

WTO Reform

Interview of Alan Wm. Wolff

with

Victor do Prado

Friends of Multilateralism Group

Geneva, Switzerland

5 March 2024

Introduction:

This is the third in a series of interviews sponsored by the Friends of Multilateralism Group ([FMG](#)) on key trade topics arising in connection with the World Trade Organization (WTO) at the time of its 13th Ministerial Conference (MC13) held in Abu Dhabi. The participants discussing the issues in each of these online briefings are members of the Friends of Multilateralism (a group of international trade policy veterans) based around the world.

The questions in this interview were formulated and put to the discussant by Victor do Prado, a senior international trade diplomat from Brazil, who was former Director of the WTO Council Division, the central part of the WTO Secretariat that assures that the General Council can conduct its business and that the Trade Negotiating Committee, chaired by the WTO Director-General, is staffed.

The following is the script followed in this online FMG interview.

Victor do Prado

Alan Wolff is a distinguished visiting fellow at the Peterson Institute for International Economics in Washington, DC. He was previously deputy director-general of the World Trade Organization (WTO). Alan Wolff has a long career in trade matters, including as United States deputy special representative for trade negotiations in the Carter administration, Chairman of the National Foreign Trade Council (NFTC) – just to mention a few of his posts.

He is also the author of “Revitalizing the World Trading System”, listed by Martin Wolf of the Financial Times as one of the Best Books of 2023 in Economics, and described as “the definitive guide to the past, present and future of the multilateral trading system”.

Thank you for taking the time to do this interview for the FMG. Our subject for today’s conversation is WTO Reform – something you have focused on in quite a bit of detail in your book.

Before we talk more in-depth about WTO Reform...

Q: You are just arriving back from Abu Dhabi, where you attended the MC13. Could you tell us your off-the-cuff thoughts about the conference?

Wolff:

This is the perfect time to be discussing WTO Reform because this was to be the first WTO Ministerial Conference dedicated to WTO reform and it did not have that feeling in Abu Dhabi where I spent some time with attendees at this Ministerial this last week.

The ministerial holds up a mirror to the WTO to show its deficiencies, where reform is most needed, or its strengths.

The Ministerial Conference instead had the real potential for backsliding, reversing the progress made in an important area of the WTO's rules. It was unknown during the conference whether the moratorium on applying customs duties to e commerce would be ended. In the end, the two-year moratorium was renewed once again. This biennial challenge, cancelling the moratorium, may not make it past MC14, however.

The only reform item formally on the agenda for this ministerial was putting back into place AN AGREED DISPUTE SETTLEMENT SYSTEM -- and the members are frankly not much closer to reaching that objective.

- This is despite a praiseworthy contribution -- the Molina collection of largely agreed provisions for improving some of the less contentious aspects of existing dispute settlement.
- Of this more later in our conversation

The heart of reform in my way of thinking is THE LEGISLATIVE OR RULE MAKING FUNCTION of the WTO.

One plus, the Agreement on Domestic Regulation of Services went forward – was finalized at the WTO, when a member stepped aside to allow other members to certify their own schedules. This made the agreement operational as a formal matter.

Otherwise, the weakness of the WTO was on display in a number of agenda items for negotiation.

A clear negative – the completed Investment Facilitation for Development Agreement (IFD) remained an unrecognized formally as a legitimate WTO agreement. Making the IFD agreement part of the WTO *acquis*, its body of agreements was not allowed, blocked by at least one member.

The tyranny of the veto, consensus interpreted as unanimity, remained an obstacle. This practice occurs when any member, even if it does not have an essential interest at stake, stands in the way of those who want to proceed bringing the agreement into the WTO.

These negotiating questions dealt with at the ministerial reflect institutional reform issues – what is the extent to which the WTO agreements are to be multi-speed (IDF), whether they are mandatory for all, or a la carte; the institutional question goes beyond whether plurilaterals will be allowed, but what is critical mass, when must agreements be virtually universal – ag subsidies? Industrial policy subsidies, Climate change measures?

There were other negotiation issues on the agenda.

- FISH – 71 ratifications of the required 110 were in hand to bring the first part of the Fisheries Subsidies Agreement into effect.
- FISH II – this is the more traditional lack of closure that occurs in negotiations-- not for want of trying. So, this was not a reform issue as such, but one of will.

The third branch of governance: THE ROLE OF THE EXECUTIVE. As expected, at this Ministerial, no proposals were to be forthcoming from the DG for negotiated solutions, nor was there a statement from the DG as to what the future agenda for the WTO should be.

What should the secretariat have provided for the ministers -- a catalogue of challenges derived from a strategic foresight document, any planning documents, nothing on improving transparency, going beyond reporting. To what extent can the Secretariat be tasked with assuring that maximum transparency, information about the current trade is collected, analysed and disseminated?

