

The Future of the Multilateral Trading System

Remarks of

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Summary

Multilateralism In a Time of Increasing Fragmentation. A strong case can be made for increased international cooperation in the face of urgent common challenges -- the need to deal with climate change, future pandemics, accelerating technological change and in many parts of the world, food insecurity. At the same time, forces causing division have been growing due to geopolitical and economic rivalry, the expanded use of national security and economic security measures, subsidies, industrial policies, the felt need for greater supply chain resilience and carbon reduction through trade measures. Countries are seeking solutions that are unilateral, or in small groups with those with allied interests. What does the future hold for global, that is multilateral, economic cooperation?

Predicting the future of the world trading system

The famous baseball player and epigrammist Yogi Berra once said, 'It's tough to make predictions, especially about the future.' It is hard to argue with that sentiment. In fact, there are too many variables to see very far into the future. I am on more solid ground to talk about what I believe the world trading system should be rather than what it will be, and to prescribe what might be done to arrive at a better outcome.

I first engaged in my episodic career as a WTO futurist when I was at the WTO and invited to speak at [a conference in Adelaide](#) in 2019. I had been working on ideas of WTO reform premised on making major strides by 2025, but it became apparent that that target date was too early for achieving fundamental reform. Within the WTO, time can be more nearly geologic, often taking a few decades for a trade agreement to move from conception to conclusion. So I thought it more useful to [speculate in 2019](#) about what the world trading system might look like in the year 2050.

There were then and are now several relatively stable ‘knowns’ about the future – dictated by demographics, climate change, advances in technology, and the like. Other determinants of the future are less certain. Since we are in the process now of a consequential presidential election, we will witness first-hand in January what America’s policy choices are likely to be, choices which will contribute to shaping the evolution of the trading system along with those made by the European Union and China, and some others.

We do not know whether the current pattern of US presidencies will be Trump – Biden – Trump, or Trump – Biden – Biden. Both Trump and Biden supporters will contend that this will make a major difference, and it likely will. Had we extrapolated from the Clinton, Bush or Obama presidencies, that process would have yielded a very different result than what we have today. (While it is tempting to say about the present “never has there been greater uncertainty about the future of U.S. trade policy, in fact we have been here before, with Congress poised to enact serious protectionist trade legislation in 1970, for example.)

Nearly five years have elapsed since my speculation in 2019. We did not know then whether the abandonment by Trump of the Transpacific Partnership (TPP) was an aberration. We now know that the change in direction of policy was to be more long-lasting than a single US administration. Focusing on 2050 takes some of the guesswork out of extrapolating what may turn out to be short term shifts in policy. It allows us to think about what the ideal WTO would look like based on a heightened level of international cooperation.

The WTO in the year 2050

In considering a high-performing WTO 2050, two aspects should be addressed: what does the rule book look like, and what shape the international institution should take to best administer the global trading system.

An Optimum WTO for World Trade in 2050

- Convergence not coexistence must be the explicit guiding principle of the WTO, otherwise it suggests a different WTO.
- Competitive outcomes must be determined in general by market forces.
- The goal is to move toward a global single market. National borders continue to fade insofar as trade is concerned.
- Services are provided freely across borders.
- Advances in technology reinforce this trend. Much of international trade is conducted on digital platforms. Advances in transportation and further expansion of 3D printing and other technological breakthroughs move greater quantities of goods and services from one part of the globe to another largely unimpeded using less energy.

- Due to shifts in weather patterns, as harvests became less reliable, world agricultural trade becomes more open and agile to move supplies from areas of surplus to those of deficit.
- Learning from dealing with global health emergencies, rules are adopted for the equitable sharing of essential goods, including vaccines, medicines, and medical equipment and supplies.
- Discrimination based on gender, that reduces participation of women as producers or consumers, as participants in the trading system, is prohibited.
- The use of forced labor is banned.
- The trading system reflect nations' common stewardship of the physical planet. Rules supporting sustainability are adopted: e.g., curbing fossil fuel and fisheries subsidies.
- The goal of development assistance is to bring about full participation by all in the trading system. Most of the developing countries in 2050 will have progressed dramatically, and attention will be focused on the remaining least developed, with highly tailored and effective assistance.
- General exemption (1): To the extent that trade is distorted by divergence from the ideal of substantially equivalent conditions of competition (SECC), offsetting measures are authorized.
- General exception (2): To remedy trade-related harm if domestic adjustment measures are not sufficient, defensive measures are authorized.

