial tariff reductions were balanced by additional forms of revenue that, in practice, extracted a larger percentage of income from poor individuals than from rich ones, in benefit of budgetary sustainability.

C. Liberalization of interest rates

The original determination that interest rates should be market-determined, yet moderate and positive in real terms, was probably one of the most controversial and criticized propositions of the Washington Consensus following the financial disasters in Asia and Latin America, as it did not encompass, originally, the necessary concomitant factors of institutional financial supervision and the correct timing towards broader financial liberalization reforms. Even though this was fully recognized by Williamson, his initial conceptualization of financial liberalization was limited to market-determined interest rates, instead of the more comprehensive set of reforms distinguished by that author back in 1997:[9]

> By 1997 ... we distinguished six dimensions of financial liberalization: whether credit is allocated by government or the market, whether interest rates are set by government or market, whether government imposes entry barriers to the financial sector, whether government

[6] Ibid.

[7] See J. Williamson, *The Washington Consensus as Policy Prescription for Development*, lecture delivered at the World Bank on 13 January 2004, p. 5; online version for the Institute for International Economics, 2004, available at: <www.iie.com>, accessed 10 January 2006.

[8] See IMF, *Review of Fund Work on Trade* (Washington, D.C.: IMF Policy Development and Review Department, 2005), p. 9.

[9] Ibid., at 6.

> regulates bank operations or allows banks to operate autonomously, whether the government owns the banks, and whether international capital flows are regulated or liberalized. But in 1989, I still thought of financial liberalization primarily in terms of moving to market-determined interest rates, with what I saw as a corollary of allowing banks or markets rather than the government to determine who gets credit . . . I am quite clear that I was not intending to include liberalization of the capital account.

The prescribed liberalization of the financial sector, as a matter of fact, constitutes a very sensitive area in terms of trade policy, touching upon countries' liberalization commitments of services under the General Agreement on Trade in Services (GATS). Interestingly, it seems like the gruelling work on liberalization of the services sector is not spearheaded by WTO (as the institution possessing due competence and mandate for such a task), but by way of unilateral decisions or participations in World Bank/IMF programmes, as advocated by the IMF itself in that "liberalization *outside* the WTO framework will remain a *key driver of openness, including for services*"[10] (emphasis added).

The firm stance of the IMF behind financial services liberalization appears to be a direct offspring of the Financial Sector Assessment Programmes (FSAPs), devised in the late 1990s by the IMF and the World Bank to provide countries with a comprehensive evaluation of their financial systems. Such surveillance of the financial sector clearly tackles trade policy issues, especially in situations where countries are on the verge of opening their services markets. The IMF even asserts that, in the field of bilateral surveillance of trade issues, there has to be a more thorough treatment of restrictive trade regimes in services, already presuming the need for financial sector liberalization as a *fait accompli*.[11]

D. Competitive exchange rate

As regards exchange rates in developing countries, the purported view of the Washington Consensus goes in the direction of an exchange rate "sufficiently competitive to promote a rate of export growth that will allow the economy to grow at the maximum rate permitted by its supply-side potential".[12]

In fact, the competitiveness factor would have to be coupled with stability of the exchange rate, so as to ensure "private-sector confidence that the rate will remain sufficiently competitive in the future to justify investment in potential export industries".[13]

Such view is in line with one of the purposes proclaimed by the IMF in its Articles of Agreement, namely "[t]o promote exchange stability, to maintain orderly exchange

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10 As note 8 above, at 11.

11 See, for instance, IMF, *IMF Country Report No. 04/336 – Republic of Kazakhstan – Financial Sector Assessment Update – Technical Note – Bank Profitability and Competition* (Washington, D.C.: IMF, 2004), p. 22, in which the Fund clearly supports liberalisation of the financial services sector, stating that "[c]apital account liberalization will lead to improvements in contestability conditions as may Kazakhstan's eventual accession to the WTO".

12 As note 3 above.

13 Ibid.

arrangements among members, and to avoid competitive exchange depreciation",[14] and further reinforced by the IMF Decision No. 5392-(77/63) of 1977, which states that members "shall avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment *or to gain an unfair competitive advantage over other members*"[15] (emphasis added).

The acknowledgement given by the IMF on the importance of sound and stable exchange rates in the international monetary system reflects also Williamson's understanding that competitive exchange rates are an essential element of any outward-oriented economic policy, where non-traditional exports are fostered and a "balance of payments constraint is overcome primarily by export growth rather than by import substitution".[16] However, it is worth mentioning that Williamson himself later admitted a lack of consensus on "intermediate exchange rate regimes", as most of Washington was already subscribing to the "two-corner doctrine" of either a firmly fixed or free floating currency.[17]

One could say, though, that the IMF still devotes priority to an open and flexible exchange regime, as it believes that is one of the major generators of structural adjustment, growth and good governance; this assessment, in fact, resulted from continuous analyses of trade reform in Fund-supported programmes, which identified a purported need for "early restructuring of the domestic tax base, liberalization of exchange systems and exchange rate flexibility" as important complements to sustainable trade reforms, and in line with more liberal economic policy perspectives.[18]

E. Liberalization of trade policy

Another corollary of Williamson's idea concerning an outward-oriented economic policy is trade liberalization per se, originally stated in the form of import liberalization and elimination of import licensing/quantitative restrictions that, in his view, created opportunities for corruption and costly distortions. The main strategy would be, thus, to engage in a tariffication process that limited tariff dispersion (i.e., the level of disparity of protection for different products in a given country) and exempted from tariffs imports of intermediate goods normally used in exports.

He further emphasized that the elimination of quantitative restrictions and implementation of a comprehensive tariff system would enable a country to channel

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14 See IMF Articles of Agreement, Article I(iii), available at: <www.imf.org/external/pubs/ft/aa/aa01.htm>, accessed 10 January 2006.

15 See IMF Decision No. 5392-(77/63) of 29 April 1977, as amended by Decision Nos. 8564-(87/59), 1 April 1987, 8856-(88/64), 22 April 1988, and 10950-(95/37), 10 April 1995, in Selected Decisions and Selected Documents of the IMF Twenty-Ninth Issue (as of 30 June 2005).

16 As note 3 above.

17 See J. Williamson, "What Should the World Bank Think about the Washington Consensus?", background paper to *World Bank World Development Report 2000* (Washington, D.C.: World Bank, 1999); online version for the Institute for International Economics, available at: <www.iie.com>, accessed 10 January 2006.

18 See IMF, *Trade Conditionality Under Fund-Supported Programs, 1990–2004* (Washington, D.C.: IMF Policy Development and Review Department, 2005).

"rents to the government instead of privileged importers" and allow "import quantities to expand in response to shocks that increase the need for imports".[19]

In fairness, while Williamson in his original paper advised in favour of free trade and low tariffs, he still accepted policy options such as temporary infant industry protection, moderate average tariffs (in the range 10 percent to 20 percent) and more careful sequencing of reforms; furthermore, he recognized that trade policies applied to many East Asian economic "miracles" were clearly at odds with the Washington Consensus.[20]

But the most interesting aspect of the Washington-led trade liberalization advice is that, as far as the IMF is concerned, little regard has been paid to Williamson's careful remarks as cited above. Although Fund missions are said to be "sensitive" to constraints linked to political economy or fiscal revenue, the bulk of IMF's advice is still "premised on the voluminous theoretical and empirical literature in support of trade liberalization",[21] covering in its advice and surveillance activities a set of policies for middle-income and low-income countries that encompasses, in monolithic terms, tariff reduction or "rationalization", elimination of NTBs and elimination of exemptions and import surcharges.

That perception is further reinforced by the acknowledgment, by the IMF itself, that even though coverage of trade issues was generally adequate (i.e., advice on increased liberalization), trade-related vulnerabilities were not dealt with as much,[22] contradicting the core mandate of the Fund as a stalwart "caretaker" of fiscal and balance of payments problems in member countries.[23]

F. Liberalization of inward foreign direct investment (FDI), privatization and deregulation of productive activity

The seemingly consolidated view of the Washington Consensus is that FDIs can bring capital, skills and know-how to developing countries; on the other hand, potential domestic subsidies to FDIs (i.e., "race to the bottom" approaches by potential competing receivers) and economic nationalism considerations might present difficulties for proper implementation of such policies. But in fact, the de facto Washington Consensus went far beyond the original ideas of Williamson, supporting also the precarious topic of capital account liberalization, as expressed by that author:[24]

> I believe that in both cases my formulation was a much better prescription for development than the advice proffered by the Bretton Woods institutions, or at least by the IMF. I hold premature capital account liberalization to have been primarily responsible for the catastrophe of the Asian crisis that overtook the tigers in 1997 and interrupted the East Asian miracle.

[19] As note 7 above, at 7.
[20] As note 17 above.
[21] As note 8 above, at 8.
[22] Ibid., at 19.
[23] As note 14 above, Articles I(iii), I(iv) and I(v).
[24] As note 7 above, at 9.

Notwithstanding the currently limited scope of the WTO Agreement on Trade-Related Investment Measures (TRIMS) and the fact that trade and investment (and trade and competition) issues were dropped from the Doha Development Agenda,[25] it is relevant to point out the IMF's interest in streamlining those issues through Mode 3 ("commercial presence") services negotiations under GATS, applicable as well to traditional Washington-based advice on privatization.[26]

Another display of influence by the IMF on trade policy can be seen in the subject of deregulation, supported by Williamson as "removal of constraints on entry and exit, so as to make the economy more competitive".[27] The WTO equivalent to that is defined as "trade facilitation", the only Singapore issue not dropped by the July 2004 Package which comprises freedom of transit, customs formalities, publication and administration of trade regulations and capacity building.

Such understanding holds true due to the presence, in PRSPs and IMF official surveillance and advice documents, of discussions on trade facilitation for middle- and low-income countries,[28] as well as of customs reform and "second generation" trade facilitation measures in Fund-supported programmes, comprising approximately 80 percent of nowadays' IMF trade-related conditionalities and representing "by far the most prominent form of trade conditionality".[29]

G. Property rights

Although deeply entrenched in most developed countries, the concept of secure property rights is considered by Washington as a failing aspect in most developing nations, and this perception led to Williamson's last point of the Washington Consensus which, in terms of trade policy, could hint developing countries in the direction of, for instance, more effective application and implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

But even if direct *ingérence* on property rights is absent from IMF trade policy prescription, one may already identify that, especially for low-income countries, issues of institutional development, capacity building and strengthened governance might be employed by the IMF as a form of continuous advice and conditionality on property rights implementation and enforcement.

One must mention, too, that the original Washington Consensus described above has been gradually supplemented by what Rodrik terms the "augmented" Washington

[25] See the WTO Decision Adopted by the General Council on 1 August 2004 on the Doha Work Programme (WT/L/579), 2 August 2004, para. (g).

[26] See IMF, *Developments in the Doha Round and Selected Activities of Interest to the Fund* (Washington, D.C.: IMF, 2003), pp. 20–21; and as note 6 above, at 20.

[27] As note 7 above, at 10.

[28] As note 8 above, at 18.

[29] As note 18 above, at 15.

Consensus,[30] allegedly a "refashioned" cluster of institutional guidelines that stemmed from the dissatisfaction with previous results attained by reforms in Latin America, East Asia and the former Soviet Union. Virtually for all such cases, blind allegiance to the tenets of privatization and liberalization generated little more than disappointing levels of economic and social development, bringing to the fore a dire need to create more balanced market reform structures.

These were composed of additional disciplines on legal, political and regulatory reform, treatment of corruption, labour market flexibility, WTO agreements on trade, adoption of financial codes and standards, "prudent" opening of capital accounts, non-intermediate exchange rate regimes, implementation of social safety nets and poverty reduction initiatives.

Such additional set of policies is, indeed, in line with the Fund's theoretical framework on trade policy advice, debt reduction initiatives and concessional loan facilities to be shortly discussed in this article, namely the HIPC, the PRSP and the PRGF. Indeed it seems explicit, for Bretton Woods institutions, that streamlined trade policy and converging efforts may usher an era of growth and development for poor countries. But as this article will attempt to demonstrate, it remains to be seen whether said presumption holds true or not for the IMF mandate and its supported programmes on poorer nations.

III. A Legal Critique of the Fund's Mandate on Trade

The connection between trade matters and Fund activities can be traced back to 1944, when the Articles of the Agreement were originally formulated at the International Monetary and Financial Conference of Bretton Woods in the United States, along with the World Bank and the ill-fated International Trade Organization (ITO). The IMF was supposed to foster international economic cooperation, as the central institution for an international monetary system that deals with payments and exchange rate regulations between countries.

Regardless of the fact that an overambitious agenda in the original Havana Charter impeded the creation of the ITO, the General Agreement on Tariffs and Trade (GATT), a direct offspring of the 1947 tariff negotiations, established a clear liaison between the sole multilateral instrument on international trade at that time[31] and the Fund.

