

The World Economic Order – *Building the WTO Back Better*
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The June 13 Final Communiqué of the G-7 Summit included the following statement:

4. Our agenda for global action is built on our commitment to international cooperation, multilateralism and an open, resilient, rules-based world order. As democratic societies we support global institutions in their efforts to . . . share prosperity through trade and investment. That open and resilient international order is in turn the best guarantor of security and prosperity for our own citizens. [emphasis added].

That we can refer to a “world economic order” at all is the product of the wisdom and foresight of mid-twentieth century planners preparing for the post world war era. This order is now 75 years old, a relatively short time in human history. The underlying precept was that a liberal international political order was inseparably intertwined with a liberal economic world order. The economic order was to be based primarily on three cooperative multilateral arrangements designed to be open to all nations, one for development finance, one for currency arrangements and one for trade. Two were founded at Bretton Woods -- the World Bank and the International Monetary Fund. The third, for trade, has a more complicated history.¹

The postwar planners intended the multilateral trading system to be governed by an International Trade Organization, the ITO, the product of the Havana Charter. When it failed to be accepted by the U.S. Congress, an interim trading arrangement, consisting largely of a series of tariff schedules and a set of rules to accompany them, would come be relied upon. This *ad hoc* structure, the General Agreement on Tariffs and Trade, the GATT, was to last nearly a half century, until it was succeeded by the World Trade Organization, the WTO, which was put into place in 1995. The WTO was designed to provide transparency with respect to trade measures and to be a repository of multilateral trade agreements, a forum for deliberation, the negotiation of additional agreements and the means to settle disputes among Members.

The multilateral trading system, since its inception, has by many measures been astoundingly successful. World Trade has grown dramatically as has global GDP. Hundreds of millions of people have been lifted out of poverty. The quality of life for billions of people has

¹ Supplementing the three multilateral organizations was an institution that was originally designed to coordinate aid for European recovery, the OECD, an organization of industrialized Western nations. To this were later added such additional coordinating mechanisms as the G7 and G20.

been improved and countless individuals have been able to rely on world trade for their livelihoods as innovators, producers, and consumers. For the first time in history, a single system governed nearly all of world trade. Most of world trade, some 80%, flows at tariff rates set in WTO schedules and under WTO rules. This is sometimes obscured by the fact that there are hundreds of bilateral and regional trade agreements. Whether businesses find it worth the cost to meet the requirements to qualify for their tariff preferences, they all share one thing in common: they are built upon the WTO's rules.

During the 26 years since the WTO was founded, the Members added an agreement to provide duty free treatment to information technology goods and duty-free treatment for pharmaceuticals. They concluded a landmark trade facilitation agreement that takes direct aim at reducing the 24% on average cost of moving goods across borders, a cost that is on top of whatever tariffs exist. They inaugurated peer review of trade regimes through the trade policy review mechanism. Their institutional arrangements provided increased transparency with respect to a large number of government measures that affect trade. In a testament to the WTO's importance, thirty-six countries have joined since its founding including former members of the Soviet bloc and China, and twenty-three countries are now seeking entry, bringing the WTO to near universal applicability.

Why then the current disquiet, the repeated, largely unheeded call by world leaders and trade ministers for reform of the WTO, the growing unease about the durability and even the relevance of this liberal international trading system. What challenges does the WTO face? What is the path forward?

To analyze the international order, it must first be recognized who the actors are. Ever since the Treaty of Westphalia, global relations are the exclusive province of nation-states.² In the WTO, there are 164 Members, each with recognized sovereignty over its trade³. Once this concept is kept firmly in mind, one is less likely to look upon the imposing classical building on the right bank of Lake Geneva, the Centre William Rappard, and mistake it as an independent seat of global economic governance. It is a place that can house negotiations among its Members and can provide for the enforcement of agreements through binding resolution of disputes, according to the will of its Members. It has a chief executive officer. She has as tools moral suasion, the Secretariat's analytical capabilities, and the ability to convene meetings, both internally and externally to coordinate with other international organizations. Her formal authority to do more is lacking. Her role largely is what she makes of it insofar as the Members acquiesce in her doing so.

² Throughout this essay, when referring to "nation-state" or WTO Member, the reference includes, depending on context, the European Union. For trade during normal times, it is a superstate comprised of 27 Member states.

³ In the context of the WTO, Chinese Taipei and Hong Kong are seen as sovereign with respect to trade, even if they are not accorded nation-state status for other purposes. The same is true of Curacao, seeking to accede to the WTO.

Beyond the basic issues of national sovereignty, the trading system is beset by multiple specific problems. They consist of past challenges unmet, current challenges still demanding a response and emerging challenges yet to be confronted.

Systems of governance generally have three functions – legislative, executive, and judicial. With respect to the WTO each of these functions is in trouble:

1. *The loss of binding dispute settlement.*

While the first of these, the legislative function, is the most important, it was the judicial function breaking down that likely caused the G20 leaders to call for WTO reform. The United States, founder of the multilateral trading system, had been disaffected for years by the steady erosion of remedies available against injurious trade, sometimes categorized as unfair because of dumping and subsidization, and sometimes simply injurious due to the loss of market share by an industry due to a rapid increase in imports. To this was added frustration over the WTO Appellate Body's insufficient ability to find subsidies in support of state enterprises.