WTO 2050 – Institutional aspects

- The WTO will be the world's trade negotiating forum, the venue for trade dispute settlement, and the premiere source of international trade knowledge, data and analysis, made available readily to all.
- Through the application of artificial intelligence, there will be nearly complete transparency with respect to trade -- revealing why it takes place and why it doesn't. Instant analyses will indicate where government measures impede trade, will reveal competitive advantage, as well as pointing to anticompetitive practices, standards and other factors affecting trade.
- Proposed national measures will be reviewed in draft for comment by those affected, reducing the potential for conflicts.
- Most trade agreements, multilateral, plurilateral, regional, bilateral, will be administered by the WTO.

- New trade agreements subscribed to by Members who wish to do so will be readily added to the body of WTO agreements and will be open to participation by all who meet qualifying criteria. Nonparticipants will not be allowed veto the adoption of new agreements that are consistent with the WTO's purposes.
- The preference will be for binding, enforceable rules, rather than best efforts or declarations of intent.
- Proposed outcomes of disputes will be identified in a fraction of a second through AI, lessening resort to litigation.
- Appeals will be rare, as compensation is owed from the time of litigants receiving a preliminary outcome from a panel. Appeals will be heard by panels of former trade negotiators chosen by lot from a roster rather than from a standing appellate body.
- The WTO Secretariat will constitute a proactive executive branch of the WTO, collecting and analyzing trade intelligence, helping members consider alternative paths forward, engaging in strategic foresight and planning, making negotiating proposals where this would be productive, and assisting members with compliance with their obligations.

MC13

The WTO's 13th Ministerial Conference was to have been the WTO's first "reform ministerial". It was not. In fact, the WTO's institutional deficiencies were all on display at Abu Dhabi. Nor were the problems new.

I termed the Ministerial Conference "[a qualified success](#)", which was a grade or two above what most of those commenting accorded to it. I did so for several reasons -- because there was no backsliding (the ministers did not allow the moratorium on levying customs duties on e-commerce to expire); because I had not really expected more (negotiators representing members that sought progress had told me months earlier, in September, that this was likely the best outcome that one could hope for); and, not least, because the ministerial conference continued to make progress – on fisheries subsidies disciplines, for example. There were, however, two serious negative outcomes emerging from the ministerial meeting -- the continuation of the fraudulent practice of members appealing adverse panel decisions to a nonexistent Appellate Body which has no effect other than to frustrate reaching a conclusion (we in the United States seem to have become accustomed to this use of judicial process) and, secondly, the members finding no way around a single non-participant vetoing a negotiated outcome, in this case, the Investment Facilitation for Development Agreement.

The system cannot afford too many "successes" of this kind without risking lasting harm to the credibility of the WTO. The shortfalls in performance will become chronic unless something is done.

Despite the COVID-19 pandemic, some progress has nevertheless been made in the five years since I spoke about a WTO 2050: joint statement initiatives for Domestic Regulation of

Services and Investment Facilitation for Development were agreed among interested WTO members, and an informal process has resulted in a potential degree of consensus around several relatively non-contentious dispute settlement reforms. However, institutional reform has not progressed.

Building a bridge to the future

How does the world trading system evolve toward a better place by 2050? There are several steps WTO members can take in the near term to make the WTO more effective with the goal of fostering international cooperation.

The starting point is for Members (countries) to keep their word. Each WTO member has undertaken obligations by virtue of being in the WTO. These commitments ought not to be shrugged off too readily. I understand that sovereign countries make choices and living up to trade agreements may readily not appear to be as important to them as, for example, dealing with climate change or promoting strategic industries. But it is important that WTO members shoulder the obligations that they signed up for. Hugo Grotius, the 17th century Dutch father of international commercial law, would cite the aphorism, *pacta sunt servanda*, agreements must be honored. The existing world trading system to which nearly all subscribe is founded on the rule of law. If that is not the point of departure for any government that is a WTO member, there will not be much trust, and international cooperation will be very difficult to maintain.

Turning to achieving essential reforms: If one were drafting afresh, there are many elements that could be included in a new Marrakesh Agreement establishing an updated WTO. A complete charter for a WTO could have stated objectives; it could refine organizational elements creating three means for effective governance – legislative (that is rulemaking), juridical, and executive. However, this is clearly not an opportune time to convene a grand constitutional convention to create a new WTO in its entirety. There is not sufficient common ground. There is not the political will, nor the political economy, to support it. There is not the leadership to drive the required effort.

The practical alternative is to achieve breakthroughs by MC14, the WTO ministerial conference in 2026, on three fronts, which are modest in appearance but vitally important in reality:

- **Re-establish a working negotiating function.**
- **Achieve once again binding dispute settlement applicable to all.**
- **Begin to provide for effective governance of the organization, including radically improving transparency with respect to measures affecting trade.**

I. *A working negotiating function.*

The great period of global trade liberalization and rulemaking preceded the founding of the WTO in 1995. It occurred during the GATT (General Agreement on Tariffs and Trade) era. In its thirty-year history, 1995 to the present, the WTO's members have concluded three truly multilateral trade agreements that are by their terms part of the WTO *acquis*.