Apart from peripheral considerations presented under Articles II ("Schedules of Concessions"), VII ("Valuation for Customs Purposes") and XIV ("Exceptions to the

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[30] See D. Rodrik, *The Global Governance of Trade as if Development Really Mattered* (UNDP, 2001), pp. 11 and 50. For a more conservative view of the IMF as a "core institutional component of the humanistic vision for a free and democratic world order", see C.L. Gilbert and D. Vines, *The IMF and its Critics – Reform of Global Financial Architecture* (Cambridge: Cambridge University Press, 2004).

[31] See, for instance, *Understanding the WTO: Basics – The GATT Years: From Havana to Marrakesh*, available at: <www.wto.org/English/thewto_e/whatis_e/tif_e/fact4_e.htm>, accessed 10 February 2006.

Rule of Non-Discrimination") of the GATT, the main source of institutional linkages between that agreement (as incorporated later by the WTO framework) and the Fund is shown under Article XV ("Exchange Arrangements"), which comprises a mandatory call for cooperation "with regard to *exchange questions within the jurisdiction of the Fund and questions of quantitative restrictions and other trade measures within the jurisdiction of the Contracting Parties*" [32] (emphasis added).

In other words, while signalling for a clear, distinctive line between the mandates of the WTO and the Fund, Article XV sets up the legal fabric for mandatory institutional cooperation between both organizations, by way of a mechanism that demands, in cases touching upon monetary reserves, balances of payments and foreign exchange arrangements, that WTO Members "consult fully" with the Fund and accept "all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balances of payments", all determinations of the Fund as to whether "action by a contracting party in exchange matters is in accordance with the Articles of Agreement of the International Monetary Fund", and all determinations as to what constitutes a "serious decline in the contracting party's monetary reserves, a very low level of its monetary reserves or a reasonable rate of increase in its monetary reserves".[33]

In line with what has been said by Siegel in her legal assessment of the effect of WTO institutional consultation with the Fund,[34] this unidirectional vector presumes mandatory reliance on factual findings within the Fund's competence, as well as legal findings regarding consistency of certain measures with its Articles of Agreement. This is especially relevant in cases where WTO members impose trade restrictions on the grounds of balance-of-payments problems.

However, notwithstanding its usefulness for clarification of the Fund's coherence role in the realm of international trade, the scope of this section is not to specifically address the hurdles of institutional cooperation between both organizations, but rather to discuss the legal propriety of Fund-mandated trade policy interventions by means of its statutes and programmes. They are presented over two major pillars, namely (a) Fund surveillance activities on its members, and (b) conditionalities attached to Fund-supported programmes.

A. Article IV surveillance: the ever-expanding reach on Fund members

With reference to membership and surveillance of economic and financial policies, Article IV, Section 1 of the Fund's Articles of Agreement sets forth the obligations of members as to compliance with orderly exchange arrangements, in a framework where

[32] See General Agreement on Tariffs and Trade (GATT 1994), Article XV.2. In this sentence, "Contracting Parties" refers to the GATT.
[33] Ibid.
[34] See D.E. Siegel, *Legal Aspects of the IMF/WTO Relationship: The Fund's Articles of Agreement and the WTO Agreements*, 96 American Journal of International Law 3 (2002), pp. 570–571.

trade in goods, services and capital is facilitated among countries, and where sound economic growth and overall financial and economic stability is to be secured. It is worth underlining here that the scope of Section 1 is to ensure that each member collaborates to assure, in specific terms, orderly exchange arrangements and to promote a stable system of exchange rates. In order to achieve such goals, each member is supposed to follow the main obligations below presented:

(i) to endeavour to direct economic and financial policies towards the objective of fostering orderly economic growth with reasonable price stability, with due regard to the member's circumstances;
(ii) to seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that avoids erratic disruptions;
(iii) to avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members; and
(iv) to follow exchange policies compatible with the undertakings under Article IV, Section 1.

At this stage, it must be stated upfront that an interesting aspect of Section 1 obligations, as noted by Leckow,[35] is shown by the distinct "weight" present in items (i) and (ii), where hortatory "best efforts" scenarios are depicted, in comparison with the cogent character of items (iii) and (iv), which clearly proscribe any practices inconsistent with those provisions and show a much higher degree of legal enforceability. This denotes that the deployment of economic and financial policies aimed at "orderly growth" or "reasonable price stability" is, at least as far as Article IV is concerned, left at the full discretion of Fund members, bearing no legal consequences whatsoever in case of non-attainment of those goals.

Article IV, Section 3 provides the extent and scope of surveillance to be performed by the Fund, both in international and domestic terms. It provides the Fund with a mandate to oversee the international monetary system and the compliance of each member with the obligations under Section 1 of the same Article, by way of a legal apparatus furnished by item (b) of Section 3, which specifies the pathways towards "firm" surveillance of members' exchange rate practices.

The key aspects of surveillance activity basically reside on adoption, by the Fund, of specific principles for guidance of all members with respect to exchange rate policies; the requirement that members furnish all requested information to the Fund; and the obligation to engage into consultations on exchange rate policies if ever requested by the Fund.

On the part of the Fund, it must be said that all "guidance principles" are subject to a compulsory respect to social and political policies of members, as well as their

[35] See IMF, *Biennial Review of the Implementation of the Fund's Surveillance and of the 1977 Surveillance Decision – Modalities of Surveillance*, Appendix I (Washington, D.C.: IMF, 2004), p. 57.

individual circumstances[36]; this means that surveillance on members cannot be contingent on "turnkey" or "wholesale" overseeing recipes; proper weight must be dispensed, in any evaluation of exchange rate policies, to a member's peculiar conditions and necessities. Also, Article IV, Section 1 cannot be confounded with the requirements of Article VIII, which set down the general obligations of members concerning avoidance of restrictions on current payments, avoidance of discriminatory currency practices, convertibility of foreign-held balances, furnishing of information, and finally consultations and collaboration measures. [37]

Consequently, surveillance is a tripodal undertaking that relies on the establishment of certain exchange rate guidelines, the need to provide information, and the obligation to consult with the Fund if necessary. These guidelines are mainly presented, in turn, by the Fund's previously mentioned 1977 "Decision on Surveillance over Exchange Rate Policies"[38] and comprise a set of principles for guidance of members' exchange rate policies that basically mirror the obligations under Article IV, Section 1, focusing on them with roughly the same "should-shall" dichotomy demonstrated for items (i) through (iv) above.

Moreover, the Decision enumerates certain potentially troublesome developments that should be observed in the Fund's assessment of members' exchange rate policies, including large-scale interventions in one direction in the exchange market, unsustainable levels of official or quasi-official borrowing for balance of payments purposes, existence of restrictions on current payments and flows of capital for balance of payments purposes, unusual behaviour of exchange rates, and unsustainable flows of private capital. This appraisal is supposed to be made within a framework of a comprehensive analysis of the general economic situation, taking into account the objectives of continued development of "financial stability, the promotion of sustained sound economic growth, and reasonable levels of employment".[39]

One could infer, in this regard, that surveillance activities would encompass more generic responsibilities than those originally set by Article IV; but what ensues from the 1977 Decision is that the observance of ancillary aspects and overall policy steering must always happen within the boundaries of exchange rate policies.

Not surprisingly, Article IV, Section 1 general obligations fit well within the Fund's programmatic purposes given under Article I. However, the puzzling aspect of surveillance resides not in what is literally predicted by said legal conditions, but in the continuous enlargement of the Fund's de facto surveillance tentacles on its members, bearing no proportional correlation with the principles of textual and contextual interpretation that are paramount to any international agreement. As both Siegel and Leckow acknowledge, the purpose of Article IV surveillance is to "enable the Fund (i)

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36 Ibid., at 58.

37 This interpretative consideration is useful to emphasize the distinction between Article VIII and "general obligations of members", as opposed to "obligations regarding exchange arrangements" under Article IV.

38 As note 15 above.

39 Ibid., para. 3.

to oversee the international monetary system to ensure its effective operation, and (ii) to oversee members' *compliance with the obligations specified under Article IV, Section 1 of the Fund's Articles*"[40] (emphasis added).

It is worth recalling that Article IV refers to "Obligations Regarding Exchange Arrangements"; thus, any legal interpretation of its sections and consequent surveillance activities ought to fall under the microcosm of exchange measures and policies taken by the Fund membership. In principle, any international treaty, in the sense of an "international agreement concluded between States in written form and governed by international law", is regulated by the textual interpretation test of Article 31.1 of the Vienna Convention on the Law of Treaties, by which a "treaty shall be interpreted in good faith in accordance with the *ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose*"[41] (emphasis added).

This interpretative approach, in the case of Fund's Articles of Agreement, is stretched by an explicit provision under Article XXIX, which calls for the mandatory referral of any such questions to the Executive Board for its decision or, in case of a member's request, to the Board of Governors. In fairness, though, it should be stated that this is still in line with Article 31.3 of the Vienna Convention, which allows for proper consideration, together with the context used for treaty terms, of any subsequent agreements between parties regarding the interpretation of the treaty or its application, any subsequent practice in the application of such an agreed interpretation, or any relevant rules of international law applicable in the relations between parties.

This does not necessarily mean that the Executive Board or the Board of Governors attain absolute interpretative power when it comes to Article IV consultations and surveillance, particularly when the title of the Article delimits the legal substance and applicability of its provisions. However, in spite of the obviously restricted scope of surveillance, what has been seen in practice is an objectionable legal amplification of the Fund's mandate under Article IV, especially if one is to curb surveillance chores within the bounds of exchange rate policy.

Indeed, the 2004 Biennial Review of the Fund's Surveillance,[42] in its Overview section, admits that the major focus is now on the hortatory "obligations" under items (i) and (ii) of Article IV, Section 1, reflecting "changes in the international financial system" and a recent understanding, by the Executive Board, that

> . . . coverage of surveillance had expanded over the years from a relatively narrow focus on fiscal, monetary, and exchange rate policies to a broader purview encompassing external vulnerability

[40] As note 35 above, and as note 8 above, at 42.

[41] The idea of applicability of Vienna Convention interpretative provisions on IMF statutes is further reinforced by the Fund itself, which states that it "was established by international treaty in 1945 to help promote the health of the world economy". See <www.imf.org/external/pubs/ft/exrp/what.htm>, accessed 10 February 2006, for more historical information on that institution's structure.

[42] See IMF, *Biennial Review of the Implementation of the Fund's Surveillance and of the 1977 Surveillance Decision – Overview* (Washington, D.C.: IMF, 2004), p. 4.

assessments, external debt sustainability analyses, financial sector vulnerabilities, and structural and institutional policies that have an impact on macroeconomic conditions.[43]

They also assert that this "expanded coverage" constitutes a necessary and positive adaptation of surveillance to what they had termed a "changing global environment"; but contradictorily, the same document stresses that individual Article IV consultations should continue their focus on key issues, instead of attempting to "cover a large number of secondary issues in Article IV consultations" and use the consultation process as a "catch-all" surveillance vehicle, a distracting trend perceived by members' authorities and purportedly discouraged by the Fund itself. Unfortunately, the Biennial Review demonstrates exactly the opposite practice, evidence that the Fund fails, nowadays, to realize its original Article IV purposes.[44]

This failure is further aggravated by the arbitrary division of surveillance activities between the so-called "core" and "non-core" issues, a definition created in 2000 by the Fund which specifies exchange rate policies and their consistency with macroeconomic policies, financial sector issues, the balance of payments and capital account flows and stocks, and related cross-country themes as "core" subjects to be covered in all Article IV consultation activities. Assorted "non-core" issues would be discussed up to the extent that they influence on macroeconomic developments; but if we are to follow such approach, "non-core" issues might comprehend practically everything, from external vulnerability assessments to external debt sustainability analyses, and from financial sector vulnerabilities to structural and institutional policies, including international trade policies.[45]

Another perturbing feature of current de facto surveillance discussions resides in the fact that exchange rate policies are being equated to generic trade measures that, unless specifically enacted for balance of payments reasons, fall totally outside the scope of Article IV. In this regard, the distinction used by Article VIII constitutes a useful legal analogy, as it touches upon the issue of what a "restriction on current payments" signifies; and this is particularly relevant for international trade, as such terminology might give rise to differing and conflicting understandings. In this case the doubt is solved by means of Article XXX, which explains payments for current transactions as payments which are not for the purpose of transferring capital and include, without limitation, all payments due "in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities".[46]

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43 Ibid., at 5.

44 This situation is acknowledged by the current Under Secretary for International Affairs at the US Treasury Department, who says that the Fund is "asleep at the wheel on its most fundamental responsibility – exchange rate surveillance", as "domestic policies . . . dominate Article IV reviews, and it is not uncommon to read an Article IV review *with only a brief reference to a member's exchange rate policy and its consistency with both domestic policies and the international system*" (emphasis added). See T.D. Adams, *The US View on IMF Reform*, presented at conference on IMF Reform, Institute for International Economics, Washington, D.C., 2005.

45 See note 8 above, at 42.

46 See IMF Articles of Agreement, Article XXX(d), available at: <www.imf.org/external/pubs/ft/aa/aa30.htm>, accessed 10 February 2006.

