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**Article**

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## End of previous Forum article

Bernard Hoekman\*

### Revitalising Multilateral Trade Governance

The global trade regime is a major success story of multi-lateral cooperation. It has helped to enable a large number of countries to expand their participation in world trade, with associated reductions in prices, increased consumer choice and higher productivity. Rising average per capita incomes and lower poverty rates in many developing economies are in part the result of greater trade integration. The concomitant rebalancing of global income shares and competitive pressures emanating from emerging economies, especially China, is generating challenges for the trading system. In part, this is reflected in a broader ‘backlash against globalisation’ in high income countries. More specifically, it has fed perceptions that success is based in part on unfair trade practices. Competition between governments to attract investment and technologies is feeding trade tensions. The recent unilateral imposition of trade restrictions by the US on the steel and aluminium imports of many countries and retaliatory responses is a notable example of these tensions resulting in trade conflict.

Concerns that trade is not ‘fair’ because of differences across countries in trade-distorting measures designed to favor national industries (policies to ‘make it here’, not ‘in the world’) have created calls to the bargains struck at the time the World Trade Organization (WTO) was created (in 1995) and China acceded to the organisation (2001). The rules of the game were designed in the 1980s and have not kept up with a rapidly changing world economy in which cross-border flows of data, digital products and technologies reflect the digitisation of production.

WTO members have done too little to confront and address these challenges. The trading system is in crisis. The core negotiation, transparency and conflict resolution functions are contested, undermining the WTO’s ability to fulfil its designated tasks. WTO members failed to conclude the first round of multilateral trade negotiations launched under WTO auspices in 2001, the Doha Development Agenda. They have been unwilling to discuss a new work programme that spans both long-standing subjects such as agricultural support and new matters such as digital trade and forms of industrial policies that are not captured by current rules (e.g. investment-related policies). Many WTO members do not abide with notification commitments, reducing transparency. Moreover, since 2016 the US has blocked new appointments to the WTO Appellate Body, reflecting dissatisfaction with the functioning of the dispute resolution mechanism. If continued, the appeals system will become defunct.

All WTO members have a stake in sustaining the rules-based multilateral trading system. Large trade powers need a functioning multilateral trade regime because many of their concerns regarding foreign trade practices cannot be addressed effectively on a bilateral basis. Bilateral deals will be eroded by market forces that drive investment toward other countries; moreover, many trade practices generating negative spillover effects are not unique to one country. Most developing countries have little market power vis-à-vis large trading nations – only the WTO offers small countries the opportunity to influence the development of new trade rules. Likewise, citizens in all countries concerned with ensuring that trade supports societal goals and sustainable development have

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an interest in a functioning multilateral trade regime that supports the realisation of these objectives.

### How did we get here?

Space limitations preclude a discussion about how WTO members ended up where they are today.<sup>1</sup> Arguably two operating modalities of the WTO have played an important role: decision-making on the basis of consensus; as well as special and differential treatment of developing countries. The former has been used by WTO members to veto initiatives and block efforts that seek to go beyond the issues for negotiation agreed to in the Doha Development Agenda. The latter has allowed advanced developing countries to offer less than full reciprocity in trade negotiations and skirt the application of certain WTO rules. This has been an underpinning factor fuelling perceptions of an unlevel playing field and has impeded successful negotiations in the WTO.

Deadlock in the WTO has led many countries seeking to strengthen the governance of their commercial relations to turn to preferential trade agreements (PTAs). Some PTAs cover areas such as e-commerce, investment, competition and digital trade policies, while others span policy areas such as labour standards and the environment. PTAs allow countries to deepen integration of markets with trade partners; however, they risk fragmenting the rules that apply to global value chains and offer only partial solutions to companies seeking disciplinary acts on trade-distorting policies.

### What could be done?

The WTO provides extensive flexibility for members to engage with each other. Using this, WTO members should identify a road map for the future and a work programme to update and expand the rulebook to address trade-distorting non-tariff policies that are not or only partially covered by current WTO rules. The recent unilateral protectionist actions by the US government, and its decision to block appointments to the Appellate Body until its concerns over dispute settlement have been addressed, have raised the stakes. It is now clear that business-as-usual practices, such as insistence on consensus-based operating modalities and special and differential treatment for large, successful developing countries, are no longer viable. More generally, initiatives are needed to improve the implementation of agreements and dispute settlement. What follows suggests six steps to help remedy the situation.