The first is the Information Technology Agreement (ITA). It can be called multilateral because all approved it. However, for most members, while they receive benefits on an MFN (nondiscriminatory) basis, they pledge none. It works because a critical mass of members, covering over 90% of world trade, joined.

The second, the Trade Facilitation Agreement (TFA), is based upon self-assessments of capabilities, whether accepting trade facilitation obligations in whole immediately, phased in over time, or contingent on gaining assistance in taking on obligations.

The third is the Fisheries Subsidies Agreement, but it is still unratified, partial and time-limited if it is not completed.

It is increasingly difficult to obtain agreement of the 166 WTO members for a new agreement to be added to the WTO rulebook. One size does not fit all. This has been increasingly true as the trading system moved toward universality from its beginnings with 23 members in 1948 to the present 166, with an anticipated 20 more now in the process of accession. They range from the least developed to the fully industrialized. Over time, countries change categories. The postwar period saw reconstruction. The Asian tigers, as they were called, emerged. Most recently, Bangladesh has made major economic strides. In current US dollars, per capita GDP per annum in that country has moved from just over \$4 to nearly \$2700.

There is not as much common ground among the members as there once was in the 1980s and 1990s (or could be dictated to the others by two dominant members, the United States and the European Union, with agreement of several like-minded countries). Having no further full rounds of negotiations once the Doha Development Agenda died in 2008, there is very little scope for trade-offs. There is not enough on the table to make it worthwhile for all to come in. Any member can block a "consensus" currently needed to add an agreement to the WTO's set of agreements. The term "consensus" has *de facto* become a rule of unanimity, and opposition can be voiced by a single member for any reason, or none. A veto can be deployed to take an agreement hostage to force acceptance of another, otherwise unrelated, objective. The result is a freezing up of the ability to dock an agreement at the WTO despite widespread support.

The future of the WTO lies in members being able to conclude open plurilateral agreements lodged at the WTO as formally part of the WTO set of agreements – the WTO's *acquis*. To be an OPA, accepted as part of the WTO agreements, there should be full transparency of negotiation and implementation, and any WTO member should be able to join. The agreements are likely to be mainly nondiscriminatory, which at present would be the least controversial format to be accepted.

A suggested way forward: If the WTO Director-General (DG) determines that a trade agreement is consistent with the purposes of the WTO, such as the Investment Facilitation for

Development Agreement (IFD), the Director-General should proceed to enter an arrangement with the OPA members to administer the agreement. Any OPA added in this fashion should have equal status with other agreements that are adopted by all. The DG would be making a judgment as to both the appropriateness of taking on the administrative function to support an agreement as well as the political wisdom of doing so.

There are alternative paths to get to this outcome. There could a decision of the Ministerial Conference of the General Council, suggested by Singapore, of operating under the notion of a “[responsible consensus](#)”. Presumably no agreement could be blocked by a nonparticipant without a compelling national interest being shown. To adopt this change, there could be a Working Party formed where most parties agreed to the new procedure to define how to determine that a consensus existed. This second path is less certain of being adopted and gaining the cooperation of all in its use.

The tyranny of the nonparticipant veto must be curtailed one way or another if the WTO is to remain relevant.

Pragmatism is needed to make the WTO function well. It should be remembered that the institution serving the world trading system during the GATT era, the GATT Secretariat, existed for half a century only informally, without being accepted as a formal entity. The WTO risks being strangled by legalisms designed to hobble the institution.

II. A single binding dispute settlement system

The hallmark of the newly established WTO was that its rules were to be enforceable. Countries were to be held accountable for living up to their trade obligations.

As WTO members are sovereigns (in each case, at least sovereign over their trading relationships), obligations are not enforceable in a literal sense. There is ultimately no compulsion available. What is meant by enforceability is that judgments emerging from WTO dispute settlement proceedings are ultimately to be final, and members are accountable for complying with their obligations. Once a decision is rendered, members have a choice -- conform their conduct with the judgment rendered, owe trade compensation or be subject to retaliation.

No one can disagree with the proposition that a central outcome of the Uruguay Round agreements, providing for the founding of the WTO, was that dispute settlement would be binding. There is no authority for panels to render advisory opinions, and yet that is what they have become for those not accepting the outcome. Those of us who have lived with the law for a lifetime understand that what a judicial system provides is finality. Finality is designed to allow litigants to move on and not resort to self-help. The immediate result of clashes over US national security measures on steel and aluminum and more generally trade with China was not limited to consigning the issues raised to a frozen dispute settlement system, but in countries finding ways in which to respond with retaliatory trade measures of their own outside the system.