Technically this means that, insofar as international trade is considered, no member shall, without prior approval of the Fund, impose restrictions on the making of payments and transfers related to foreign trade in general. This cannot be regarded, however, as allowing for any evaluation of the underlying transaction or trade measure per se, which falls outside the Fund's jurisdiction under Article VIII.[47] In parallel terms, the same approach must be taken by Article IV surveillances, insofar as pure exchange rate manipulatory purposes "behind" trade measures, and not its consequences, ought to be deemed as relevant by the Fund.

In synthesis, it may be said that the political clout of the Fund means that strict compliance with the text of the Articles of Agreement seems like an avoidable outcome; coverage of trade policy is presently considered essential in countries where "serious trade distortions hamper macroeconomic prospects", as well as in countries "whose trade policies have global or regional implications", regardless of the improbable qualification of trade policy as an exchange rate policy.[48]

One may only infer that the formal acceptance, by the Fund, that issues falling outside the legal scope of surveillance under Article IV are of a voluntary fashion that merely represents "policy advice", acts as an effective "smokescreen" that does not rectify the legal loophole caused by actual surveillance practices, as these clearly seem to answer the call for new instruments that allow a "closer engagement than under Article IV consultations", without neglecting the purpose of sending "clear signals on the strength of a member's policies".[49] Surveillance, interpreted in such an enlarged manner, paves the way for even more influential structural adjustments and conditionalities in areas such as trade policy in member countries, as described below.

B. Fund conditionalities on trade

The controversial issue of the Fund's conditionality originates from Article V ("Operations and Transactions of the Fund"), Section 3 of the Fund's Articles of Agreement, which broadly presents the conditions governing use of the Fund's resources. Briefly, Section 3(a) states that the Fund:

> ... shall adopt policies on the use of its general resources ... and may adopt special policies for special balance of payments problems, that will assist members to solve their balance of payments problems in a manner consistent with the provisions of this Agreement and that will establish adequate safeguards for the temporary use of the general resources of the Fund.

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[47] Siegel acknowledges this fact when discussing attempts, by the Fund's Executive Board, to define exchange restrictions based on a test that would evaluate the measure's effects and the authorities' motivation. But as the Executive Board expressed, such considerations "would *necessarily involve evaluation* of the member's trade policies and thus would fail to establish *an objective rule and a clear method for distinguishing the jurisdiction of the Fund* from the scope of the GATT" (emphasis added); as note 8 above, at 40.

[48] As note 42 above, at 18.

[49] See IMF, *Policy Support and Signaling in Low-Income Countries* (Washington, D.C.: Policy Development and Review Department, IMF, 2005), p. 6.

This means that the Fund requires, prior to the release of any financial resources to its members, that certain constraints, widely known as "conditionalities", be properly set under the form of both compliance with Fund rules and Fund-suggested (or practically mandated, in the case of poor countries) policy guidelines and adjustments; these boundaries, set under the above mentioned item, theoretically allow for proper release of funds in consistency with Fund policies and provisions, establishing adequate solvency safeguards while being specifically targeted on temporary balance of payments problems.

These policies and provisions, also termed "monitoring techniques", are partitioned by the Fund in four main procedures that generate a set of conditionalities: prior actions, performance criteria, structural benchmarks and programme reviews.[50]

Prior actions constitute the measures taken at the beginning of a Fund-supported programme or prior to the completion of a programme's review; these prior actions are intended to improve the capacity of the programme to meet its objectives. Their implementation is mandatory by the Fund member, and represents a prerequisite for any programme approval or successful completion of a programme review. According to the Fund, they are especially relevant in cases of severe imbalances, a "weak record of policy implementation", or as catalysts against delayed implementation of structural benchmarks.

Also with an imperative character, but applied to distinct and ongoing stages of a support programme, performance criteria relate to so-called "critical" structural measures which define the level of success of an adjustment programme, and whose implementation is based on both economic and financial parameters, along with tight timeframes. Typically, their implementation constitutes a pre-condition for any purchases under Fund arrangements. Non-implementation by agreed terms is possible, but only if a country submits a "request for a waiver", where waivers may be granted if the Fund considers the delays as non-disruptive to the programme, or if "adequate compensatory measures are taken".[51]

Yet another monitoring technique is the structural benchmark, used for surveillance of structural reforms that are not regarded as *sine qua non* conditions for continued approval of a programme or completion of a Fund review, that do not carry strict timeframes, or that cannot be precisely gauged; but as expressed by the Fund, they may also carry a cogent character, as numerous delays in their implementation "can signal a setback in meeting a programme's objectives and will figure importantly in deliberations to complete a review".[52]

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[50] See IMF, *Structural Conditionality in Fund-Supported Programs* (Washington, D.C.: Policy Development and Review Department, IMF, 2001), p. 6.

[51] Ibid.

[52] Ibid.; one could infer, in the context of several or repeated delays, that structural benchmarks also possess, in reality, a more cogent character in the context of programme approvals by the Fund. This was indeed the case for periodic approval of annual arrangements under ESAF-supported programmes, later replaced in 1999 by the Poverty Reduction Growth Facility (PRGF) initiative.

Finally, programme reviews set up the framework for identification and evaluation of a programme's reforms, and are intrinsically linked to the release of a programme's lending parcel; however, contrarily to performance criteria or structural benchmarks as such, programme reviews do not constitute reform components, but simply a mechanism to assess whether such reforms are being carried out or not, in close accordance with a country's letter of intent.

The first two "monitoring techniques", prior actions and performance criteria, are of a compulsory and exacting character, and constitute essential requirements for approval of any Fund assistance, while structural benchmarks and programme reviews do not necessarily withhold commencement or continuation of loans within Fund programmes, even though they may, in their entirety (and without overlooking their expected political weight), legally influence the Fund's final decisions. This aspect of Fund conditionalities is of significance to this article, when trade conditionalities are discussed in the following sections.

As observed by Siegel,[53] one has to delineate the subtle difference between early adjustment measures proposed by Fund members (for purposes of securing Fund financing in the first place), and the narrower concept of Fund conditionalities per se, identified and adopted by the Fund as specific conditions for continuation of financing to its members. The former is initiated by a Fund member country by way of a "letter of intent", which sets forth such country's intended package of adjustment measures and mainly comprises the economic and financial policies to be implemented in the context of a support request to the Fund.

In this regard, a positive decision by the Fund gives rise to a Fund-supported programme or arrangement, which supports a member country's proposed adjustments and is subsequently accompanied by Fund conditionalities that ensure an extension of the accorded financing programme.

For the purposes of this article and in the context of HIPC lending schemes, the programme to be brought into focus here is the Poverty Reduction and Growth Facility (PRGF), a successor of the Structural Adjustment Facility (SAF) and the Enhanced Structural Adjustment Facility (ESAF) mechanisms devised in the eighties and directed towards macroeconomic and structural reforms in poor countries. As hinted by the PRGF acronym, one of the main aspirations behind that new three-year arrangement is poverty reduction and growth in eligible countries (up to seventy-eight as of September 2005[54]), seeing that concessional loans are supposed to follow the approval of a country-owned and publicly supported Poverty Reduction Strategy Paper (PRSP).

An interesting aspect of Fund conditionalities is that, while not representing statutory Fund obligations, they are equivalent to binding commitments taken on by a

53 As note 34 above, at 573.

54 See the IMF factsheet on PRGF, available at: <www.imf.org/external/np/exr/facts/prgf.htm>, accessed 10 February 2006.

member country in regards to specific Fund disbursement arrangements. Therefore, such conditionalities are supposed to comprehend a smaller set of policy reforms in comparison to those unilaterally presented by the member country in its foundational letter of intent, which normally comprises a broader set of macroeconomic considerations and policy objectives. But notwithstanding the acknowledgement, by the Fund, that conditionalities should not extend themselves beyond the Fund's core competences, the fact of the matter is that structural reforms have increasingly covered other policy aspects that have little to do with Fund expertise.[55]

> Structural conditions related to the restructuring of public enterprises, privatization, and the reform of the social security system together have accounted for another 20 percent of total conditions. While these reforms were outside the Fund's core areas of expertise, they were motivated not only by efficiency considerations and the need to scale back extensive quasi- fiscal operations, but also by budgetary considerations more directly. They were thus often linked to fiscal adjustment, which plays a critical role in nearly all Fund-supported programs.

Indeed, although PRSPs seem to resemble a more advanced and development-friendly version of SAF and ESAF's Policy Framework Papers (PFPs), PRSPs collectively comprise, along with SAF and ESAF, the preponderant number of structural conditionalities in Fund-supported programmes.[56] This trend is further increased by the expanding breadth of sectors covered under structural conditionalities, which show a marked change from a more strict and legalistic approach (with almost 20 percent of Fund programmes covering only one economic sector between 1987 and 1993), to a recent wholesale approach that shows much broader coverage of sectors, even taking into consideration that the already mentioned "core" areas of Fund responsibility are still restricted to exchange rate policies and their relationship with macroeconomic issues, balance of payments problems and financial/monetary matters.

The problematic trend towards an enlarged IMF policy impact has been evidenced by a composition of structural conditionalities among SAF/ESAF/PRGF countries that shows, in stark contrast with original Fund conditions set until the early eighties, a growing participation of measures in areas such as public sector employment, privatization and public enterprise reforms, trade policy regime, pricing and marketing, social security systems and "systemic" reforms.[57]

By conceding that there are two different "broad groups" of structural reforms,[58] the Fund circumspectly admits the existence of contrasting (and, one may say, legally

[55] For a historical account of the Fund's increasingly comprehensive set of conditionalities, see as note 20 above, at 23. Obviously, what the Fund contentiously regards as "core" competence encompasses nowadays a plethora of macroeconomic topics that extends well over members' original exchange and balance of payments obligations under Articles of Agreement IV and VIII; the Fund seems to prefer, instead, to justify its policy commands under the broad hortatory and programmatic precepts of Article I, notably in what pertains to, as quoted, "efficiency" and budget-related reforms or direct trade policy conditionalities.

[56] One can see that, from 1988 onwards, all SAF/ESAF/PRGF programmes contained structural conditionalities, as well as the highest number of structural conditions among all Fund programmes (an average of 14.3 in 1999). See as note 50 above, at 16.

[57] Ibid., at 26.

[58] Ibid., at 28.

troublesome) fields of policy activity in regard to conditionalities; the first cluster, legitimately embedded in the Fund's "core" areas of expertise, tackles macroeconomic scenarios by way of policies that aim to ensure stabilization of exchange rate practices, as well as the lessening of balance of payments and financial or monetary system problems. Such policies could comprise safeguarding measures such as tax reform, fiscal responsibility, banking and monetary reforms, or exchange rate flexibilization.[59]

The second cluster, derived from the Fund's recent enlargement in the scope of conditionality, advocates for "policies aiming more generally at improvements on the economy's underlying structure—its efficiency and flexibility—to foster growth and facilitate adjustment to exogenous shocks".[60] Here is where the Fund usurps its legitimacy to, as mentioned above, engage in much broader reforms that include trade liberalization, pricing and marketing, labour market reorganization and generic institutional or regulatory changes.

Needless to say, an enlarged and overarching understanding of Fund competence, as expressed by its conditionalities, should be promptly curbed by legal provisions and guidelines issued by the Fund itself. For instance, the establishment of "adequate" solvency safeguards does not bear the same meaning as a legal *carte blanche* to demand all-encompassing structural reforms from a Fund member. Instead, it dictates that conditionalities cannot surpass the competence of the Fund, or be unduly extended so as to infringe textual directives of that organization.[61]

In fact, the restrictive interpretation of the Fund's mandate is formally supported by the IMF Guidelines on Conditionality,[62] which emphasize conditionality objectives as being strictly related to the resolution of balance of payments problems, in agreement with the Fund's Articles and in a manner that establishes "adequate" safeguards for use of its resources. But the form in which said reasoning is further elaborated shows that extensive trade policy measures ought not to be within the realm of primary goals in Fund-supported programmes.

The guidelines spell out, most notably, a number of precepts that are rarely applied in Fund-initiated trade conditionalities. Paragraph 3, for instance, calls for the need of a national ownership of sound economic and financial policies and adequate administrative capacity, so that programmes may be implemented successfully.

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59 See also IMF and World Bank, Joint Statement by Horst Koehler and James Wolfensohn, *An Enhanced Partnership for Sustainable Growth and Poverty Reduction* (Washington, D.C.: IMF and World Bank, 2000), affirming that the "Fund's core mandate is to promote international financial stability and the macroeconomic stability and growth of member countries . . . The Fund must focus on its core responsibilities: *monetary, fiscal, and exchange rate policies*, and their associated institutional and structural aspects" (emphasis added).

60 Ibid.

61 As note 34 above, at 573; as expressed again by Siegel, Fund arrangement conditionalities "must be limited to those [policy intentions] that are consistent with the Fund's Articles [of Agreement]". See also IMF and World Bank, *Strengthening IMF-World Bank Cooperation on Country Programs and Conditionality* (Washington, D.C.: IMF and World Bank, 2001), p. 8, by which PRGF conditionality measures "should focus on policies within the Fund's *core areas of expertize: monetary, fiscal, and exchange rate policies*; the institutional arrangements underlying these policies; and structural aspects *closely related to them* . . ." (emphasis added).