1 See e.g. the contributions to the special issue on the political economy of multilateral trade negotiations, in: *Review of International Organizations*, Vol. 9, No. 2, 2014, and to the Symposium Issue on Structural Issues at the World Trade Organisation, in: *World Trade Review*, Vol. 14, No. 1, 2015.

### Policy dialogue to establish a road map and new work programme

The situation confronting the trading system is not unprecedented. There are parallels with the 1980s, which saw extensive recourse to trade-distorting measures in response to a rapid rise in exports from East Asian economies. This motivated a preparatory process that led to the eventual launch of the Uruguay Round in 1986. The current context calls for a similar process aimed at resolving trade tensions on systemic matters. The process must encompass policy areas of importance to developing countries. Efforts to block deliberation on non-Doha issues arise not because countries do not see the salience of new policy areas for the WTO, but because of a desire to see progress on long-standing priorities for many developing countries – such as tariff escalation in agriculture and natural resource sectors. Thus, balance across topics matters.

There are two areas where such efforts are most urgently needed: dealing with current conflicts between major trade powers and controlling the tit-for-tat expansion in use of tariffs and resolving the impasse on the functioning of the WTO dispute settlement mechanism. The latter plays a vital role in sustaining cooperation between WTO members. Dealing with concerns regarding how the system functions without undermining its effectiveness is critical. That said, there are many trade issues that concern many WTO members. Examples include the trade-distorting effects of agricultural support policies; tariff escalation that constrains developing country firms from moving up the value chain; ensuring a level playing field for competition between firms in markets where the state plays a significant role; managing instances of global sectoral over-capacity; disciplining the competition-distorting effects of policies towards foreign investment; and the use of subsidies to support local production or exports.

There is no compelling reason for major players not to engage with each other on these matters, nor are there good reasons why any WTO member should seek to block deliberation on a new work programme. This should be the bread and butter of the WTO – it is a core function. The aim should be to define an agenda and roadmap for the organisation. A key ingredient in doing this is analysis of the size and incidence of the effects of policies. We need a common understanding of the magnitude of the negative effects of specific contested policies to distinguish between those that are of systemic importance and distort competition in a major way from those that do not generate major negative spillovers.

Cooperation on contested policies need not involve all WTO members. Some subjects may lend themselves to agreements between a subset of the WTO membership, with associated benefits extended to all WTO members. Others will

require a broader negotiation and accommodation. Determining what type of cooperation is needed to resolve current conflicts and filling gaps in the rulebook is critical in any effort to revitalise the WTO.

### Self-reflection on the operation of WTO bodies

In addition to engaging in a discussion on major sources of trade policy spillovers, WTO members should launch a process to reflect on the operation of WTO bodies, including the Appellate Body, in order to ensure they are fulfilling their mandates effectively and identifying opportunities for improving their performance. This should focus on key areas of contention and drawing lessons from experience.

*Dispute settlement.* There have been 15+ years of discussion in the WTO reviewing the dispute settlement system. These have not produced results because consensus is required to make changes. The WTO consensus practice is now being used by the US to generate pressure to resolve its dispute with the Appellate Body. WTO members lack the will to engage in an open discussion about system performance and to accept that there may be reforms that would improve the system. Absent a resolution of the dispute on the operation of the Appellate Body, conflict resolution will revert back to the pre-WTO situation in which panel reports may remain unadopted if the losing party disagrees with the panel's findings – with attendant risks of escalation in the use of unilateral trade policies.

*Transparency.* The lack of compliance with many of the WTO notification requirements in a timely and comprehensive manner has been a long-standing problem. Rather than seeking to impose stronger measures to induce compliance with existing notification requirements, it would be more constructive for WTO bodies to ask themselves what information is needed to fulfil their mandate and what would be most useful in helping economic actors and citizens navigate and understand the trading system.

*Economic development.* Greater emphasis on jointly determining what constitutes good practice and how policy disciplines covered by different agreements affect development outcomes could help provide a basis for a more effective approach to dealing with economic development concerns. A development-focused policy dialogue in the various WTO bodies could consider what kind of treatment may help countries develop industries in sectors where they have comparative advantages and identify the scope for greater differentiation among developing countries on an issue-by-issue basis. Such differentiation is already built into some WTO agreements, setting a precedent. WTO bodies should examine whether the rules embedded in existing agreements are detrimental to development.