For those not making arrangements for an alternative appellate process, accountability disappeared when losing parties appealed to what was in actuality a nonexistent Appellate Body (AB). The United States deprived the WTO of sitting AB members by refusing to allow nominations to be made to fill vacancies on the Body. The cynical act of filing a mock appeal with no AB in place came to be called “appealing into the void”, a wholly empty action. A first step in WTO reform is to stop this fraud.

When I was one of four Deputy Directors-General (DDGs), to act on behalf of the DG during the half year when that office was vacant, I was unable to persuade my three colleagues to reject an appeal to the notional AB. They would not take it upon themselves during our brief time as caretakers of the WTO to have the Secretariat (per we four) declare that the Dispute Settlement Understanding’s (DSU) provision for appeals was inoperative. Now it has been nearly five years that the AB has not been in existence and there is no evidence that it will ever be reconstituted in anything like the form provided in the DSU. The Members through their ministers have declared twice, at MC12 and MC13, that they would fix the problem in 2024. That is unlikely. **The only way to restore working dispute settlement is to acknowledge that there is currently no AB, and no appeals can be accepted to it.** There is little incentive for WTO members wedded to filing fraudulent appeals to abandon the practice as long as it is allowed. At MC13, some ministers attempted to stop the practice and failed to gain acceptance for doing so.

As of January 1, 2025, if no new system is agreed, the following should take place: some members who care for the system should formally state to the Director-General that in light of the MC12 and MC13 ministerial pledges to resolve the dispute settlement impasse which has now continued for nearly five years, the members must now determine by consensus whether to grant the DG authority to continue to accept appeals to a nonexistent AB. If she is not authorized by consensus to continue accepting appeals, Members should understand that all cases will be final at the panel stage unless an alternative arrangement is agreed by the parties to a dispute. The decision should not be hers but that of the members as to whether she has authority to continue to accept the notional (sham) appeals.

Can a way forward be found to restore binding dispute settlement? This should be possible. To meet the primary objections raised by the United States, three conditions need to be fulfilled –

- It is agreed that prior interpretations narrowing the scope of the use of trade remedies are of no further force and that the use of trade remedies is a right granted members under the WTO’s rules.
- Claims of national security will not be justiciable but will be treated as an invocation of a right to renegotiation (as under GATT Article XXVIII) with an immediate right conferred on members whose trade is adversely affected to a rebalancing of concessions (through accepting trade compensation or retaliation); and
- There will be an opt out between any two members, for example, the United States and China, for any reason (but in fact due to geopolitical concerns). The member

opting out would not be able to bring a case against the member with which it refuses to have binding dispute settlement.

The first condition is designed to cure the complained of treatment by the former Appellate Body of treating trade remedies as subordinate rights. The second is to acknowledge that GATT Article XXI calls for the consideration of political questions that are beyond the competence of WTO dispute settlement panels to decide. The third condition acknowledges the political reality that the WTO's two largest trading nations must decide how disputes between them are to be handled, as they search for a new equilibrium in their bilateral trade relations. Both the United States and China have changed direction to varying degrees with respect to government involvement of their economies. China is relying more on the role of state ownership. The United States (and for that matter other developed countries in Europe and in Asia) have increased government support for selected industrial sectors through subsidies.

There are a variety of possible formats for restoring binding dispute settlement. Most members will accept an appellate stage with no AB as such other than in name, consisting of a roster of distinguished trade law experts and experienced former trade negotiators who may serve on an appeals panel when requested to do so. This is a lighter version of the MPIA (the Multiparty Interim Arrangement) for dispute settlement invented by the EU and Canada, which is a negotiated use of arbitration under Article 25 of the DSU. The alternative as a default is to simply accept the interpretation of the DSU that without an AB, panel decisions are deemed final.

There is no easy path forward. The DSU was part of a very large, negotiated package of agreements in the Uruguay Round. The negotiation was of a sufficient size and complexity that no party could afford to turn its back on the deal. For the US Congress, resolving concerns over [American sovereignty](#) was a paramount concern. For most developing countries, it was a dictated outcome. One way or another, the outcome had to be and was accepted by all. If WTO members seek to accomplish the binding dispute settlement as a single-issue, standalone agreement, that will take greater skill and flexibility. But it is doable.