62 See IMF, *Guidelines on Conditionality* (Washington, D.C.: Legal and Policy Development and Review Department, IMF, 2002), pp. 1–2.

Most interestingly, it states that:

> ... [i]n responding to members' requests to use Fund resources and in *setting* program[me]-related conditions, *the Fund will be guided* by the principle that the *member has primary responsibility for the selection, design, and implementation of its economic and financial policies*. The Fund will *encourage* members to *seek to broaden and deepen* the base of support for sound policies in order to enhance the likelihood of successful implementation.[63] (emphasis added)

Obviously, it may be denoted from the excerpt above that the grey area between Fund "demands" and Fund "suggestions" is as pronounced as the level of contradiction shown in the paragraph above. By means of an extremely careful selection of words, the Fund attempts to guarantee, at the same time, two main aspects of Fund-enforced conditionalities. First, that ownership and capacity to implement a programme is of sole responsibility of a member country; and second, that the Fund will be, ironically, simply guided by the same principle of ownership, not bound by it.

This subtle choice of wording ensures that, on legal grounds, the Fund is shielded from external criticisms, since full responsibility is borne by local governments; on the other hand, the same guidelines establish the foundations for an almost unhindered setting of conditionalities by the Fund, as the preference of governments might not necessarily be reflected in the measures considered by the Fund under the rubric of "adequate safeguards".[64]

Such conclusion is further buttressed by Paragraph 8 of the same Guidelines, asserting that the Fund "is fully responsible for the establishment and monitoring of all conditions attached to the use of its resources", and, in even more candid terms, under the "Principles Underlying the Guidelines on Conditionality", that the "need for ownership implies selectivity: approval of the use of Fund resources depends *in particular on the Fund's assessment that the member is sufficiently committed* to successful implementation"[65] (emphasis added).

Moreover, as will be shown in the following discussions on trade policy setting by the Fund in low-income countries, proper regard to the social and political goals and specific circumstances of members (as advised under Paragraph 4 of the Guidelines) has not been given by the Fund when defining conditionalities. This is especially relevant if one observes the "wholesale" approach taken by proposed trade policy reforms, or the considerable policy reform homogeneity in HIPC-PRGF programmes, providing critics with reasons to think that the design of conditionalities still suffers from the "one-size-fits-all" approach and the lack of correct policy sequencing concerns in poor countries.

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[63] Ibid.

[64] In fairness, the ambiguity between Fund-supported programmes (along with a member's intended set of reforms) and Fund-driven conditionalities might also be, paradoxically, convenient to certain governments that may prefer transferral of responsibility for unpopular reform measures to the Fund, under the guise of "Fund requirements". As note 31 above, at 573.

[65] As note 62 above, at 8.

The vagueness of Article I principles contributes to such state of affairs whenever trade policy considerations are exerted in Fund programmes. This has been, in fact, one of the major driving forces behind justification of trade policy conditionalities in Fund arrangements, particularly when the Fund regards a more restrictive trade regime as "destructive of national or international prosperity" or against the "balanced growth of international trade".

But one cannot forget that, in line with the Articles of Agreement and the Guidelines on Conditionality, the scope of reform conditions must be interpreted narrowly and applied with parsimony; this implies that, from a legal perspective, hortatory principles cannot supersede the "critical importance" test in face of a programme's goals, or the "necessity test" in what pertains to application of Fund provisions.

The obvious deviation from the Fund's "core" legal mandate hidden as "conditionalities" is corroborated by trade policy objectives, properly identified by Fund documents, that have little to do with the Fund's traditional mission or areas of expertise. Instead of exchange rate considerations, strict balance of payments concerns or financial and monetary analysis, what is manifested by the Fund in favour of trade policy reforms passes through ambiguous reasons such as economic efficiency improvement, streamlining of trade policy administration, amelioration of government revenue structure or governance and customs administration.[66]

Finally, the clear prohibition on cross-conditionality is another facet that cannot be neglected when analysing Fund-supported trade policy measures, notably in regard to WTO or RTA commitments and rights so closely impacted by conditional measures that a member may have to unilaterally undertake. In order words, any Fund conditionality cannot be subject to rules or decisions of other organizations or external arrangements, or establish that a member assume commitments under the laws of other international institutions or frameworks.

Notwithstanding the ongoing debate on coherence (mostly represented by the Integrated Framework and "lead agency" concepts to be discussed below), it remains to be seen whether compliance with Fund rules and clear admonitions by the Fund's legal staff has been fully followed in lending arrangements with member countries; as Siegel expresses, "trade measures . . . should not be incorporated for the purpose of enforcing obligations under another international treaty or to expand the scope of commitments under another international agreement".[67]

But at least one example, in Guyana's ESAF programme, shows that the Fund may have surpassed once more its legal attributions, as it required the country to "implement the phased reduction of the common external tariff agreed by CARICOM member states", both in the form of binding structural benchmarks and

[66] As note 18 above, at 4–6.
[67] As note 8 above, at 44.

performance criteria, a policy request which clearly goes beyond the IMF's core mandate.[68]

One could even infer that the recent "streamlining" phenomenon of structural conditionalities epitomizes the Fund's late acceptance of the fact that many conditionality measures, indeed, have failed those legal tests in terms of criticality, urgency and necessity, not to mention the obvious deviation from the Fund's "core" areas of expertise and legal mandate.[69]

Thus, the legal considerations conveyed in this section, coupled with a critical analysis of specific country cases further presented below, set the ground for our analysis of unilateral trade policy measures that have been undertaken by some of the poorest and heavily indebted member countries under Fund arrangements, and how the Fund's "suggestions" regarding the trade sector have had, at best, mixed effects on HIPC/PRGF countries' economic and social development.

IV. The Influence of the Fund in Setting Poor Countries' Trade Policies

The veil of secrecy shrouding official lending documents has been an acknowledged and criticized fact in Fund arrangements with member countries over the years. Indeed, as briefly commented in the section on legal analysis, the latent ambiguities that persist in terms of programme ownership may have their usefulness for governments when it comes to unpopular proposals for structural reforms, or for the Fund itself as a means to ensure that its activities and ingrained policy agendas suffer little disturbance in their implementation.

However, due to continued pressure from academic researchers, non-governmental organizations and other interested stakeholders in member countries, the Fund has seemingly initiated a march towards increased transparency of internal processes and reform initiatives, representing an inexorable trend in which it might be "no longer possible to put the genie back in the bottle", despite some visible opposition from the Executive Board or the Fund's legal staff.[70]

Interestingly, policy reforms under the Fund's trade agenda still reflect a widespread perception, by Bretton Woods institutions, that liberalization carries unequivocal positive effects; because of that perception and in line with a tendency towards transparency, current Fund practices bear, at least to a certain extent, a higher

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68 As note 18 above, at 11.

69 Ibid., at 16.

70 See W.E. Holder, *Publication Policies of the Fund* (preliminary version), in seminar on Current Developments in Monetary and Financial Law, IMF Legal Department and IMF Institute (2002). He also questions how the benefits of openness could be "furthered by making the Fund's operations and policy deliberations more open to public view *without compromising the Fund's primary role as banker, confidential advizer and assessor of national policies*?", expressing that "the authorities of the member have an obligation to protect the confidentiality of Fund documents that are communicated to them. . . . the member must prevent any voluntary or forced disclosure, *including disclosure under national "freedom of information" acts*. . . . this distribution by Executive Directors to national authorities extends *only to the executive branch* (and central bank) of government, not to the member's legislative branch" (emphasis added).

degree of visibility insofar as structural trade reforms in poor countries are considered. The idea of "trade liberalization as a good thing" has been encouraged by institutions such as UNCTAD, which endorses the assumption of long run gains from trade liberalization ("at least in the absence of externalities") through the Trade & Development Index (TDI) initiative, with openness to trade carrying the largest weight to the index, with up to 15 per cent of its value.[71]

This occurs primarily because the paradigms arisen from the Washington Consensus are still mirrored in advocacy activities exercised by the Fund and other international institutions; liberalized trade regimes would be promoted, thus, as "a means to improve economic efficiency, combat rent-seeking and corruption, promote income growth, and, as a result, provide a firm basis for poverty-reduction efforts", on the grounds of "economic theory" and "recent empirical literature" on trade and growth.[72] Consequently, the open trade agenda is not regarded by the Fund as a confidential affair, but a vastly publicized objective of that institution.

Accordingly for developing nations, the Fund attempts to focus on the so-called unfinished liberalization agenda, urging poorer countries to "seize opportunities that open trade policies afford to promote development objectives, and to avoid conditioning liberalization on the policies of other countries".[73] In other words, the Fund openly advocates unilateral liberalization in its member countries, even if short-term "adjustment costs" are to be expected.

Although it is not the scope of this article to enumerate or submit to deep scrutiny the whole gamut of cases where the Fund has engaged in active trade reform in HIPC/PRGF countries, it might be useful to underline a few examples on how the Fund has proactively carried its trade policy reform projects in poorer nations, including PRSP processes and the usual modalities of Fund influence on trade policy, namely Article IV surveillances and Fund-supported arrangements and conditionalities under the PRGF (which, in some cases, just succeeded SAF/ESAF programmes).

A. PRSPs, THE PRGF FACILITY AND HIPC COUNTRIES: A CASE OF TRADE POLICY OWNERSHIP?

As previously described in this article, the PRGF initiative was deemed by the Fund as an enhanced and revised successor to the SAF and ESAF programmes, representing a concessional instrument to support low-income countries in their poverty reduction efforts with a pro-poor and pro-growth focus.

In the Fund's own words, a PRGF lending arrangement should have, on one hand, a backbone composed of development-friendly and pro-poor content, much

[71] This is notably relevant if we consider that only the component "Effective Foreign Market Access", has similar weight. All other components such as Human Capital, Environmental Sustainability, Economic Development, Economic Structure, Social Development and Gender Development have lower levels of contribution to the TDI. For more information, see UNCTAD, *Developing Countries in International Trade 2005 – Trade and Development Index* (Geneva: UNCTAD, 2005).

[72] As note 8 above, at 3.

[73] Ibid.

increased country ownership of policies and reforms, and a clearer and more coherent role for the Fund when it comes to interaction with other development agencies and institutions.

Indeed, policies and objectives embodied in PRGF programmes presumably emerge from the country's own poverty reduction strategy papers (PRSPs), with crucial reforms planned and "produced in a transparent process involving broad participation from the government, nongovernmental organizations (NGOs), civil society, and donors", whereas the Fund is expected to focus on its core areas of expertise and work alongside local authorities to ensure that all objectives can be achieved within favourable macroeconomic scenarios.[74] The PRGF programmes and macroeconomic reforms, thus, must be drawn or derive from PRSPs (and not the opposite), paying due regard to all objectives linked to social development, growth and poverty reduction.

On the other hand, a PRGF programme is also intrinsically linked to the Heavily Indebted Poor Countries (HIPC) initiative, to the extent that eligibility for a PRGF constitutes one of the prerequisites of an assistance package under the HIPC debt relief framework. Therefore, any nation longing for Fund approval of its "decision point" or "completion point" triggers under the HIPC must previously receive assent by the Fund on its PRSP documents, along with formal admittance to the PRGF initiative; so as one may perceive, this amounts to further pressure, on the developing country, when it comes to devising a PRSP for approval by the Fund's Executive Board, both in temporal and substantive terms.

As hinted above, the Fund does not linger in underscoring the key features of PRGF arrangements; broad participation and greater ownership by domestic stakeholders are essential for proper embedding of PRGF arrangements in the overall poverty reduction strategy, in a context of flexible and development-friendly targets, selective structural conditionalities and social impact analyses of adjustments and reforms (also termed Poverty Social Impact Analyses or PSIAs).

Unfortunately, a few studies on PRSP processes have demonstrated, to a considerable extent, that ownership and participation by domestic stakeholders remains at insufficient levels; as argued by one publication, there is no novelty in asserting that, in most HIPC/PRGF country contexts, one has to deal with "semi-democratized states", "fragmented policy processes", "patronage-based" politics and "high levels of institutional aid dependency".[75] The result is that traditional criticisms on implementation of Fund-supported programmes once more arise, displaying further evidence of homogeneous and orthodox advices that bear little consistency with popular awareness or national development objectives.

Besides, it seems like PRSP policymaking has yet to shift away from the ubiquitous Washington Consensus prescription, as it is often perceived that IFIs hold

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74 See IMF, *Review of the Key Features of the Poverty Reduction and Growth Facility – Staff Analyses* (Washington, D.C.: IMF, 2002), p. 4.

75 See D. Booth, "PRSP Processes in 8 African Countries", in *PRSP Institutionalisation Study* (Strategic Partnership with Africa, 2001), p. 5.

