SEARCHING FOR HOPE: THE COUNTRIES THAT GLOBALIZATION HAS LEFT BEHIND

Michael Trebilcock*

I. TRADE POLICY AND DEVELOPMENT: AN HISTORICAL PERSPECTIVE

It is conventional wisdom among trade scholars that a liberal world trading system in which countries are free to exploit or develop distinctive forms of comparative advantage is a key to economic growth and development. This thinking was evident in the original Bretton Woods Agreement that gave birth to the post-war international economic architecture, including the IMF, the World Bank and the GATT. In other words, conventional economic thinking was that with the emergence of a liberal world trading system, a rising tide would lift all boats. Unfortunately, this has not proven to be the case. As the following table from Williamson shows, over the past two centuries, there has been a dramatic divergence in incomes around the globe which has been driven overwhelmingly by the rise of between-country inequality.  

* Professor of Law and Economics, Faculty of Law, University of Toronto.
1. The first two sections of these comments draw on work by two of my former students: Elizabeth Acorn, “Learning from Experience: Special and Differential Treatment in the World Trade Organization” (2006) [unpublished, archived at Faculty of Law, University of Toronto]; Tracey Epps (with Michael Trebilcock), “Special and Differential Treatment in Agricultural Trade: Breaking the Impasse” (2007) [unpublished, archived at Faculty of Law, University of Toronto]. It also draws on Michael Trebilcock and Robert Howse, The Regulation of International Trade, 3rd ed. (London, Routledge, 2005), c. 15 (Trade and Developing Countries). I am indebted to Mariana Prado, Tracey Epps, James Wilson, Ben Alarie and Andrew Green for comments on an earlier draft.
A number of developing countries have successfully integrated themselves into the world trading system and have benefited enormously from it (the most prominent contemporary examples being China and India). However, many other developing countries have largely been left behind by the process of globalization. In a recent book, *The Bottom Billion*, Paul Collier documents the stagnation and absolute decline in real incomes of a number of very poor countries around the globe, most concentrated in sub-Saharan Africa, but a number located in Central Asia and Latin America, in which the bottom billion of the world’s population is concentrated, living on less than one dollar a day. These countries — about 60 on Collier’s count, comprising almost a third of the countries in the world (mostly small) and one-sixth of the world’s population — have in recent decades experienced at best economic stagnation and in many cases dramatic economic decline. While foreign aid sometimes mitigates the latter, minimal exports and foreign direct investment

---

preclude significant growth. According to Collier, these are countries caught in various traps — the conflict trap, the natural resource trap, the landlocked with bad neighbours trap, and the bad governance trap.

The multilateral trading system has not been oblivious to the special economic challenges facing developing countries. Almost from the beginnings of the GATT in 1947, developing countries were accorded a form of exceptionalism in terms of the application of standard GATT disciplines (often referred to as Special and Differential Treatment — SDT). In 1955, Article XVIII of the GATT was extensively revised so as to permit developing countries (1) to maintain a flexible tariff structure to promote a particular industry, even where previous tariff bindings had been entered into; (2) to limit imports by quantitative restrictions to address balance of payments problems; and (3) to impose tariff and quantitative restrictions to promote the establishment of a particular industry with a view to raising the general standard of living.