III. Constructing the WTO's executive functions

Making decisions as a committee of the whole may work for a small canton in Switzerland. It is not a satisfactory way to organize the work of an international organization comprising nearly all nations. Neither of the Bretton Woods organizations, the World Bank and the International Monetary Fund, operate on the basis that all members are needed to make any decisions. Nor can an effective WTO do so. The members must move to a representative form of governance such as the WTO's sister organizations employ. Two dozen or fewer representatives should be chosen to propose decisions for the membership to adopt in ministerial conferences, or with authority as delegated to the General Council.

The representative group should be chaired by the Director General. The Director General should be expected to set the agenda this Consultative Group, as well as for Council

meetings. She should make be charged with making proposals for decisions to be taken by the members, as necessary or appropriate.

The WTO Secretariat should also be charged with creating and maintaining a hub for global trade information and should assure as complete transparency as possible of the factors affecting trade flows, particularly, where government measures distort trade.

The Secretariat should be responsible for conducting strategic foresight to identify future challenges and opportunities, as well as engaging in policy planning.

A more complete discussion of the executive functions of the WTO is contained in the book, *Revitalizing the World Trading System*.

Finding common ground

Can the WTO's members find sufficient common ground to make international cooperation possible, not just in unofficial side deals, like the Joint Statement Initiatives? The answer is that they must. Events will force action.

Climate change. Crops will fail. Extreme weather, which can appear in the form of droughts or floods, will be experienced. Waves of pests may occur. Rising sea levels will cause displacement of people and agriculture. Global challenges require coordinated action. Food production will need to be more efficient and more responsive. Markets will have to be more open, and undistorted. An equally important front in combatting climate change is carbon reduction. Unilateral measures to deal with carbon leakage will prove to be contentious and less effective. A pillar of policy responses should be liberalization of trade in environmental goods and services.

Sustainability. The WTO's members chose to plant a flag for stewardship of the environment with the issue of curbing fisheries subsidies. They have proceeded part of the way with a first agreement, and clarified the issues that divide members in a second part of the fisheries subsidies suite of issues. Part I of the agreement is poised for ratification. Part II is poised for conclusion of the negotiations. The degree of success for this next stage rests primarily with China and India. This is a test of their commitment to an effective multilateral solution.

Social issues. Trade distortions caused by gender discrimination, forced labor, as well as changes in trade patterns due to technological advances and shifts in competitive strengths and weaknesses not eased by domestic policy measures, all undermine domestic social contracts in the absence of an international social contract. These subjects require more than discussion. The current global trade rule book needs updating.

Global health. The WTO failed to rise to meet the trade challenge of the COVID-19 pandemic. The question is whether the institution will be in any better position to meet another global health emergency.

Industrial policy. What is considered acceptable requires international discussion, to understand if there are boundaries that can be established.

The digital economy. As trade increasingly is increasingly digital, if there are no agreed rules of the road, competing national and regional regulations will tend to stifle economic growth and result in trade conflicts. Maintaining “policy space” (freedom to regulate) is a sub-optimal solution.

Trade across the geopolitical divide. Neither the US nor China seek complete decoupling of their economies. The European Union and other allies of the US clearly do not wish this, not yet in any event. The current trading system is unstable due to uncertainty over to what extent trade across the geopolitical divide is deemed positive by either side.

The challenges are many and they are great. The future of international cooperation through the multilateral trading system requires attention and dedication. A more effective WTO will support finding necessary solutions to serious challenges.

Conclusion — Getting to the future.

The multilateral trading system is vitally important to the health of the world economy. The rules and processes of the WTO undergird the economic well-being of all trading nations and must continue to do so.

Institutions that fail to adapt do not survive. This Darwinian truth applies with equal force to international organizations as it does to domestic entities.

As is clear from the considerations I have listed, I believe that there will be a WTO in the year 2050, and that it will be an improved version. The WTO’s members have not, however, yet placed their global trade organization on a on a trajectory that will accomplish what is needed. Among the members, there will have to be found the kind of leadership the United States provided in forging the postwar world order and European leaders demonstrated in creating their single market.

The chief attributes of the world trading system will remain inclusiveness, universality of membership, enforceability of obligations, with an ever-increasing scope to cover the conditions governing international trade as it evolves. The global trading system of the future must be more effective with respect to all aspects of global needs, not least, economic development. The ultimate purpose of the system will be convergence not simply coexistence, if this is achievable.

The task at hand for those involved in the WTO at present, particularly those individuals making up the delegations accredited to the WTO, is to achieve in the near term as much as they can, progressing toward making a positive vision of WTO 2050 a reality — improving the effectiveness of the constituent parts of the WTO — rulemaking, dispute settlement and the administration of the agreements governing the operations of the trading system.

