

Warwick Commission

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Context

The WTO can be looked upon as a three-layered construct, with executive (agenda-setting and decision-making), legislative (negotiating on rule-making and market opening) and judiciary (dispute settlement) branches. Much of the current concern over the travails of multilateralism in trade matters appears to relate to how the WTO dispenses its first two functions (particularly its legislative function), which are closely intertwined. Much less concern tends to be directed towards the WTO's judiciary function, whose *modus operandi* and legitimacy were significantly enhanced in the Uruguay Round and which most observers would consider the sturdiest element of the WTO architecture.

The question arises however of whether the WTO can, in an era of considerably heightened judicial activism, preserve its dispute mediation legitimacy if, as a result of legislative gridlock, its rule-book fails to adapt to the changing dimensions of cross-border trade, investment and competition in a globalizing context. Similar concerns arise if its strongest and most litigious Members gradually eschew negotiation in favour of litigation.

The challenge of voice

- The multilateral trading system has witnessed a dramatic increase in the number and diversity of voices at (and around) the agenda-setting and negotiating table in recent years.
- The near universality of WTO membership is without doubt good news, attesting as it does to the shared belief in the benefits of a rules-based trading system, best able to ensure that right, and not might, governs world commerce (this remains true in most instances and is arguably truer today in a world of far greater developing country/G-20 assertiveness, though some Uruguay Round outcomes clearly erred on the side of might-based rule-making).
- Yet near universality and the considerable diversity - in development and income levels, in collective preferences and national priorities - that comes in its wake exacts a heavy price in an institution run on a one Member one voice basis and whose negotiations operate on the basis of a single undertaking, where nothing is agreed until all is agreed.
- At the same time, the "market" for ideas on trade policy has become highly contestable in recent years, with the emergence of vocal and articulate non-state actors whose influence is now felt directly at the negotiating table, encouraged in part by the much greater degree of transparency that the WTO has come to practice in response to its critics in civil society.

- The passage from GATT to the WTO has seen a tectonic shift from a cozy, OECD-centric, *Directoire* (comprising governments and the business community in rich countries) in agenda-setting and the conduct of negotiations to a more triangular construct where governments, the business community and non-business civil society actors from both North and South compete for policy attention. Members of the *Directoire* have had some difficulty in adjusting to this new configuration, which partly explains their increasing attraction to asymmetric preferential trade agreements.
- Current WTO rules and procedures essentially preclude the emergence of coalitions of the willing (with the possible exception of the GATS and its highly flexible architecture) on new or contentious trade issues. Constitutional changes – a repeal of the current unanimity rule for the launching of plurilateral (i.e. conditional MFN) negotiations - would thus need to be considered with a view to restoring the elements of variable geometry that characterized the GATT in the Tokyo Round.

The challenge of managing expectations and of recalling the WTO's governance-enhancing properties

- The Doha Development Agenda has been, since its inception, the victim of poorly managed expectations, leading to a paradoxical simultaneity of irrational exuberance and undue pessimism.
- Part of the problem lies in the DDA's somewhat improvised development branding, which raised expectations among the vast majority of WTO Members beyond what the multilateral trading system's enlightened mercantilism can ever hope to secure. By needlessly raising the bar on the round's promised development dividend, the DDA has provided WTO foot-draggers with a tailor made excuse to eschew or water down development- and good governance-enhancing market opening and rule-making commitments.
- Part of the blame for poorly managed expectations must also be laid at the doorstep of dismal scientists, whose Washington consensus-inflated CGE models generated estimates of overall gains from liberalization that were as dubious as the data fed into them. The DDA has mercifully witnessed a sobering downward reassessment of such gains and finer appreciation of their distribution across the WTO's diverse membership, albeit with the same data deficiencies, particularly on behind the border effects.
- At the same time, the DDA (and the WTO/multilateralism more generally) has tended to suffer from undue pessimism in learned circles such as these. What is currently on the DDA table is far from trivial in both agriculture and NAMA, though clearly less so on services (although the latter outcome is to be expected). In the Warwick Commission's own terms of reference, mention is made to the risk of a diluted outcome that would lack ambition and commercial meaning. Given the relative paucity of low hanging fruits in developed countries, and the consequences of having made the DDA a development round, the value of the commitments already on offer should not be underestimated. A sober appreciation of the opportunity costs implicit in the current impasse, together with the genuine risks deriving from the looming expiry of the US Trade Promotion Authority, both appear to have restored some senses to WTO Members of late.

- Progress on rule-making and market opening, especially on sensitive issues, in as large and as diverse an organization as the WTO, which operates on a one Member one vote, single undertaking, basis can *only* be slow and incremental in nature. Moreover, because so much of the “liberalization” trade rounds aim to generate actually consists of locking in recent unilateral policy changes, there is a tendency to exaggerate both the benefits of - and downsides/dislocations from - negotiated market opening. Meanwhile, far too little attention is spent documenting and communicating the good governance-, investment-climate- and orderly adjustment-enhancing properties of trade agreements, in part because the economics profession find such properties hard to model. In behind the border issues, such as services, IPR protection, regulatory transparency or standards-related and other non-tariff measures, these are arguably the most important and tangible benefits produced by trade agreements.

The challenge of preferential agreements

- The Sutherland Report seemed genuinely obsessed with the recent proliferation of preferential trade agreements (PTAs). Such concerns appear excessive. Preferentialism in trade matters is here to stay, rooted as it often is in robust political economy considerations: the natural desire of smaller of smaller countries (typically WTO “rule-takers”) to shape their integration into regional production, trade and investment networks; neighbourhood externalities which confer to PTAs first best properties in terms of regulatory or market opening cooperation, the greater speed and depth of agreements with fewer parties around the table, geo-politics, etc.
- The business community will continue to be attracted to PTAs given their greater timeliness and the fact that multilateral negotiating cycles keep getting longer at the same time that the product cycles globally active firms contend with get shorter.
- PTAs have generated novel advances in rule-making and market opening that can inform the future direction of the WTO. This is especially the case in services and investment.
- There is no denying that PTAs cannot tackle the big ticket items of agricultural liberalization or anti-dumping reform; and legitimate concerns need to be expressed over the highly asymmetrical nature of a number of North-South PTAs, especially those concluded recently by the United States.
- The best antidote to preferentialism is a WTO bicycle in forward movement. A stalled WTO heightens the attractiveness of preferential rents, however small, temporary or second best they may be. With every WTO Member save Mongolia today a party to at least one PTA, developing tougher disciplines on preferential agreements is clearly a challenge. The Commission should consider how best to strengthen multilateral disciplines on PTAs, for instance by exploring whether and how PTA preferences should be extended on an MFN basis to all WTO Members over variable transition periods depending on Members’ level of development, with IFI assistance provided to those Members experiencing severely dislocating preference erosion. This would in effect economize on future multilateral negotiating efforts. The DDA has seen only very timid steps on PTA disciplines, limited to transparency disciplines and multilateral surveillance.