These extensive dispensations from GATT disciplines (that can be compendiously characterized as infant industry or import substitution rationales for protectionism) were justified on various grounds. First, it was widely argued by many developing countries, and indeed by many mainstream development economists in developed countries and international agencies at that time, that developing countries had often inherited truncated economies from their colonial overseers, where they had been largely restricted economically to the role of hewers of wood and drawers of water, leaving them with large, traditional and inefficient agricultural sectors where the marginal product of labour was often thought to be negligible or even zero. As with most developed countries earlier in their histories, a major transformation in developing country economies was called for in reallocating resources from traditional agricultural sectors to industrial or manufacturing sectors. To facilitate and encourage this, it was argued that at least temporary protectionism was required for these fledgling manufacturing industries in order to enable them to achieve minimum efficient scale and become competitive in both domestic and export markets. Second, it was widely argued that infant industry protectionism had been aggressively pursued by many developed countries early in the process of their economic development, including the United States, Canada, Germany, and many other currently developed countries, and that developing countries that found themselves at similar stages of development in their early post-independence histories should not be denied similar policy flexibility. Third, it was often argued that
because of low levels of education, poor physical infrastructure, weakly developed financial, credit and insurance markets, and inadequate or nonexistent social safety nets, adjustment costs faced by many developing countries in moving to a fully open international trading regime were likely to prove much more severe than those facing developed countries embarking upon a similar strategy of trade liberalization. Fourth, it was also often argued that at least for smaller and poorer developing countries, their share of world trade, and in particular imports, was typically so small that protectionist policies on their part were likely to have negligible adverse impacts on world prices in the commodities affected by these policies and hence any terms of trade externalities from the pursuit of such policies were likely to be small to nonexistent.

Despite these arguments for infant industry protection or import substitution policies, it was also widely recognized in the early years of the GATT that increasing export earnings was also an important impetus to economic development, which would be facilitated by enhanced access to developed countries' markets for exports of both primary and manufactured products from developing countries. Hence, in 1965, Part IV (Articles XXXVI to XXXVIII) was added to GATT. These provisions called on developed countries to provide favourable market access to products of export interest to developing countries on a non-reciprocal basis. Following the adoption of Part IV, in 1968 the United Nations Conference on Trade and Development (UNCTAD) established a generalized system of preferences (GSP), where developed countries could, on a voluntary basis, provide preferential tariff reductions for products of export interest to developing countries. Since such preferential tariff reductions violated the most-favoured-nation (MFN) provisions of the GATT, a waiver from MFN obligations was provided by the GATT in 1971, initially for ten years, and in 1979 was extended permanently by the so-called Enabling Clause which permits — and indeed encourages — the extension of “generalized, non-reciprocal and non-discriminatory preferences” to developing countries. Pursuant to the initial GATT waiver and subsequently the Enabling Clause, many developed countries, including the United States, the European Union and Canada, have extended preferential treatment to many exports from developing countries.

In the course of the Uruguay Round of multilateral negotiations (1986 to 1993), the general orientation of negotiations was to integrate developing countries more fully into the world trading system. This was pursued in a number of ways: first, by insisting on them binding and at least modestly reducing most of their typically
very high tariff rates; second, by narrowing the scope of the balance of payments exception provided for in Article XVIII; third, by treating almost all of the Uruguay Round agreements as a single undertaking to which all members of the GATT (now the WTO) would be required to commit themselves, albeit in the case of developing countries, typically with longer transition implementation periods and promises of technical assistance in meeting their compliance obligations. These Uruguay Round agreements included the Trade Related Intellectual Property Rights Agreement (TRIPS), the Trade-Related Investment Measures Agreement (TRIMS), the Subsidies and Countervailing Measures Agreement (SCM), the General Agreement on Trade in Services (GATS), the Sanitary and Phyto-sanitary Standards Agreement (SPS Agreement) and the Technical Barriers to Trade Agreement (the TBT). The so-called “Grand Bargain” reflected in the Uruguay Round agreements was that in return for continuing liberalization of tariffs on industrial exports to developed countries; more stringent safeguards regimes; a significant beginning on liberalizing international trade in agricultural products, including some disciplines on export subsidies, domestic measures of support, and some reduction in tariffs; and the gradual liberalization and elimination of the Multi-Fibre Arrangement (MFA), developing countries in turn would commit to additional disciplines in the areas noted above.