There are other matters under the heading of reform than those listed for institutional reform if one views the reform agenda as consisting of subjects for substantive negotiation. There is an extensive list, including: agriculture, food security, industrial policy measures (subsidies), climate change measures, national security measures, health measures to deal with future pandemics, and development goals.

Today we are talking solely about constitutional issues.

Today our subject is governance of the global trading system,

Q: The term “WTO Reform” has different meanings to different people. However, I think all agree that reestablishing a dispute settlement mechanism is part of that Reform (and since it is part of “Reform”, which implies that this mechanism will not be the same as it was before...). We know the reasons that led to the stalemate on the appointment of AB members. Last year, there was an informal process that produced a comprehensive document with suggestions. What is your view about this document? Would this be a first step towards reestablishing a 2-tiered DS mechanism?

What has been achieved is a useful contribution to the subject of dispute settlement reform. Mr. Marco Molina of Guatemala conducted an informal process to identify improvements in the handling of disputes, particularly to make dispute settlement more efficient and improve its accessibility. The “interest-based’ negotiations proved to be a useful fiction, not tying particular members to particular provisions. It presumably avoids some hostage taking. This bottoms up approach, based on consultations not negotiations, an interest-based approach was novel, but it brings the WTO no closer to restoring binding dispute settlement applicable to all, not just accessible to, all. That is not Mr. Molina’s fault.

The United States created this crisis by finally rejecting a system which it found seriously, as it turned out, fatally flawed. Most members ask one question: how to get the US to allow nominations to go forward to the defunct Appellate Body. I don’t think that is ever going to happen. It is not clear that the US will accept two stage dispute settlement - ever, with a panel and an appellate function, as sensible as this sounds if it had not been abused by judicial activism.

To get back to a universally applied dispute settlement system, at least three things are necessary in my view –

- Destroy the inherent systemic bias in a dispute settlement system against trade remedies, which caused the system to become imbalanced in favor of globalization. With AI the stresses on the system are only going to get greater, so escape valves are needed.
- Don't attempt to use dispute settlement to resolve political questions – national security is the largest – by panels of neutrals or experts. – Instead accept the judgment of each member as to what is in its essential security interest but require a rebalancing of concessions akin to use of Art. XXVIII as result. In other words, there would be no cost-free way to choose to impose restrictions on the trade of others simply by invoking the phrase “national security”.
- Allow those in geostrategic rivalry to opt out of the DS system.

The primary problem with WTO dispute settlement is that it operated in complete freedom as a judicial branch in the absence of a functioning legislature and executive. A key element of future governance is having three branches operating as power centers. For this, there needs to be an effective role for the Dispute Settlement Body (DSB) as one element.

Returning to what the Molina Collection is: it is a good contribution that skirts the primary cause of the failure of the system. It has some good suggestions that permit for small country participation in the dispute settlement system, an entirely valid concern, as well as a number of points remedying some of the deficiencies of the prior system.

Good suggestions:

- More reliance on good offices, conciliation, mediation
- Ideas as to how these would function.
- Ideas on how panels are to operate, be staffed, and panellists chosen.
- Conciseness, judicial economy, focus, prima facie case,
- That decisions are not considered binding precedent.
- Panellists draft their own conclusions.
- Transparency

However, the use of negative consensus for all DSB decisions is too extreme. A DSB Advisory Committee of the whole is unlikely to be workable remedy.

There might have been a time when the US might have moved forward to an agreed solution on the basis of incremental change, and just taken some concessions, then the MPIA came along as was taken by the US as a provocation. Going forward, there is a basis for concern that the MPIA as it now stands will become a permanent inadequate reform, with no universally dispute settlement system accepted applied by all put into place.

Q: Ministers at MC13 decided to instruct their officials to “build on the progress already made, and work on unresolved issues, including issues regarding appeal/review and accessibility to achieve the objective by 2024 as we set forth at MC12.” How credible is this? Wouldn’t a more realist tone and deadline be more credible?

A precondition for progress is that the fraud ends of appeals taken to the non-existent AB – “appeals into the void”. The US and some others blocked that solution.

WTO Dispute Settlement panels are not to give advisory opinions.

Dispute Settlement proceedings, whether MPIA, MPIA^{prime}, or panel findings (the default, if no alternative is agreed or no agreement can be reached) must be final.

I think a facilitator, or friends of the GC Chair should still be formally appointed with a fixed timetable for recommendations by December 1 or 31. A “walker process”. MC13 did not do this. There is still time for the General Council to do so.

The objective should be to have binding dispute settlement applicable to all.

The mandate for the new Walker effort should raise specific questions including – the status of precedent (anti trade defence measure bias), national security (political questions), to have a (geopolitical) opt out, and developing country accessibility.