*Learning from PTAs.* WTO bodies are also appropriate venues for discussion of what can be learned from the operation of PTAs in their respective policy areas. PTAs may pursue innovative approaches towards cooperation on trade policies. A regular focus at the committee-level on national experiences with different PTAs would not only improve transparency, but more importantly, support a process of learning about approaches that might be multilateralised through instruments such as a reference paper.

### Open plurilateralism: Initiatives among groups of WTO members

The lack of consensus to discuss issues that are not part of the Doha Round or covered by extant WTO agreements has prevented policy dialogue at the WTO. This could be partially addressed through cooperation on an open, plurilateral basis and through initiatives for specific sectors or policy areas. Open plurilateral initiatives can be a vehicle for countries to consider adoption of common policy principles such as regulatory coherence or to agree to new policy disciplines. Open plurilateralism has two key elements: any WTO member with an interest in participating is permitted to do so and the benefits of agreements are applied on a non-discriminatory basis to all WTO members (insofar as benefits are not conditional on joint action by countries). Open plurilateralism is a complementary alternative to the pursuit of PTA-based cooperation, which has the systemic disadvantage of being discriminatory in nature.

Open plurilateral initiatives may not be feasible for policy areas where free riding is a significant concern. However, they offer an opportunity for countries to cooperate on issue areas where the nature of the problem is to identify what constitutes good practices that will benefit participating countries independent of what non-participants do. Areas where this is likely include regulatory cooperation that takes the form of agreeing to good practices and 'behind the border' policies that apply equally to national and foreign firms or products.

The policy areas that could be the subject of open plurilateral initiatives must be determined by (groups of) WTO members. Four such efforts were launched at the WTO Ministerial Conference in Buenos Aires in December 2017: on e-commerce, micro, small and medium-sized enterprises, investment facilitation, and domestic regulation of services. Both the suggested process of policy dialogue to define a road map and new work programme for the WTO on matters of systemic importance and self-reflection at the level of WTO bodies will help identify policy areas that may lend themselves to open plurilateral initiatives.

Open plurilaterals that apply on a non-discriminatory basis are not a magic bullet. They will be limited to issues that

are either insensitive to freeriding concerns or span a critical mass of participating WTO members. But they offer a vehicle to introduce fresh oxygen into the system and to increase the relevance of the WTO as a platform to support international regulatory cooperation.

### Bolster the support function of the Secretariat

The WTO is a ‘member-driven’ organisation. A corollary of this is that the Secretariat is given very little voice. Member-driven means members are responsible for running the WTO, i.e. making decisions. This, however, should not translate into a monopoly on the right to express voice and supply relevant information to WTO members. Strengthening the ability of the Secretariat to provide information to its members will make it more useful to the constituencies that have a stake in enhancing the performance of WTO bodies.

These constituencies are critical in sustaining political support for the organisation. They are primarily located in the members’ capital cities. Enhancing the capacity of the Secretariat to engage substantively on trade-related policy areas of interest to national constituencies may increase the perceived salience of – and political support for – the organisation. There is substantial scope to reallocate available technical assistance funds to support the provision of analytical services to members that request it, and for bolstering engagement with national government agencies and broader constituencies that have an interest in different areas of trade policy. This includes other international organisations dealing with aspects of trade policy and related regulation.

Many citizens of WTO member states are concerned about the effects of trade integration. While improving equity of outcomes and helping workers and firms that incur adjustment costs are national policy issues, more can and should be done by the Secretariat to monitor and assess the economic effects of WTO membership. Rigorous *ex post* analysis of the economic effects of the rules-based trading system, including regular monitoring and careful examination of the implementation of WTO agreements, is a knowledge product that would be valuable to stakeholders as well as governments.

### Review organisational performance

The WTO is unique among international organisations in not having an independent evaluation office or internal review mechanism that assesses its operations. As part of its oversight function, the WTO General Council conducts a year-end review of WTO activities, based on the annual reports of its subsidiary bodies, but it is simply a summary of meetings and topics discussed. There is little substantive discussion in the General Council on the operating modalities

of subsidiary bodies. Periodic assessments of institutional performance can foster learning about what works well and what does not. Establishing a review mechanism to evaluate committees and other WTO bodies can help identify differences in performance and reasons for them, and recommend successful practices that could be emulated in other areas.