Since the close of the Uruguay Round, many developing countries have become disenchanted with the so-called “Grand Bargain,” pointing out that they still face disproportionately high tariffs on their industrial exports, still face increasingly frequent invocation of contingent protection mechanisms (anti-dumping, safeguards and countervailing duties), and still face many barriers for their agricultural exports to developed countries, including high tariffs, substantial subsidies, escalating tariffs on processed agricultural products, and onerous technical standards. In the case of the Multi-Fibre Arrangement (MFA), while quotas have been reduced or eliminated in stages, high tariffs still often remain and, moreover, since the expiration of the MFA, major importers such as the United States and the European Union have imposed or negotiated new limits on imports of textiles and clothing from major developing country exporters, in particular China. In turn, developing countries argue that the new disciplines that they assumed in areas such as TRIPS have imposed burdensome compliance requirements on them in setting up sophisticated western-style intellectual property regimes, but yielded negligible benefits and indeed in many cases adverse
impacts on them in terms, for example, of access to essential medicines.

The Doha Multilateral Round of trade negotiations that was launched in 2001 was in part conceived of as providing a forum for addressing these concerns. Indeed, the Doha Round was officially characterized on its launch as the Doha Development Round. In the course of negotiations during this round, the future status of SDT for developing countries on both the import side and the export side has emerged as a major fault-line between developing and developed countries, and along with other and often related issues, such as agricultural liberalization, has brought negotiations to the brink of collapse. In this round, unlike earlier rounds where developing countries were largely marginalized as significant participants in negotiations, developing countries (especially larger developing countries such as China, India, Brazil and Mexico) have often formed loose negotiating coalitions. At the Cancun Ministerial of the WTO in November of 2003, the G20 articulated extensive demands for major revisions of the multilateral trading architecture, which many developed countries equally strenuously resisted, leading to the collapse of the ministerial. Progress on many of these issues subsequently appears to have been extremely modest.

II. SPECIAL AND DIFFERENTIAL TREATMENT: AN ASSESSMENT

The two limbs of Special and Differential Treatment (SDT) that are sketched above need to be seen as inherently interrelated. The much greater policy flexibility extended to developing countries on the import side necessarily implies that in securing better access to developed countries' markets for their exports, they cannot be expected to offer reciprocal trade concessions (without undermining their policy flexibility on the import side). Hence the second limb of

SDT contemplates non-reciprocal and preferential treatment of exports from developing countries by developed countries. While it was assumed that this combination of policies would substantially enhance the economic prospects of developing countries, this assumption has come under increasingly searching scrutiny in academic research.

On the import side, much research beginning in the 1960s and increasing through the 1970s has found that import substitution policies were not achieving their goals and were actually hindering the growth of developing countries. For example, research by Balassa found that protectionist policies had hurt developing countries by encouraging industrialization at the expense of agriculture, worsened income distribution, reduced domestic savings, increased unemployment, and led to a very low rate of capital utilization. Little et al. demonstrated the high and indiscriminate levels of protectionism in many developing countries, and research by Krueger revealed the rise of rent-seeking behavior and corruption that accompanied highly discretionary protectionist trade policies and related policies such as foreign exchange controls. More recent scholarship has provided further evidence of the positive relationship between trade openness and growth, stemming from gains from improved resource allocation, greater potential to realize economies of scale, improved access to technology, greater domestic competition, and increased domestic savings and foreign direct investment. While measuring trade openness is not unproblematic, these findings are reflected in the following table from Williamson:


Table 1: Trade-Policy Orientation and Growth Rates in the Third World, 1963-92

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly open to trade</td>
<td>6.9</td>
<td>5.9</td>
<td>6.4</td>
</tr>
<tr>
<td>Moderately open</td>
<td>4.9</td>
<td>1.6</td>
<td>2.3</td>
</tr>
<tr>
<td>Moderately anti-trade</td>
<td>4.0</td>
<td>1.7</td>
<td>-0.2</td>
</tr>
<tr>
<td>Strongly anti-trade</td>
<td>1.6</td>
<td>-0.1</td>
<td>-0.4</td>
</tr>
</tbody>
</table>