Q: Another part of WTO Reform, to many delegations and observers, is the move towards a more flexible type of agreements to which a subset (even if majority) of WTO Members are signatories. This would of course alleviate the burden of consensus by all Members in WTO decision-making. And yet, the Investment Facilitation agreement, for example, could not be incorporated into the Plurilateral Agreements in Annex 4 of the Marrakesh Agreement, because of an opposition by India. Is the WTO condemned to be forever a hostage of the whims of one or two Members? How can the WTO negotiating function be improved?

This is a central point for the WTO system, at least equal in importance to the enforceability of commitments (DS). The legislative function has to work. The use of consensus cannot be allowed to remain a veto for any member on every occasion. The proposal made by Singapore is to have only a “responsible consensus”, not used to block progress by others.

Open plurilaterals (OPA) have to become a way forward for the WTO. Variable geometries, -as used for the Trade Facilitation Agreement and the Investment Facilitation for Development Agreement (IFD) have to be fully accepted as regular forms of doing business at the WTO. The way to achieve may have to be to simply to do it without worrying too much about incorporation in an Annex 4. The IFD harms no one and is consistent with DG’s mandate. It should just be administered at the WTO with no further decision needed by members, if that is the only way forward.

The critical mass may differ by agreement in order to reach negotiated outcomes. For an agreement on domestic support (agriculture subsidies), there might have to be something close to 100% for attaining critical mass.

An observation, the WTO should stop its drift away from hard law, *pacta sunt servanda*. The basis of the GATT and GATS is the enforceability of obligations.

- Example: GENDER if a measure discriminates against women – putting them at a disadvantage as producers, entrepreneurs or consumers, it should be prohibited not just talked about.

There is still room for best efforts, codes of conduct, and the like, but they should not become the primary means for organizing the global trade.

It may be that bringing about coherence in the main will only be solved by a display of power – as was the case with the GATT 1994 coming into effect. The WTO was created, by force. Achieving a substantially improved world trading system will depend on political will.

Q: Two of the most important subjects under negotiation – Agriculture and Fisheries Subsidies – saw no progress at all at MC13. Neither is there a reference in the Abu Dhabi Ministerial Declaration to important matters such as discussing Industrial Policy. What are the implications of these failings to the WTO?

For the global trading system to flourish and the world economy to grow aided by it, as occurring during the trading system's 80 years, it needs to remain relevant. Subjects of major concern need to be addressed. – now one is industrial policy, a vitally important topic earlier was the pandemic. The WTO did not meet the moment with respect to global health during the pandemic.

An increasingly important topic of vital importance is climate change, with vitally important implications for food security. Another aspect will be the frictions that are caused by unilateral measures such as carbon border adjustment mechanisms (CBAM).

How is technology to affect the system? What will be the impact of AI? The trading system has relevant experience in dealing with counterfeits.

Why shouldn't the use of forced labor be deliberated?

Does the WTO have any role in the geopolitical rivalry –any principles to enunciate?

Is there role for collective security at the WTO? Can the trading system respond to actions against trade, whether in the Black Sea or the Red Sea?

Q: A final question: in your book, you refer to the absence of an executive branch at the WTO as a deficiency, especially as compared to sister institutions such as the IMF, the WB and the OECD. Can you elaborate further on this point?

At the WTO's sister institutions, the IMF, the World Bank, and the OECD, the Managing Director, the President, the Secretary General, chair the body of local representatives – the Executive Directors.

No effective organization of any form of governance lacks an executive, whether a social club, or an NGO, a corporation, a town, a city, a state, a nation, and every other

international economic organization – that proposes and helps to set an agenda, that makes proposals? So should the WTO in my view.

The IMF is to know and advise as to the state of the world and national economies – without question. The World Bank is to know about the development needs of its members. Where is the mandate for the WTO Director-General (DG) and the Secretariat? There never was one. As the WTO was a rush job, the Uruguay Round messed up on Appellate Body (AB). The AB as an afterthought. The Secretariat, the DG, these were elements of the system to be gotten to later. This the members never did.

The Members should have given a mandate to the Secretariat to perform strategic foresight. What will the effect of climate change be on trade, or climate measures, or geopolitical divisions, or any other threat that comes along? These questions need to be examined by the Secretariat.

Why can't the WTO be the center of trade knowledge, data and analysis – the Secretariat not doing it all itself but being a hub for trade information?

Budget: the WTO needs an independent source of income to avoid the budget committee becoming its own executive.

A final thought for this session:

The WTO was not the product of a constitutional convention, of long and serious reflection and negotiation. The world's trading nations are not likely to stop now and create it again. there is not the political will to do so. So institutional changes will be incremental, if it is to occur at all.

Thank you, Victor and the FMG, very much!