### Revisit outreach strategies

A key function of the WTO is to provide a platform for its members to establish rules and to enforce them. As such, greater emphasis should be placed on the organisation’s role in reducing uncertainty for firms and providing a mutually agreed governance framework that helps governments pursue welfare enhancing policies. This extends far beyond the narrow interest of exporters – it benefits all citizens. Several of the aforementioned recommendations will generate information that can feed into more effective outreach strategies. What is missing is extensive knowledge of the system at work, e.g. how procedural rules intended to reduce uncertainty for traders function; how this, in turn, affects investment decisions by specific firms; how does the WTO system help members address trade concerns raised by firms; how does it give consumers access to better products and greater choice, etc. Such an exercise can also highlight what is not working well and emphasise areas where WTO members could do more to support the organisation.

WTO members can encourage greater engagement with businesses via the committees and other WTO bodies – including groups that participate in open plurilateral initiatives. This already happens to a small extent in some of the committees. Such interactions will help delegations to better understand the concerns of business and vice versa. Engaging businesses more effectively can help the WTO stay relevant for the global trade community collectively.

### Change of leadership

The success of the multilateral trade regime in the post-Second World War period is attributable largely to US leadership and the fact that the organisation was dominated by like-minded countries. Today, the US continues to participate actively in normal WTO committee work; however, it is adopting a different role by calling for WTO reform. At the 11th WTO Ministerial Conference in Buenos Aires in 2017, the US presented its reform agenda stressing better compliance with WTO obligations, greater differentiation among developing countries and action to ensure that litigation is not used as an alternative to negotiation.

In May 2018, French President Emmanuel Macron showed his support for the initiative. Following a mandate from the Eu-

ropean Council, the European Commission offered concrete suggestions for modernising the WTO.<sup>2</sup> These are positive developments. A coordinated effort by the large trade powers to invest more of their soft power in prioritised initiatives could change the game. Three of the four largest trading powers – China, the EU and Japan – account for more than one-third of world trade in goods and services and more than half of the WTO budget. Together, they can offer a strong response to the challenges confronting the organisation and revitalise the WTO.

Leadership cannot come from large trading powers alone. Safeguarding the WTO is particularly important for smaller countries, not least because only the multilateral trading system offers them the opportunity to influence the development of new trade rules. Due in part to the rise of global value chains and the success of the system, many countries have a large stake in international trade. Different configurations of these smaller countries may constitute a critical mass large enough to provide leadership. Economies pursuing deep integration of markets are best suited to play a complementary role. Examples include the eleven members of the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP), as well as the countries who wish to join the CPTPP (e.g., South Korea), the Pacific Alliance coun-

2 A note prepared for the Trade Policy Committee in July 2018 outlines a set of proposals and is discussed in Simon Evenett's article in this issue, see S.J. Evenett: Triage? Assessing the EU's Modernisation Proposals for the WTO, in: *Intereconomics*, Vol. 53, No. 5, 2018, pp. 253-256.

tries, and, more broadly, the WTO 'Friends of the Multilateral System' group of smaller economies.<sup>3</sup> Together with the EU, these countries collectively account for some 75% of world trade. They constitute a critical mass that is more than large enough to sustain multilateral cooperation and drive the trading system forward.

Expanding the WTO rulebook, accepting greater reciprocity and improving the organisation's operation are necessary for revitalising the WTO. If this cannot be achieved, the trading system will fragment into a set of PTA-based arrangements among two groups: countries that see value in accepting common rules on policies affecting competition on markets (notably the EU and the CPTPP member countries) and countries that do not. A corollary of this scenario materialising is an increasing prospect of discrimination against those that do not, thus undermining the current trade regime. While this may eventually create sufficient incentives for renewed multilateral cooperation, it will come at a high cost.

3 The Friends of the Multilateral System comprises Albania, Argentina, Australia, Bangladesh, Benin, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Ghana, Guatemala, Hong Kong, China, Iceland, Israel, Kazakhstan, Republic of Korea, Lao People's Democratic Republic, Liechtenstein, Malaysia, Mexico, Montenegro, Moldova, Myanmar, New Zealand, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Qatar, Russian Federation, Singapore, Sri Lanka, Switzerland, Chinese Taipei, Thailand, The former Yugoslav Republic of Macedonia, Tonga, Turkey, Ukraine, Uruguay, Vanuatu, Vietnam. Together, these countries account for some 40 percent of global trade.