"purse strings, and influence what developing country governments sign up to in exchange for lending", having in practice a "strong influence over the choices made in PRSPs".[76] On top of that is the traditional assessment that most PRSPs suffer from a sketchy coverage of trade issues which focuses more on expenditure rather than growth, while having little redistributive capacity and virtually nonexistent connections between trade policy content and poverty and social impact analyses, notably in what refers to contrasting interests between urban and rural areas, or among assorted economic sectors in a given country.[77]

The PRSP consultative process itself is yet another point of contention for many authors, which consider the universality of format, procedure and substance a token of how ingrained and unchanged the Fund's macroeconomic and policy orientations are in domestic poverty reduction frameworks.[78] In addition, Gillson notes that, as far as trade policy in PRSPs is concerned, there is little attention to issues other than general advocacy of trade liberalization, absent discussions on the link between trade policy and basic services for the poor, inadequate coverage of trade policy impact on distinct domestic groups, and lack of proper information of poverty-sensitive trade concerns on subsequent loan documents such as the PRGF.[79]

And if one considers that, apart from a handful of exceptions, policy discussions in most PRSPs are "either entirely or broadly consistent with the WB and IMF line on trade policy", there seems to be little room for actual country ownership in poverty reduction strategy documents, especially in what pertains to deviation from liberal trade policy patterns. As aptly synthesized by Hewitt and Gillson, the preferred trade policy approaches taken by the Fund in PRSPs are, in an abridged manner, as follows:[80]

TABLE 1: PREFERRED TRADE POLICY APPROACHES TAKEN BY THE FUND IN PRSPS

Overall trade policy stance	Economy-wide, multilateral trade liberalization; introduction of alternative revenue sources in case trade revenue is lost
Tariffs	Low, uniform tariff levels
Safeguards	Limited and temporary scope for safeguarding measures
Trade facilitation	Customs simplification and transparency; improved access to credit; more effective usage of standards, infrastructure, marketing, distribution and trade support measures
Sector-specific	In agriculture, manufacturing and services as a whole, promotion of competition, foreign investment and liberalization; flexible and deregulated labour markets

76 See A. Hewitt and I. Gillson, *A Review of the Trade and Poverty Content in PRSPs and Loan-Related Documents* (2003), pp. 2–3 and 10.

77 Ibid., at 16–17.

78 Ibid., at 13.

79 See Eurodad, *PRSPs and Trade Policy in Sub-Saharan Africa*, Workshop Report from the ABCDE 2004 Conference, available at: <www.eurodad.org/articles/default.aspx?id=569>, accessed 20 March 2006.

80 As note 76 above, at 117.

It is worth highlighting, for instance, is the case of Nicaragua, as it reflects common problems with PRSP processes such as a rushed drafting process and limited levels of participation by stakeholders. In fact, it was said that the whole process was "completed swiftly in order to qualify for completion point"; moreover, the PRSP seemed to have had little impact on macroeconomic policies, clearly showing signs of reversed causality from the PRGF to the PRSP, and not the opposite. As for the lack of participation by civil society stakeholders in macroeconomic discussions, a Fund representative reportedly said that civil society representatives were "not trained economists".[81]

The IEO also acknowledges that the government of Nicaragua "embarked on the PRS process because it was a precondition for obtaining debt relief under the HIPC initiative". The Fund's evaluation office further assessed that ownership of the PRSP was limited, as the document was prepared in a "highly centralized manner by a group that enjoyed support at the highest level of government". As for Fund supporting actions, its policy formulation process was not different from previous practices, because "macroeconomic stabilization efforts took up most of the attention, while growth and poverty issues did not receive the consideration that would have been expected under the new approach".[82]

Similarly, the Tanzanian example shows that there was little policy engagement with poverty reduction, blurred links between the PRSP and the PRGF and a rushed approval process that simply seemed to follow debt reduction completion points under HIPC.[83] Furthermore, a sizeable portion of civil society groups was manifestly at odds with ordinary reform measures (like trade liberalization), receiving little to no opportunity to discuss or effectively change the PRSP document.[84] Even the Fund's Independent Evaluation Office (IEO) acknowledges the fact that "formulation of the PRSP took place within an extremely compressed timetable, under pressure to reach the HIPC completion point".[85]

More importantly, the IEO asserts that PRSP and PRGF discussions on macro policy issues involved mainly government, donors and IFIs; by contrast, civil society stakeholders "were largely on the sidelines", giving us a clear impression that Fund staff naturally had a more than influential role on key policy issues, even if they were "reluctant to intervene *too actively* in what was meant to be a government-led domestic debate"[86] (emphasis added).

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[81] See World Development Movement, *Democracy and the Poverty Reduction Strategy Process: Country Cases* (World Development Movement, 2005), pp. 12–13.

[82] See IMF and World Bank, The Poverty Reduction Strategy Initiative – Findings from 10 Country Case Studies of World Bank and IMF Support (Washington, D.C.: IMF and World Bank, 2005), pp. 63–67.

[83] This comes in utter contrast with the IFIs' assertion that preparation for PRSP missions "should allow considerable flexibility, to avoid over-constraining the results of the participatory process". See IMF and World Bank, *Poverty Reduction Strategy Papers – Operational Issues* (Washington, D.C.: IMF and World Bank, 1999), p. 14.

[84] Ibid., at 15.

[85] As note 82 above, pp. 83–89.

In Mozambique, the IEO found that, despite an initial consultation process that involved business associations, labour unions, NGOs and other actors, a sizeable portion of the civil society and private sector declared the PRSP process as "strongly influenced by policies supported by the IMF and the World Bank, with what they perceived to be excessive attention to macroeconomic stability, privatizations, and premature exposure of key production sectors to foreign competition". Furthermore, the "macroeconomic framework of the pre-existing PRGF-supported programs influenced the [PRSP]'s macroeconomic framework, and PRGF objectives have become broadly aligned to [PRSP] goals". Strong criticism was also voiced against the need for official endorsement of the PRSP by IFIs, a major ownership-limiting factor.[87]

Mozambique was another example of a rushed PRSP process in which effective stakeholder participation was limited to government, donors and IFIs; the government wished to achieve completion point trigger for HIPC debt relief, so there was no time for gradual inclusion of civil society stakeholders; in addition, no documents were available in languages other than Portuguese.[88]

In the end, these cases represent a mere extension of what has been stated by the IMF and the World Bank about the participatory and finalization process for any PRSP. In their view, both institutions are supposed to offer assistance in the consultative process, sharing their "analyses and the key elements of their policy positions in the consultative process, even during the early stages of the policy dialogue". But even more crucial is the fact that IFIs tend to "discuss with authorities any modifications to the strategy that might be considered *necessary* to allow managements to recommend to the Boards that the PRSP be endorsed"[89] (emphasis added).

Along with poor levels of participation come so-called "blueprint" practices that drafters normally follow, donor-driven processes and an innate accountability flaw arisen from the final consent to be provided by the Fund and the World Bank for all poverty reduction strategies. Furthermore, PRSPs are perceived as being prepared in a way expected to achieve IFI approvals, in which local officials in charge of such processes "know from experience who they [are] dealing with and what they want, most of them having undergone decades of structural adjustment".[90] Or as Killick says, "[a] probably more common pattern is that [governments] have drafted their papers to

[86] Ibid. Or as others say on the PRSP process, "the macro-economic framework has been little subject to debate and sticks to what the IMF considers as 'sound policies'". See Bretton Woods Project, *Poverty Reduction Strategy Papers (PRSPs): A Rough Guide* (2003), available at: <www.brettonwoodsproject.org>, accessed 20 March 2006.

[87] As note 82 above, at 53–54.

[88] As note 79 above, at 11–12.

[89] As note 81 above, at 15.

[90] See J.Y. Jones *et al.*, *Worldbankification of Norwegian Development Assistance* (2005), pp. 24–25. Another author identifies similar dangers in the relationship between trade content and PRSPs. The first would be the failure of individual PRSPs to fully consider the impacts of trade on poverty, especially on vulnerable groups; the second referred to excessive uniformity of trade policy in PRSPs, with little regard to context-specific solutions; and last but not least, the use of coercive conditionalities to reassure that uniformity. See P. Ladd, *Too Hot to Handle? The Absence of Trade Policy from PRSPs* (2003), p. 9.

second-guess what they think the IFIs/creditors would like to see"[91]; in other words, the PRSP is wisely devised as a country-owned process; but the last word definitely comes from the Bretton Woods institutions.

B. Trade policy in select article iv consultations by the fund

The inclusion of trade issues in Article IV surveillance documents follows the instructions given by the 2004 Biennial Surveillance Review,[92] which are steered towards the examination of selected trade topics especially when deemed relevant from a macroeconomic perspective, or of special significance to domestic stability and growth prospects in Fund member countries. But as one may deduce from Fund considerations, it appears unambiguous that liberalization is the major goal behind trade issues in Article IV consultations, as reporting decisions are mainly triggered by the degree of restrictiveness or "distortion" of trade regimes, fiscal aspects of trade liberalization (notably if revenue loss is significant enough to require adjustments in other sources of revenue or public expenditures), or potential spill-over effects on world prices and exports of other countries.

As far as least-developed countries are concerned, the Fund review on trade constitutes further evidence that poorer (and usually more trade-restrictive) countries are the main targets of substantial trade policy advice, with trade reforms being "suggested" in 89.6 percent of all Article IV Staff Reports for low income countries (with a remarkable 24.1 percent of these nations receiving "unnecessary coverage" under the Fund's Trade Restrictiveness Index standard), whereas the same effort applied only to 56.3 percent of middle income countries and 50.0 percent of high income countries.[93] Akin to that is the emphasis, for trade policy reform in low-income countries, on the agenda for liberalization of trade regimes and the institutional framework for trade, including reduction of tariffs and non-tariff barriers, regional trade liberalization, trade facilitation (particularly in newer arrangements) and governance measures.

In contrast, advice for high-income countries has focused on market access promotion for developing country exports and trade-distorting practices, including their negotiating positions in the Doha Round and the impact of agricultural policies and domestic support on developing countries. And for middle-income countries, policy advice has been varied depending on the level of trade restrictiveness, but still tackling the "remaining agenda for reforms of the merchandise trade regime".[94]

In Gambia, for instance, a recent Article IV consultation shows plain similarities between the liberalization advice provided by the Fund's staff and structural reform

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[91] See T. Killick, *The "Streamlining" of IMF Conditionality: Aspirations, Reality and Repercussions* (Overseas Development Institute, 2002), p. 4.

[92] As note 40 above.

[93] As note 8 above, at 17.

[94] Ibid., at 18.

"objectives" manifested by local authorities for that PRGF country. Whereas the Fund declares that Gambia "has maintained a liberal trade regime … and low nontariff barriers" and reports additional "ongoing initiatives to further identify bottlenecks to The Gambia's external competitiveness",[95] Gambian local authorities assert that:

> … progress on the trade liberalization front has been significant and The Gambia *has one of the most open and liberal* trade regimes in sub-Saharan Africa … The authorities are *committed to further trade liberalization*, and there are *ongoing initiatives to further identify bottlenecks* to the country's competitiveness"[96] (emphasis added).

One may wonder, thus, if similar "blueprint" practices and the "previously expected content" found in PRSP documents apply to Article IV surveillance reviews.

The Gambian case shows that, notwithstanding the continuous worsening of terms of trade over the years (with consecutive negative variations since 2003) and the suspension of HIPC assistance in 2003 (due to "poor performance" under the PRGF facility), local authorities and the Fund seemed to "share" the same policy views towards maintenance of a liberal trade system and promotion of export diversification in Guinea's last Article IV consultation, especially following the country's adoption of a common external tariff under the West African Economic and Monetary Union (WAEMU).[97]

Mali, a full-fledged member of WAEMU and yet another recipient of PRGF assistance, equally shared the Fund's official position by which trade reforms in the category of unilateral tariff reductions under WAEMU have advanced, and where benefits from global trade would demand sound and swift implementations of technical assistance, export diversification efforts under the Integrated Framework, implementation of WTO agreements, and elimination of subsidies or non-justified technical obstacles to trade.

Concomitantly with broad trade openness advocacy, past Article IV "recommendations" to Mali have played their role of attempting to impede further subsidies from being offered, and to complete the privatization program, particularly in the cotton sector (Mali's most important export sector). The Fund recognizes, though, that terms of trade had declined 13 percent in 2005 to a 25-year low, along with a severe reduction of production prices (even if producers had maintained their planted areas). But what seems clearer is the underlying interest for privatization of the state-owned cotton-ginning corporation (CMDT); that "close surveillance of CMDT cashflow is warranted in order to clear payment arrears".[98]

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[95] See IMF, *The Gambia: 2005 Article IV Consultation—Staff Report; Staff Statement; Public Information Notice on the Executive Board Discussion; and Statement by the Executive Director for The Gambia*, IMF Country Report No. 06/8, 2006, Staff Report (Washington, D.C.: IMF, 2006), p. 17.

[96] Ibid., at 4 (Statement by the Executive Director for The Gambia).

[97] See IMF, *Guinea: 2005 Article IV Consultation and Staff-Monitored Program—Staff Report; Staff Statement; Public Information Notice on the Executive Board Discussion; and Statement by the Executive Director for Guinea*, IMF Country Report No. 06/37 (Washington, D.C.: IMF, 2006). WAEMU comprizes Benin, Burkina Faso, Cote d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo.