These findings are often reinforced by reference to the trade policies pursued by the so-called East Asian miracle economies, beginning with Japan in the early post-war years and followed by Hong Kong, Singapore, Taiwan, Korea, Malaysia, Thailand and more recently by Vietnam, China and India, or African countries like Botswana and Mauritius or Latin American countries like Chile. In one respect or another all these countries have pursued policies of export-led growth, although it must be acknowledged that there is ongoing and to some extent unresolved controversy as to the extent to which this export-led growth has been managed by interventionist trade and related policies designed to protect infant industries in their early stages and to support selective export-oriented industries (various versions of so-called strategic trade theory). At the very least, it is true that most of these countries have pursued somewhat idiosyncratic paths to integration with the global economy.  

As to the second limb of SDT—non-reciprocal trade preferences—much recent research suggests that these preferences have not proved as useful to developing countries as they had hoped. First, the benefits of the preferences seem to be concentrated on the more advanced developing countries that needed them least. For example, a 1987 study found that four beneficiaries—Brazil, Hong Kong, Korea, and Taiwan—derived more than 50% of all GSP benefits. Second, GSP market access preferences have tended to become less valuable as margins of preference have been eroded through successive negotiating rounds which reduced MFN tariff levels. Third,


preferences are also not durable since they have often been tied to the level of a country's economic development; countries that are successful in increasing per capita incomes are often graduated out of the programs. Fourth, donor countries often reserve the right to withdraw preferences if imports became too competitive with domestic products. Fifth, many import-sensitive products of major export interest to developing countries have been excluded from GSP schemes. Sixth, preferences have increasingly been subject to various forms of conditionality such as human and labour rights and environmental standards, and ideological or geo-political factors (such as countries' perceived efforts to combat terrorism). Seventh, complex rules of origin also have often diluted the value of GSP preferences, preventing developing countries from producing goods most efficiently. Eighth, preferences cause trade diversion from non-preference recipient developing countries to the preference recipients. Thus, while preferences may benefit some developing countries in the short term, they are unlikely to benefit developing countries overall and they create inducements to distort comparative advantage, which puts the preference recipients at risk in the long term if and when preferences are withdrawn. 10 Finally, and most importantly, because these preferences are non-reciprocal, developing countries have forsaken significant bargaining leverage in negotiations with developed countries — without a *quid*, there is often a very meager *quo*. This is simply to acknowledge the real politique of trade negotiations — one has to give in order to get.

Despite these reservations about the past and prospective efficacy of SDT, some prominent and respected commentators continue to defend its continuing vitality and indeed argue for its strengthening and expansion. For example, Nobel laureate Joseph Stiglitz in two recent books 11 argues that the empirical evidence demonstrating the economic benefits of a liberal trading regime for most developing countries is much more ambiguous than conventional thinking acknowledges, pointing to the gradualist and sometimes strategic approach to trade liberalization adopted by most of the high-growth East Asian economies, the relative failure of the so-called Washington consensus to stimulate high and sustainable growth in

---


much of Latin America, and the devastating short-run economic consequences of “shock therapy” in Russia. He argues that even if in the long run an open trading regime is to the benefit of developing countries, the absence of most of the adjustment cushions that exist in developed countries means that many developing countries face relatively more severe adjustment costs from trade liberalization. From these premises, he argues for a radically expanded form of SDT, where countries would be divided into various per capita income tranches and countries in higher income tranches would be required to liberalize all trade with countries in lower income tranches and among themselves, while countries in lower income tranches would only be required to liberalize trade with countries in even lower income tranches and among themselves but not with respect to trade with countries in higher income tranches. Proposals such as this, which have been vigorously endorsed by prominent international NGOs such as Oxfam, have significantly widened the fault-line between developing and developed countries in the multilateral trading system, and hence it is difficult not to be pessimistic about the prospects of finding any consensus or middle ground. With the multilateral trading system in this state of stasis, it is important to note an important and rapidly growing phenomenon — the proliferation of regional and bilateral trading agreements, pursued between or among developed and developing countries, and between or among developing countries themselves. Since Cancun, for example, the U.S. has announced that it will aggressively pursue bilateral trading agreements with friendly developing countries, and indeed it has done so. As to whether this strategy provides an effective response for developing countries to the fault-lines between developing and developed countries in the multilateral system noted above, there are also reasons for pessimism. Negotiations between large developed countries and small, poor developing countries on a bilateral basis entail much greater inequalities of bargaining power than developing countries encounter in the multilateral system, at least if they strategically negotiate as blocks or informal coalitions, exploiting the consensus decision principle that governs the multilateral system. Indeed, they are likely to end up assuming so-called WTO-plus commitments in areas such as intellectual property and investment. In turn, regional trade agreements between or among developing countries cannot, for the most part, ensure greater access to their most important potential export markets.