[98] See IMF, *Mali: 2005 Article IV Consultation and Second and Third Reviews Under the Poverty Reduction and Growth Facility, and Request for Waiver of Nonobservance of Performance Criteria—Staff Report; Staff Supplement on Debt Sustainability Analysis; Press Releases on the Executive Board Discussion; and Statement by the Executive Director for Mali*, IMF Country Report No. 06/73 (Washington, D.C. IMF, 2006).

In conclusion, one may say that, while coverage of trade issues was oftentimes excessive, due attention to trade-related vulnerabilities and the effect of trade liberalization on balance of payments, tax revenue and exchange rates of member countries has been missing throughout Article IV analyses by the Fund, venturing into the opposite course and dispensing its efforts on trade issues that, as explained, do not necessarily fall under its core mandate.

C. A BRIEF CRITIQUE OF TRADE CONDITIONALITIES UNDER FUND-SUPPORTED ARRANGEMENTS

In following with Washington Consensus paradigms, the Fund conceals none of its trade objectives under conditionalities and supported arrangements; for that institution, "the presence of trade-related measures stems in large part from the importance of an open trade and exchange regime to structural adjustment and growth, as well as its contributions to good governance".[99]

But what seems to be an incontrovertible stance for the Fund is a highly contentious subject for a plethora of critics which tend to discuss the propriety of trade measures as pertains to the Fund's mandate and their effectiveness as solvency safeguards targeted on temporary balance of payments problems. Oxfam, for instance, has declared trade-related reform as an ubiquitous features of Fund programmes, reflecting high levels of confidence in the benefits of open markets; but the fact that loan conditions are, de facto, applied only to developing countries means that an unbalanced liberalization phenomenon takes place, in which richer nations are not forced to reciprocate under multilateral negotiations.

In addition, the IFI-led rapid liberalization process in developing countries has caused major adjustment costs compounded by "the unwillingness of rich countries to open their markets", with little attention paid to "short-term poverty and long-term development" consequences. Consequently, in reiterating WTO and comprehensive RTA negotiations as proper venues for discussing reciprocal trade liberalization, removal of trade measures from IFI loan conditions is forthrightly advocated by non-governmental organizations such as Oxfam and Christian Aid.[100]

As hinted by Akyüz, there seems to be no well-founded rationale for involvement of the Fund in development matters, notably in terms of trade policies that ought to be treated by multilateral negotiations under the ideal umbrella of the WTO. For him, the Fund was supposed to focus on macroeconomic and exchange rate policies that would

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[99] As note 18, at 2.

[100] See Oxfam International, *Rigged Rules and Double Standards – Trade, Globalisation and the Fight Against Poverty* (Oxfam International, 2002), pp. 126–128, 147; for additional NGO-based arguments against Fund conditionalities on trade, see Christian Aid, *Business as Usual – The World Bank, the IMF and the Liberalisation Agenda* (Christian Aid, 2005), p. 25; and Action Aid *et al.*, *Kept in the Dark – A Briefing on Parliamentary Scrutiny of the IMF and the World Bank* (Action Aid, 2005), pp. 4–11.

promote a stable scheme of exchange rates and payments, thus ensuring a predictable trading scenario that could not be mistaken by trade policies as such.

Akyüz correctly hints also at the problem of conditionalities as one of "content" and not "principle", in which "the Fund has effectively sought to impose exactly the kind of policies that the postwar planners tried to avoid in countries facing payments difficulties—austerity and destabilizing currency adjustments".[101] Originally imagined at Bretton Woods as concessional and unconditional tools to promote growth, employment, stability and trade in a post-war scenario, Fund loans turned out to become subject to strict conditions that reflected the weight and interests of more influential Fund member countries.

The use of trade-related measures, in harmony with the Fund's pivotal argument that such reforms improve economic efficiency and streamline policy administration, follows not only general commitments to liberalize trade in a comprehensive way, but also specific conditionality measures that aim to reduce restrictions, most commonly on tariff reductions, non-tariff barriers and customs administration.

The level of influence of trade measures on Fund-supported programmes may be measured by a recent Fund review of 138 arrangements over a period of more than ten years, including 56 programmes under the SAF/ESAF/PRGF facilities. In it, the Fund identified that 80 percent of the countries surveyed had been imposed some sort of trade reform measure, distributed among the three most binding modes of conditionality, that is, prior actions, performance criteria and structural benchmarks. More importantly, one may observe that SAF/ESAF/PRGF programmes, usually directed at poor developing countries, carried the heaviest burden of trade measures, with almost 55 percent of the programmes requiring structural benchmarks, more than 40 percent demanding performance criteria, and almost 40 percent calling for prior actions, considerably above the percentages for all other Fund programme modalities.[102]

The Fund does not conceal this fact; the troublesome combination of longer-term features and low-income member countries points at SAF/ESAF/PRGF programmes as the ones containing the highest proportion of trade conditionalities, with 80 percent of such programmes collectively bearing those conditions. And as expected, regional considerations linked to the level of overall trade restrictiveness show, once more, that poorer and more "restrictive" countries are the major recipients of trade conditionalities, with Sub-Saharan Africa undergoing the most extensive recipe of comprehensive trade reforms, liberalization of tariffs and non-tariff barriers and customs administration adjustments.[103]

Indeed, this is not at all hidden by the content of SAF/ESAF/PRGF arrangements which, jointly with World Bank conditionalities under the Poverty Reduction Support

[101] See Y. Akyüz, *Reforming the IMF: Back to the Drawing Board*, draft for discussion, 2005.
[102] As note 40 above, at 8.
[103] Ibid., at 9.

Credit (PRSC) programme, portray close collaboration between the two IFIs in regards to trade reforms in developing countries, as well as clear temporal overlaps between WTO membership status and unilateral commitments assumed under those arrangements.

The case of Burkina Faso, a WTO Member since 1995, shows us that trade-related structural conditionalities existed well before the request for a new PRGF arrangement in 2003, with the presence of structural conditionalities in a previous ESAF package which, under the rubric of enhanced tax systems and improved frameworks for agriculture, demanded Burkina Faso to quickly implement common WAEMU external tariffs, adopt new categorization for products and reduce maximum tariff rates to 20 percent; the Fund also determined withdrawal of the public sector from rice imports and rice trade, posing potential food security and sectoral risks to that country. Unsurprisingly, the local government vowed to implement further liberalization steps, promising to "complete the liberalization of the export and import sectors" in due course.[104]

Burkina Faso's structural reform agenda, devised in collaboration with the World Bank, followed a similar track, focusing on "strengthening tax administration and public finance management, lowering factor costs [another offspring of trade reforms], promoting good governance, and accelerating trade liberalization".[105] This stance is further reinforced by the fifth PRGF review which asserted, as a "development strategy" partner, the role of the Fund as the main leader in establishing structural performance criteria and conditionalities in the areas tax policy, financial transparency and good governance, and trade policy.[106]

Another PRGF recipient country, Tanzania embodies one of the most evident examples of trade liberalization under Fund-supported arrangements, both for the ESAF/PRGF facilities and the HIPC debt reduction initiative. Trade liberalization measures may be traced back to the ESAF Policy Framework Paper for 1998–2001, which clearly set out in its conditionality policy matrix the "achievement of benefits of international integration" through continuance of financial reforms and liberalization; the simplification of tariff structures and reduction of protection, tariffs and import duties; the implementation of most common market (COMESA) preferences; and the reduction of tariff and non-tariff barriers within the East African Cooperation.

Moreover, under the Fund's umbrella of adjustment *diktats*, previous policy performance indicators showed abolishment of all trade restrictions except for petroleum products and goods restricted for health and security reasons; reduction of

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[104] See IMF, *Burkina Faso: Enhanced Structural Adjustment Facility – Policy Framework Paper for 1998–2000* (Washington, D.C.: IMF, 1998), para. 21 and Table 1.

[105] See IMF, *Burkina Faso: 2003 Article IV Consultation and Request for a New Three-Year Arrangement under the Poverty Reduction and Growth Facility–Staff Report; Public Information Notice and Press Release on the Executive Board Discussion*, IMF Country Report No. 03/197 (Washington, D.C.: IMF, 2003), p. 18.

[106] See IMF, *Burkina Faso: Fifth Review Under the Three-Year Arrangement Under the Poverty Reduction and Growth Facility and Request for Extension of Commitment Period—Staff Report; and Press Release on the Executive Board Consideration*, IMF Country Report No. 06/107, (Washington, D.C.: IMF, 2006), pp. 48, 53.

non-zero tariffs from seven to four; reduction of tariff ceilings to 30 percent; and further reform of customs tariff structures.[107]

Acknowledging, under a recent review of the PRGF, a widening current account deficit due to the sharp increase of Tanzania's trade deficit (with growing imports of capital and manufactured goods in a liberalized environment and the abatement of non-traditional export growth in the medium term), the Fund insists in explaining that said trade deficit will be covered by increased aid inflows, even if a purportedly "solid" expansion in traditional exports occurs at the same time.[108]

But not only within the PRGF framework has the Fund confirmed its active role in tariff and trade reforms in general; back in 2001, concomitantly with the ongoing PRGF programme, the Tanzanian HIPC Completion Point document for debt reduction equally outlined several reforms that would have an impact on international trade and tax revenue, including the repeal of import-specific partial remissions on customs duties; a reduction in the scope of exemptions; a reduction in the number of excise taxes from 52 to six; and the establishment of a more efficient duty drawback system, based on technical assistance recommendations.[109]

Originally a Fund partner through an ESAF programme that was later converted into a PRGF arrangement, as well as a recipient of HIPC assistance, Uganda has always followed, with "strong performance", the traditional Fund policies on trade rationalization; but in a manner similar to that of Tanzania and other African countries, it has also faced a widening current account deficit flatly determined by continuous import growth, due to the elimination of duties on raw materials and manufactured goods alike. This, in connection with the extremely concentrated export base of most HIPC countries, turns them into vulnerable actors of international trade and common targets of commodity price fluctuations in the world market, with the resulting lower export revenues and the above indicated chronic background of trade and current account deficits.[110]

Yet even with a relatively competitive export position for coffee beans and other products, the country has been forced to depend on donor "assistance" to cover its large deficit arisen from, among other factors, unilateral trade liberalization measures

[107] See IMF, *Tanzania: Enhanced Structural Adjustment Facility – Policy Framework Paper for 1998–2001* (Washington, D.C.: IMF, 1998), Tables 1 and 2.

[108] See IMF, *United Republic of Tanzania: Fourth Review Under the Three-Year Arrangement Under the Poverty Reduction and Growth Facility and Request for Waiver of Performance Criteria—Staff Report; Staff Statement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for the United Republic of Tanzania, IMF Country Report No. 05/291* (Washington, D.C.: IMF, 2005). The Fund is careful enough to explain the rise in imports as based on "accelerating economic growth, infrastructure projects, government subsidies for fertilizer transport, and high oil prices".

[109] See IMF and IDA, *Tanzania: Completion Point Document for the Enhanced Heavily Indebted Poor Countries Initiative (HIPC)* (Washington, D.C.: IMF and IDA, 2002), p. 7.

[110] See P. Walkenhorst, *HIPC and Trade Policy Reform: Some Early Observations*, OECD Trade Directorate, TD/TC/WP(2003)4/FINAL (Paris: OECD, 2003), p. 8.

that included the elimination of export taxes, a reduction in the level and dispersion of import tariffs and abolishment of the coffee marketing board export monopoly.[111]

Under the Fund's watchful eyes, it has been said that the impact of Uganda's implementation of trade liberalization measures has had mixed results at best, with the collapse of the cooperative movement and system, worsened levels of rural poverty, marginal gains in terms of international agricultural competitiveness, prolonged deterioration in terms of trade, increased global vulnerability and little improvements in income and prices for poor households, notwithstanding gains in economic growth, stability and government revenue.[112]

The brief examples above are emblematic of a trend that has so far survived in Fund arrangements, despite sporadic *mea culpa* statements by select Fund publications that trade liberalization, which often bears heavy adjustment costs, may only be beneficial when supporting factor markets and institutions are properly functional.[113] This approach has not only been criticized by NGOs; even the British government admits the controversial character of policy conditionalities in sensitive areas, declaring in a paper[114] issued by its Department for International Development that:

> The UK Government accepts the evidence that conditionality cannot "buy" policy change ... Reforms will not be implemented – or will not be sustainable – *if a partner country is acting purely in order to qualify for financial support and does not consider that the reforms are in its own interest*. The UK will not make our aid conditional on specific policy decisions by partner governments or attempt to *impose policy choices on them* (including in *sensitive economic areas such as privatization or trade liberalization*).[115] (emphasis added)

The same document goes as far as admitting that evidence is mixed on trade reforms, whereas most of the initiatives brought about by way of policy conditionalities have neglected appropriate sequencing of trade measures during early stages of development, affected the ability of poor countries to negotiate effectively in

[111] See IMF, *Uganda: Request for a Three-Year Arrangement under the Poverty Reduction and Growth Facility–Staff Report; Staff Statement; and a Press Release on the Executive Board Discussion*, IMF Country Report No. 03/213 (Washington, D.C.: IMF, 2002), pp. 18–19. See also IMF, *Uganda: 2002 Article IV Consultation–Staff Report; Public Information Notice on the Executive Board Discussion; and Statement by the Executive Director for Uganda*, IMF Country Report No. 03/83 (Washington, D.C.: IMF, 2003), p. 6.

[112] See DENIVA, *Uganda: Trade Liberalization and its Impact on Poverty", Country Background Paper – Final Report* (DENIVA, 2005), p. 7.

[113] See C.M. Robb, *Poverty and Social Analysis—Linking Macroeconomic Policies to Poverty Outcomes: Summary of Early Experiences*, IMF Working Paper No. WP/03/43 (Washington, D.C. IMF, 2003), p. 27. Prowse also states that "[g]ains from trade liberalisation are conditional on an environment that allows the associated movements of labour and capital across sectors to occur, that encourages the needed investment in new sectors of activity and that provides the vulnerable with some assurance that they will be assisted if necessary". See S. Prowse, *"Aid for Trade": Increasing Support for Trade Adjustment and Integration – A Proposal*, draft concept paper (2005), p. 10.

[114] See UK Department for International Development, *Partnerships for Poverty Reduction: Rethinking Conditionality*, UK Policy Paper (London: 2005). The British authorities acknowledged in the same document, though, that donors such as United Kingdom have traditionally relied on IMF programmes to gauge whether a country's macroeconomic policy stance and strategy are satisfactory before granting aids.

[115] Ibid., at 10. This decision by the UK government has been echoed also in a note by the United Nations Economic and Social Council; see United Nations, *Coherence, Coordination and Cooperation in the Context of the Implementation of the Monterrey Consensus: Achieving the Internationally Agreed Development Goals, Including Those Contained in the Millennium Declaration*, Note by the Secretary-General No. E/2005/50 (New York, UN, 2005), p. 13.

multilateral discussions, and paid insufficient attention to poverty concerns, supply-side constraints and access to basic services.[116]

While not necessarily linked to the continuous criticism received by the Fund for its policy advocacy efforts, another interesting pattern may be identified in Fund-sponsored reforms as regards the evolution of trade conditionalities over time. For ESAF/PRGF programmes, the percentage of formal trade conditionalities (leaving aside pervasive general commitments) rose steadily from the pre-1995 years until the early 2000s, declining considerably thereafter. According to Fund data summaries, the share of poverty reduction programmes containing formal conditionalities on trade ranged from a striking 93 percent in pre-1995 years, to 69 percent in 1995–97, rebounding again to 100 percent in 1998–2001 and then virtually halving to 54 percent during 2001–04.[117]

Furthermore, the considerable change over time in types of trade conditionalities demonstrates that the initial emphasis on non-tariff barriers and tariffs has been replaced by customs reforms and other measures such as export processing zones and import surcharges in recent years, hinting at a suggestive "life-cycle" of trade reform where the Fund first seeks to ensure full liberalization of the trade sector in terms of traditional import restrictions (the "primary agenda"), and subsequently attempts to work out a liberalization on remaining technical details and secondary obstacles to trade, like customs administration, governance and efficiency in general.

Consequently, tariff and NTB reforms, which embraced more than 60 percent of all trade measures in the period 1995–97, fell sharply during 2001–04 to just 9 percent, whereas in the same later period the incidence of customs reform and other measures collectively climbed to roughly 80 percent of all trade-related conditionalities.[118] That is to say, once the Fund achieves its desired set of comprehensive reforms in developing countries, it is ready to "iron out" any remaining policy shortcomings in trade policy.

V. Short Overview of the Potential Impact of Fund Measures on a Country's Negotiating Position in Trade

From the remarks above presented, it is not difficult to discern the existence of a multitude of repercussions arisen from Fund-mandated unilateral liberalization steps and their impact on WTO multilateral negotiations. In fact, when discussing its relationship with the WTO, the Fund claims a controversially broad scope for intervention on countries' trade policies, stating that WTO commitments determine maximum amounts of protection, not optimal levels of economic efficiency.

[116] Ibid., p. 7. The ineffectiveness of the PRSP initiative and IFI conditionalities in terms of poverty reduction was touched upon by former Tanzanian President Julius Nyerere, who in 1998 was quoted as asking World Bank officials, in passionate words, "what went wrong [with poverty reduction efforts, as] Tanzania has been signing on the dotted line and doing everything the IMF and the World Bank wanted". See A. Mbogora, *The Tanzanian Poverty Puzzle: Arusha or Washington?* (Global Policy Forum, 2003), p. 4.

[117] As note 18 above, at 13.

[118] Ibid., at 14–15.

On top of that, the Fund apparently insinuates criticism at WTO as a member-driven institution and the fact that WTO discussion fora "do not provide authority to determine whether a member's policies are consistent with its obligations", silently arrogating to itself the capacity and agility to determine trade policies in developing countries. Similarly, in the words of the Fund, various trade policy aspects not subject to firm disciplines under the WTO would potentially bear significant structural and macroeconomic implications, paving the way for countries to go "beyond their commitments—autonomously or under Fund/Bank" supported programmes, outside the framework of the WTO.[119]

But unilateral trade measures taken under Fund arrangements are conceptually at odds with the genuine scope of trade organizations such as WTO, which provides a common institutional framework for the conduct of trade relations amongst its members. WTO, indeed, consolidates a forum for negotiations concerning multilateral trade relations on goods, services and trade-related aspects of intellectual property rights, objectively incorporating every measure on trade suggested or mandated by the Fund in its loan arrangements.[120]

As far as the PRGF is concerned, the Fund has been more emphatic in defending the narrowing of structural conditionalities on the Fund's areas of primary responsibility, while advising for parsimonious use of conditionalities even in those core areas. Measures covered by conditionalities would have to be of critical importance for achieving a programme's goals, or carry direct macroeconomic impacts deemed vital for a "successful" outcome of the arrangement.[121]

Notwithstanding Killick's pertinent criticisms on streamlining results[122] and the possibility of added conditionalities on the side of the World Bank (thus compensating any drop in Fund conditionalities), one cannot deny that there has been at least a reactive approach by the Fund towards a more legitimate implementation of conditionalities in loan programmes.

The recent phenomenon of lessened Fund trade conditionalities is most likely a result of three factors, in the opinion of the Fund itself: formerly liberalized markets (because of Fund arrangements or autonomous country decisions), streamlined conditionalities in the wake of new Fund guidelines on conditionality,[123] and the advent of the Doha Round of trade negotiations, in which countries must prepare themselves for "give-and-take" sessions with other WTO Members.

[119] As note 8 above, at 33–34.

[120] See Agreement Establishing the World Trade Organization, Articles II.1 and III.2.

[121] As note 74 above, at 31.

[122] Killick notes, amongst other problems, that streamlining is still "narrowly conceived and supply-driven", conceived exclusively for structural conditionalities, restricted to content and not process issues, and with recognisable attention for social expenditures and substantive changes only in new PRGF programmes (and not those derived from older ESAF arrangements). He suggests, then, an expansion of the streamlining concept to issues of process, increased congruence between PRGF and HIPC conditionalities, and reduction in the use of mandatory Fund prior actions. As note 89 above, at 2–3, 27.

[123] As note 62 above.

This conclusion carries the explicit admission that unilateral trade liberalization under Fund arrangements has deeply transformed the negotiating field for developing countries, which "might well have been more reluctant to engage in unilateral liberalization—holding as bargaining chips measures that they might have agreed to under a Fund-supported program".[124]

It is not surprising, thus, to read comments such as the one from a renowned Senegalese economist, applicable to most least-developed countries that have undergone Fund-mandated trade liberalization:

> The ongoing process of Bank and Fund initiated trade liberalization is *undermining the negotiating position* of Senegal in the World Trade Organization (WTO) and in bilateral or regional trade agreements involving industrialized countries. *These rich countries know*, for example, that Senegal has been pushed to reduce its average agricultural tariffs to a level (18 per cent) well below the 30 per cent allowed under WTO rules. The influence over Senegal's trade policy the industrialized world exercises through the IMF and World Bank means that Senegal has *little to bargain* with when it comes to trade negotiations.[125] (emphasis added)

He also quotes an unidentified senior servant in the Senegalese Ministry of Economy and Finance as saying that "[h]aving made sweeping unilateral trade concessions through repeated liberalization policies imposed by the IFIs, they have given up all the cards they could have used at the WTO, or elsewhere".

This issue had already been examined during Uruguay Round negotiations, WTO discussions on coherence and by a WTO document jointly prepared with the Fund and the World Bank, where WTO Members expressed their concern for Fund advice and conditionalities that, once implemented, were "perceived by a Member to weaken its ability to engage in a future exchange of reciprocal concessions in WTO trade negotiations"[126] or, to a lesser extent, in coalition-building possibilities with other WTO Members.

A possibility would be, then, to recognize and specify "credit" modalities in WTO negotiations, by which proper regard would be paid to previous unilateral liberalization steps taken by countries, providing them with "bargaining tokens" that might be compensated in ongoing or future multilateral rounds of trade negotiations. This would enable, thus, a more encouraging environment for governments to engage in autonomous liberalization steps that extend beyond existing WTO commitments, or even to "accept" similar measures presented by the IFIs as advice or conditionalities, so that "urgently needed trade policy reforms are not delayed unnecessarily in anticipation of obtaining reciprocal trade concessions at some future date".[127] Such approach has already been adopted in some detail for services negotiations by the Council for Trade

[124] As note 18 above, p. 16.

[125] See D.M. Dembele, *Debt and Destruction in Senegal: A Study of Twenty Years of IMF and World Bank Policies* (World Development Movement, 2003), pp. 10, 56.

[126] See WTO, *Coherence in Global Policymaking and Cooperation Between the WTO, the IMF and the World Bank*, Note by the Secretariat No. WT/TF/COH/S/9, (Geneva: WTO, 2004), p. 8.

[127] Ibid.

in Services[128] and sanctioned, in less elaborate terms, by the Doha July Package for trade in non-agricultural products.[129]

It remains to be seen, however, whether the poorest developing countries will be able to identify their own interests, strengths and weaknesses properly in the Doha Round and subsequent negotiation rounds, given their current situation as liberalized trade markets and the lack of capacity and manpower to undertake such negotiating tasks.[130]

The controversial WTO accession process, regulated in succinct terms by Article XII of the WTO Agreement,[131] conveys analogous questions for developing countries, considering that of the 30 nations currently facing accession negotiations, half of them are PRGF-eligible, with Ethiopia and São Tomé and Príncipe having reached, respectively, completion point and decision point status under the HIPC initiative. The example of Cambodia shows that the decrease in applied tariff rates and the rapid pace of liberalization under Fund programmes has taken its toll on an already troublesome bargaining and negotiating position of Cambodia during its recent WTO accession process.[132]

Finally, the WTO generalized system of preferences (GSP) may also be affected by the Fund's influence on trade policies in HIPC/PRGF countries. The GSP, where developed countries offer non-reciprocal preferential treatment to developing countries' products, emerges from the so-called "GATT 1979 Enabling Clause",[133] which was inherited by the current WTO framework as part of the GATT 1994. In it, GATT contracting parties decided to grant developed countries with a possibility to derogate from the most-favoured nation (MFN) principle, so that developing countries would be able to receive preferential treatment for trading their goods.

However, whenever least-developed countries engage in unilateral liberalization under Fund-supported arrangements, they relinquish rights embedded in the GSP

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[128] See WTO, "Negotiators Agree on Modalities for Treatment of Autonomous Liberalization", WTO Press Release No. Press/335, available at: <www.wto.org/english/news_e/pres03_e/pr335_e.htm>, accessed 20 March 2006). In it, "autonomous liberalization" is defined as a measure: (a) subject to scheduling under Part III of the GATS, and/or leading to the termination of an MFN exemption; (b) compatible with the MFN principle; (c) undertaken by the liberalizing Member unilaterally, since previous negotiations, in accordance with Article XIX of the GATS; and (d) applicable to any or all service sectors. It is worth noting, however, that such modalities do not bestow automatic "credit" rights to the liberalizing Member, being mainly subject to bilateral negotiations with trading partners.

[129] See WTO, *Doha Work Programme: Decision Adopted by the General Council on 1 August 2004*, WT/L/579 (Geneva: WTO, 2004), Annex B, para. 5. In what pertains to tariff formulas, "*credit shall be given for autonomous liberalization by developing countries* provided that the tariff lines were bound on an MFN basis in the WTO since the conclusion of the Uruguay Round" (emphasis added).

[130] See, for instance, International Lawyers and Economists Against Poverty (ILEAP), *Aid for Trade: Why and How?* (ILEAP, 2005), p. 3.

[131] As note 120 above. Article XII.2 plainly states that "[d]ecisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO."

[132] See IMF, *Third Roundtable with Local and International NGOs: WTO Accession* (Washington, D.C.: IMF, 2003), p. 1, and Oxfam International, *Cambodia's Accession to the WTO: How the Law of the Jungle is Applied to One of the World's Poorest Countries* (Oxfam International, 2003), p. 4.