Moreover, a world trading system that is dominated by (in Jagdish Bhagwati’s terms)\(^{12}\) a “spaghetti bowl” of preferential trading
arrangements — apart from the transaction costs entailed in negotiating and maintaining a host of these agreements and the complex rules of origin that are required as a predicate to these agreements — stands in a sharp antithesis to the non-discriminatory world trading system that the architects of the Bretton Woods system (such as John Maynard Keynes) envisaged at the beginning of the post-war era as a response to the political and economic factionalism that characterized international relations in the inter-war years, with catastrophic consequences.

III. THE NEW INSTITUTIONAL ECONOMICS: AN ALTERNATIVE PERSPECTIVE ON ECONOMIC DEVELOPMENT

One can plausibly argue that a more promising way out of the dilemmas noted above, especially for developing countries, is to downplay the importance of international trade policies in the economic development equation and instead focus on a set of domestic policies and institutional arrangements that fall much more fully within the control of developing countries themselves. This institutional perspective on development has become increasingly prominent in development thinking in the past decade or so, captured in the mantra Institutions Matter, or Governance Matters. The overall tenor of this perspective can be captured by examining one particularly influential study entitled, “Governance Matters.” This study was undertaken by Kaufmann, Kraay and Zoido-Lobaton, all of whom are affiliated with the World Bank, as part of the World Bank’s ongoing research on governance, which has been updated on a regular basis. The World Bank’s Governance project involves compiling a large number of subjective measures of institutional

quality—meaning data obtained from either polls of country experts or surveys of residents—and grouping them into six clusters: “voice and accountability,” “political stability,” “government effectiveness,” “regulatory quality,” “rule of law,” and “control of corruption.” They describe these clusters as follows:

**Voice and accountability:** Measures the extent to which citizens of a country are able to participate in the selection of governments and combines indicators measuring “various aspects of political process, civil liberties, political rights” and “the independence of the media.”

**Political stability:** measures “perceptions of the likelihood that the government in power will be destabilized or overthrown by possibly unconstitutional and/or violent means.”

**Government effectiveness:** Measures the inputs required for the government to be able to produce and implement good policies. Combines “perceptions of the quality of public service provision, the quality of bureaucracy, the competence of civil servants, the independence of civil service from political pressures, and the credibility of the government’s commitment to policies.”

**Regulatory quality:** “Includes measures of the incidence of market-unfriendly policies such as price controls or inadequate bank supervision as well as perceptions of the burden imposed by excessive regulation in areas such as foreign trade and business development.”

**Rule of law:** Includes measures of “the extent to which agents have confidence in and abide by the rules of society. These include perceptions of the incidence of both violent and non-violent crime, the effectiveness and predictability of the judiciary, and the enforceability of contracts.”

**Control of corruption:** Measures perceptions of corruption ranging from the frequency of “additional payments to get things done” to the effects of corruption on the business environment. Corruption is defined as “the exercise of public power for private gain.”