[133] See GATT, Decision of 28 November 1979 on Differential and More Favourable Treatment – Reciprocity and Fuller Participation of Developing Countries, L/4903, 1979.

framework, which presupposes that developed countries cannot expect reciprocity for commitments made by them in trade negotiations; in accordance with such GATT decision, developing countries should not be expected to make contributions and concessions "inconsistent with their individual development, financial and trade needs".[134] In total contrast with usual Fund orientations on trade policy, the GSP pays specific regard to the economic difficulties of LDCs, and demands developed countries to "exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries".[135]

But if HIPC/PRGF countries have already made fully liberalizing concessions in the first place, little sense remains for the provisions above cited. Consequently, even GSP pacts, professed as well intentioned unilateral gestures by developed countries to bring more equity into the multilateral trade regime, may suffer from Fund advice and conditionalities on trade policy, not to mention a plethora of other special and differential treatment provisions within the WTO structure.[136] In the end, trade-related Fund conditionalities and unilateral liberalization measures override the benefits arising from GSP preferences, as they will not anymore provide developing countries with the expected latitude in market access for rich markets; instead, the duo of Fund unilateral measures and GSP results in virtually reciprocal concessions that were not supposed to exist in the first place.

VI. Coherence as a Solution for the Trade Policy Quandary?

Stiglitz once dismissed most studies that claim a positive correlation between liberalization and growth, declaring that none of the desirable conditions for trade liberalization, namely good risk markets, full employment and mature economies, are present in developing countries. Instead, he said that "studies that focus directly on liberalization—that is, what happens when countries take away trade barriers—present a less convincing picture that liberalization is good for growth", especially since the fastest-growing, export-driven economies of the world did not pursue policies of unfettered liberalization.[137]

In parallel terms, lending programmes by the Fund and the World Bank to developing countries, with their intrusive conditionalities on trade policy, have not yet brought the sought-after stimulus to economic growth as originally envisaged.[138] A United States government official seconds this thought, acknowledging that "IMF's financial involvement in low-income countries has gone terribly awry [with] too many

[134] Ibid., para. 5.
[135] Ibid., para. 6.
[136] For a comprehensive index of S&DT provisions in WTO agreements, see WTO, *Special and Differential Treatment for Least-Developed Countries*, Note by the Secretariat No. WT/COMTD/W/135 (Geneva: WTO: 2004).
[137] See J. Stiglitz, *Social Justice and Global Trade*, 169 Far Eastern Economic Review 2 (2006), p. 19.
[138] See J.L. Butkiewicz and H. Yanikkaya, *The Effects of IMF and World Bank Lending on Long-Run Economic Growth: An Empirical Analysis*, 33 World Development 3 (2005), pp. 371–391.

follow-on programs and repeat borrowers [even after] even after HIPC (Heavily Indebted Poor Countries) debt relief and multiple IMF programs".[139]

However, what is being questioned by this article is not the overall effectiveness of trade liberalization per se, or its socio-economic soundness. Nowadays, at a faster pace or not, trade liberalization processes are a fact for any country engaged in international transactions in goods and services. What matters in this debate is to ask for further clarification on the role of each institution in regards to the debate on trade, development and finance; more specifically, one should attempt to identify, in critical terms, the legal and material constraints connected to trade policy advice in developing countries.

In view of the considerations above posed, it looks as though "coherence" embodies the answer for proper trade policy advice in developing countries. In the words of WTO, reflecting the scope of Article III of its inaugural agreement, "coherence is a response to the globalization of the world economy and the growing interdependence of trade, finance and development policies".[140] Unsurprisingly, the same joint document enforces the role of the Fund in trade, even if its primary concern should not, as already shown, be on trade as such:

> The IMF's primary concern is financial stability and economic growth, for which a strong and liberal multilateral trading system is seen to play an increasingly important role. In addition to supporting the Doha negotiations, there has been a significant increase in the IMF's trade-related policy analysis, surveillance, technical assistance, and adjustment lending. The IMF has increased the trade focus of the World Economic Outlook (WEO) and its Article IV consultations; it has stepped up its capacity to provide technical assistance, especially in customs administration and tariff policy; and it has clarified its readiness to support Members dealing with the macroeconomic effects of price or other shocks through its Poverty Reduction and Growth Facility. Tangible examples of the IMF's increasing focus on trade are its 2004 Trade Integration Mechanism (TIM)—designed to provide financial support to Members that face a net negative impact on their balance of payments as a result of implementation of multilateral trade commitments—as well as its new Exogenous Shocks Facility that was introduced in 2005.[141]

One of the key elements of cooperation is the Integrated Framework (IF), a joint initiative formed in 1997 by six multilateral institutions (IMF, ITC, UNCTAD, UNDP, World Bank and WTO) which seeks to: (i) integrate trade into development and poverty reduction strategies of least-developed countries; and (ii) to assist in the delivery of trade-related technical assistance (TRTA) in response to needs specifically identified by LDCs.

The IF involves a World Bank-led Diagnostic Trade Integration Study (DTIS), destined to identify and address impediments in the process of trade integration, as well design and implementation phases that would require integration of trade concerns into

139 As note 44 above.

140 See WTO, *Coherence in Global Policymaking and Cooperation Between the WTO, the IMF and the World Bank*, Note by the Secretariat No. WT/TF/COH/S/11 (Geneva: WTO, 2006), p. 1.

141 Ibid.

the PRSPs. Nevertheless, it has been admitted that the factual integration of trade policy (and its consequences) into poverty reduction documents is still dubious.[142]

Or as Saner and Paez stated, it seems like neither the quantity nor the quality of technical assistance, highly regarded as essential for successful integration of LDCs into the multilateral trading system, "is sufficient to help LDCs grasp the benefits of trade liberalization, and reduce poverty".[143] But if the IF is to be effectively implemented, the Hong Kong declaration's pledges for country ownership and partnership must be complied with, in a manner that satisfactorily deals with the trade-related development needs of LDCs.[144]

The methodological failures that have plagued the Fund, also admitted by the World Bank's Independent Evaluation Group, cannot be repeated in the Fund's ancillary role on trade policy.[145] Should the Fund, then, give up on its trade-related activities altogether? Not necessarily, as demand-driven assistance could be useful on its core areas of expertise and the impact that trade policies may bear on them. Prowse explains that trade liberalization may lead to higher trade deficits and balance of payments difficulties; consequently, trade measures may involve currency devaluations and domestic tax reforms, both of which might fall under the core mandate of the Fund, thus giving it a legitimate role to play in the context of trade policy reforms in developing countries.[146]

Alternatives for Fund activities in trade could lie, thus, in *bona fide* modalities of trade-related research and assistance, including TRTA under the IF, and in the new Trade Integration Mechanism (TIM), a newly devised tool to assist a developing country in case of "a net balance of payments shortfall as a result of measures implemented by other countries that lead to more open market access for goods and services". The TIM would provide the country, then, with details on how access to Fund's resources may be realized, in connection with trade-related adjustments arisen from other countries' measures.[147]

A possible recommendation could be to materialize, in the end, the concept of WTO as a "lead agency" in trade reforms, legitimizing its expertise in coordinating trade policy intervention and negotiation, while handing over secondary tasks to bodies

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142 Ibid., at 9.

143 See R. Saner and L. Paez, *Technical Assistance to Least-Developed Countries (LDCs) in the Context of the Doha Development Round (DDR): High Risk of Failure*, Journal of World Trade (2005), p. 37.

144 See WTO, *Doha Work Programme Hong Kong Ministerial Declaration*, WT/MIN(05)/DEC (Geneva: WTO, 2005), paras 49–51.

145 See World Bank, *Assessing World Bank Support for Trade, 1987–2004* (Washington, D.C.: Independent Evaluation Group, World Bank, 2006), p. xv. Such mistakes by the IFIs included the lack of macroeconomic stabilization to complement trade reforms; the existence of marketing and price distortions; the lack of competition policies; labour market rigidities; an unfavourable investment climate; absence of consideration to poverty and distributional outcomes; and lack of proper studies on the impact of external trade policies for different groups of developing countries.

146 See S. Prowse, "Aid for Trade": A Proposal for Increasing Support for Trade Adjustment and Integration", in World Bank, *Economic Development and Multilateral Trade Cooperation* (Washington, D.C.: World Bank, 2006), p. 233.

147 More information about the TIM is available at: <www.imf.org/external/np/exr/facts/tim.htm>, accessed 10 April 2006.

such as UNCTAD and the IFIs. The Fund, in abiding by its core mandate of exchange rate stabilization and financial oversight, would forego its conditionality practices on unilateral liberalization in favour of LDCs' interests[148], and finally accept the understanding that trade liberalization, even for those that believe in the trading system as an international public good, "is not sufficient".[149]

VII. Conclusion

The movement towards reform of the Fund is strong, given the current issues on multilateral surveillance goals, a need for better representation of emerging economies and clear aspirations for a reshaping of Fund conditionalities. As the Financial Times put it, recent discussions on reform of the Fund will decide "[w]hether the IMF continues to play a leading role in the global financial system or whether it gradually fades into irrelevance ... Many at the IMF believe that after the trauma of the 1997 Asian crisis, Asian countries will never again rely on the IMF unless they know that credit will be available in times of need with no strings attached".[150]

The current managing director for the Fund apparently recognizes some of these issues, asserting that the Fund's advice has been, in the past, "spread too thinly and our conditionality set too broadly. We have been working on sharpening our focus for some time, but I believe that in the future, we need to go further in focusing on what is essential and on areas where the IMF has a comparative advantage".[151] The Fund's self-confession may, in fact, be accompanied by Rodrik's assertion that "few country studies have in fact been able to identify the effects of trade liberalization separately from the macro stabilization and other reforms that typically accompany it. ... When ideology substitutes for analysis, the result is bad policy".[152]

In the more candid words of Weisbrot:

> ... [t]he power of the IMF to decide the most important macroeconomic policies for dozens of countries is not written in its charter or anywhere else. Rather it is the result of an informal arrangement between the IMF, the World Bank, the G-7 governments, and other creditors, which puts the IMF at the head of a creditors' cartel. This arrangement can be broken down, and in fact it is beginning to break down.[153]

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148 See also European Parliament, *Report on the Strategic Review of the International Monetary Fund*, Final Report No. A6-0022/2006 (Brussels: European Parliament, 2006), para. 21.

149 See P. Lamy, *Towards Global Governance?*, inaugural lecture for the Institut d'Etudes Politiques de Paris, 2005.

150 See Financial Times, "IMF Needs Reform to Remain Relevant", available at: <www.news.ft.com>, accessed 5 April 2006.

151 See IMF, *The IMF's Medium-Term Strategy for Low-Income Countries (Remarks by Rodrigo de Rato)*, Regional Roundtable on Policies for Growth and Development and the Challenges of Scaling-Up Aid (Washington, D.C.: IMF, 2006), available at: <www.imf.org/external/np/speeches/2006/031606.htm>, accessed 10 April 2006.

152 See D. Rodrik, "Comment on Trade Policy Conditionality in Fund-supported Programs", in IMF, *External Comments and Contributions on IMF Conditionality* (Washington, D.C.: IMF, 2001), p. 52.

153 See M. Weisbrot, *The "Washington Consensus" and Development Economics*, draft paper for UNRISD, 2001, p. 3.

This article has, hopefully, shed some light on the involvement of the Fund in influencing trade policy regimes of low-income countries, more specifically in the context of Poverty Reduction Strategy Papers (PRSPs), the Heavily Indebted Poor Countries (HIPC) initiative and the Poverty Reduction and Growth Facility (PRGF) lending mechanism.

This article also discussed ordinary trade policy recipes by the Fund, along with the prominence of Washington Consensus considerations in them, and presented a critical legal analysis of the Fund's mandate on trade. The authors hence have approached, in more detail, the issue of the Fund's influence on poor nations' trade policies and tariff regimes, and how such influence under Fund-sponsored arrangements works for least-developed countries.

Finally, this article has tentatively made a few comments on the potential impact of Fund policies in terms of a developing country's bargaining stance in face of WTO negotiations, recommending further discussion on coherence among international organizations and a redirection of the Fund's efforts and expertise towards its core business.

As Sen observes:

> ... traditional trade theory ... continues to be used to justify trade liberalization in developing countries, notwithstanding [its] serious theoretical and empirical limitations ... the use of such (old variant) free trade policies is defended by the advanced nations, both at inter-governmental levels and in multilateral institutions like the IMF and the WTO.[154]

In most advanced countries, the evolutionary trade policy path from poverty towards development has been historically gradual, encompassing in the beginning very protectionist measures until a careful opening of their markets was possible.[155] Why should poor, supply-side deprived countries be, then, supposed to liberalize faster than the "old boys network" of developed countries holding the strings at the Bretton Woods institutions? The question of how the Fund will deal with these trade policy challenges will probably persist for some time, depending on how much political willpower is there for what we may regard as an urgent redefinition of its institutional roles.

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[154] See S. Sen, *International Trade Theory and Policy: What is Left of the Free Trade Paradigm?*, 36 Development and Change 6 (2005), p. 1026.

[155] As note 137 above, p. 19–20.

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