The authors of “Governance Matters” created indices that measure institutional quality along each of these six dimensions as well as a composite “governance” index designed to measure the overall quality of governance in a society. They then regressed three
measures of development: per capita GDP, infant mortality and adult literacy on these indices. They found strong correlations (indeed causation) between each of their sub-indices of institutional quality, including the rule of law index, as well as a composite governance index, and their measures of development, hence their conclusion that "Governance Matters." In a more recent iteration of this work, Kaufmann reports:

The effects of improved governance on income in the long run are found to be very large, with an estimated 400 percent improvement in per capita income associated with an improvement in governance by one standard deviation, and similar improvements in reducing child mortality and illiteracy. To illustrate, an improvement in the rule of law by one standard deviation from the current levels in Ukraine to those "middling" levels prevailing in South Africa would lead to a fourfold increase in per capita income in the long run. A larger increase in the quality of the rule of law (by two standard deviations) in Ukraine (or in other countries in the former Soviet Union), to the much higher level in Slovenia or Spain, would further multiply this income per capita increase. Similar results emerge from other governance dimensions: a mere one standard deviation improvement in voice and accountability from the low level of Venezuela to that of South Korea, or in control of corruption from the low level of Indonesia to the middling level of Mexico, or from the level of Mexico to that of Costa Rica, would also be associated with an estimated fourfold increase in per capita incomes, as well as similar improvements in reducing child mortality by 75 percent and major gains in literacy.15

Drawing on the Kaufmann et al. data, Rodrik, Subramanian and Trebbi, in a recent paper,16 estimate the respective contributions of institutions, geography, and international trade in determining income levels around the world. The authors find that the quality of institutions "trumps" everything else. Once institutions are controlled for, conventional measures of geography have at best weak direct effects on income, although they have a strong indirect effect by influencing the quality of institutions. Similarly, once institutions are controlled for, trade is almost always insignificant except for indirect effects on institutions. In their study, the authors use a number of elements that capture the protection afforded to property rights as well as the strength of the rule of law. To convey a flavour of the striking nature of their findings, the authors find that an increase in institutional difference between measured institutional quality in Bolivia and South Korea produces a two-log points rise in per capita incomes, or a 6.4-fold difference — which, not

coincidentally, is also roughly the income difference between the two countries.  

While this is not the place to pursue in any detail the implications of this institutionalist perspective on development, it is important not to present it as a simple panacea for the problems of the developing world. To identify some of the questions that it raises, first, what do we mean by development — is it simply economic growth or should the concept of development capture a number of other aspects of human well-being? Second, what exactly do we mean by institutions (formal and informal), and what role do legal institutions in particular play in the development equation (however development is defined)? Third, which institutions matter most to development? Fourth, do good institutions cause economic growth, or does economic growth cause good institutions? Fifth, how can bad institutions be changed, given the importance of path dependence in shaping initial conditions and the resistance to change of often powerful, predatory political elites. What are the relative roles of insiders and outsiders in promoting institutional reform, given the particularities of each country’s, culture, history, stages and patterns of economic development and institutional legacies? Sixth, as some argue, does culture matter more than institutions in determining a country’s development prospects or do they shape each other over time in complex interactive ways? None of these are easy questions to resolve, and suggest modesty in assuming that shifting the focus from the role of developing countries in the international economic system to issues of domestic governance promises simple and easy fixes to the eternal challenges of economic development.

IV. CONCLUSIONS

While national policies and institutional arrangements might be a more promising focus for developing countries, international actors have an important role to play in improving the quality of governance in developing countries, especially the least-developed countries.

17. See also World Bank, Where is the Wealth of Nations?, supra, footnote 14.
19. See Michael Trebilcock and Ron Daniels, Rule of Law Reform and Development: Charting the Fragile Path of Progress (Edward Elgar, forthcoming).
22. Collier, supra, footnote 4, at ch. 9.
As demonstrated by accession negotiations between the EU and its new member states, improvements in domestic governance can be insisted on as a condition for access to important economic benefits. In the international context, Collier has proposed the negotiation of a series of international charters dealing with natural resource revenues, democratic checks and balances, budget transparency, investment, and post-conflict sustained assistance. A co-ordinated insistence on adherence to the terms of these charters by international agencies, aid donors and NGOs as a condition for receipt of additional aid and debt relief (focused mainly on the least developed countries) holds out some prospect of improving the quality of governance in many developing countries and breaking the grip of predatory or incompetent political elites and vested interest groups who have often captured the state in these countries. In turn, improved domestic governance holds out the prospect of an enhanced capacity to participate effectively in international fora where trade policy, aid, and other issues important to economic development are addressed.

In addition, by suggesting a shift in focus, I am not dismissing the possibility of fruitful negotiations on international trade policies, especially for the least developed nations. In the current Doha Round, Member Countries should agree (as many have proposed) on providing immediate, unconditional, and non-reciprocal duty-free access to their markets for all exports (without exceptions) from the least-developed countries that are the focus of Collier’s concerns. Developing countries in higher income tranches, in contrast, should follow a different path. It is likely to be in their long-term interests to phase out reliance on SDT and bargain reciprocally for enhanced access to developed countries’ markets, albeit with longer transition periods, more gradual reductions in trade barriers, more expansive safeguard protections, and cross-issue bargaining where reductions in developed country trade barriers can be exchanged for not only reductions in developing country trade barriers but also relaxation of restrictions on foreign direct investment and services. In addition, specialized agreements like TRIPS and TRIMS should in future generally be plurilateral rather than multilateral in nature (as they were prior to the Uruguay Round), leaving more policy flexibility for developing countries on scope and timing of commitments beyond the general GATT principles.

Aggressive progress on these margins is crucial if the world is serious about alleviating the desperate poverty of one-sixth of its citizens living in countries that globalization has left behind, searching for a glimmer of hope.
# TABLE OF CONTENTS

**EDITORIAL** ................................................................. 1

**ARTICLES AND SYMPOSIA**

**RECOVERY OF UNLAWFUL TAXES: THREE COMMENTS ON KINGSTREE INVESTMENTS**

Recovery of Unauthorized Taxes: A New Constitutional Right  
*Peter W. Hogg* ............................................................... 5

Public Justice and Private Justice: Restitution after *Kingstreet*  
*Lionel Smith* .............................................................. 11

*Kingstreet Investments*: Taking a Pass on the Defence of Passing On  
*Benjamin Alarie* .......................................................... 36

The Quick-Look Approach in Antitrust Analysis  
*Can Erütüku* ............................................................... 50

The Standard of Proof for Jurisdiction Clauses  
*Stephen G.A. Pitel and Jonathan de Vries* ....................... 66

**ASPECTS OF GLOBALIZATION**

Globalization and the Practice of Law — One Lawyer’s Perspective  
*Donald R. Crawshaw* .................................................... 162

The Essence of Globalization: An Economist’s Perspective  
*John M. Curtis* ............................................................ 180

Searching for Hope: The Countries that Globalization Has Left Behind  
*Michael Trebilcock* ...................................................... 184

Reflections on the Recommendations of the Task Force to Modernize Securities Legislation in Canada: A Retail Investor Perspective  
*Paul Halpern and Poonam Puri* ....................................... 199

Piercing the Corporate Veil and the “Pure Form” of the Corporation as Financial Innovation  
*Christopher C. Nicholls* ............................................... 233

Legal Strategies to Profit from Peer Production  
*Jeremy de Beer* ........................................................... 269

Panel Discussion of Canadian Bankruptcy and Insolvency Law: Bill C-55, Statute c. 47 and Beyond  
*Justice Kathryn N. Feldman, Andrew Kent, Rosalind Mason and Charles J. Tabb* ....................... 321

Governing the Nonprofit Organization: Accommodating Autonomy in Organizational Law  
*Evelyn Brody* ............................................................. 343