The narrowing of the effectiveness of trade remedies, through quasi-judicial interpretations of the WTO rules, created an imbalance in the WTO agreements. The political and legal premise of the WTO is that broad liberalization will be accepted if harms from trade can be lessened, even if temporarily. One major consequence of the loss of effective trade remedies was organized labor's alienation with respect to a liberal US trade policy. Limiting trade remedies to an ever-narrowing exception from broad trade liberalization was a fundamental political misjudgment. In this, one of the seeds for the rise of calls for a worker-centered trade policy and a surge of populist sentiment can be found. Unbridled globalization resulted in a backlash. The costs for the world economic order have not yet been fully tallied but they are very large.

The bottom line: the hallmark of the WTO – the full enforceability of its rules -- must be restored. This in turn requires that dispute settlement decisions be again binding. A negotiation is needed with an outcome that is viewed as legitimate by all WTO Members who seek to resolve their disputes at the WTO. Getting to that point may be contingent the Members giving clear guidance on a number of contentious substantive issues, but it must occur.

2. *The inability to update the trading system.*

There is only one way to show that the WTO as a trade negotiating forum is effective and that is through concluding new agreements. The seemingly lost art of negotiating and concluding trade agreements must be rediscovered. The WTO was the product of eight rounds of multilateral trade negotiations, the Uruguay Round, concluded in 1993. A ninth round, the Doha Development Agenda -- initiated in the immediate aftermath of 9/11 in 2001 -- was abandoned by most WTO Members in 2008. There is no single agreed explanation for its end, but it is clear that it is not being revived other than perhaps piecemeal. There have been no

rounds since. Nor have there been ongoing multilateral negotiations that all have agreed to, such as on agriculture⁴.

The WTO is not graded on a curve. The WTO is held to a higher standard than its sister international organizations. Not every meeting of finance ministers held for the Bank or Fund is judged by whether the participants launch a new financial instrument or lending facility. A gathering of trade negotiators is judged solely by their output in terms of agreements reached. Not having substantive outcomes marks a WTO ministerial meeting as a failure, a judgment that is widely applied to the effectiveness of organization itself, underlined further at Buenos Aires in December 2017 by the absence of even an agreed joint communiqué at its conclusion.

The WTO's Members' failure to come to grips collectively with the trade aspects of the pandemic during the last 15 months is a black mark against the organization and its Members. Future pandemics and this one must be dealt with.⁵ Under new leadership, the WTO is seeking to rally to the challenge. Can nations cooperate sufficiently to assure that the necessary flow of vaccines and other essential goods will cross borders? Increased foreign direct investment can certainly help, but a trade response is imperative.

The WTO's Members also cannot afford to fail to put into place rules for the global digital economy. What lies ahead absent cooperative solutions is fragmentation of e-commerce resulting in a serious detriment to world growth and prosperity. We are beyond the beginning of the age of digital commerce, but global digital commerce and digitally enabled commerce can be strangled by uncoordinated national actions.

The WTO's Members cannot afford to fail to put into place rules to safeguard the environment. They cannot afford to wager that carbon border adjustment measures (which will likely dwarf tariff levels in developed countries at least for carbon-intensive products) will somehow work out well for the trading system without examination, discussion, and cooperation at the WTO. The trade aspects of climate change must be addressed. It is a humanitarian imperative to smooth the flow of food from areas of plenty to areas of shortages. Other green challenges that need to be met are establishing credible disciplines over fisheries subsidies and curbing plastics pollution in the oceans. WTO Member stewardship over the environment must be fully embraced.

⁴ **WTO Agreement on Agriculture.** Article 20 Continuation of the Reform Process.

Recognizing that the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform is an ongoing process, Members agree that negotiations for continuing the process will be initiated one year before the end of the implementation period...

⁵ This is not to say that the existing trading system and its mechanisms completely failed. Trade in essential medical products did finally flow and vaccines are beginning to move in quantity across borders. The Secretariat did provide much greater transparency through enhanced monitoring and reporting. Restrictions on the export of food were largely rolled back. But there was insufficient deliberation in the WTO of the challenges posed and adoption of the means to meet them.

To get to solutions, two changes must occur. First there must be a strong desire among a critical number of major trading nations to obtain a result. Second, the current use of a single member veto must be altered.

With respect to the first requirement, it is not clear that the leaders of major countries attach a high enough priority to accomplishing either any new disciplines or trade liberalization. G7 and G20 leaders' declarations do not play through to action at the level of negotiation. Heads of government actually do have the means to change this if they so desire.

As to the second of these two fundamental challenges, the culture of the organization, the baked-in flaws, must be overcome. Requiring a consensus in all decision-making, which in practice often means unanimity, is crippling the institution's ability to reach negotiated results. The tyranny of the veto is the price paid for the reservation of unbounded sovereignty that has grown beyond not allowing WTO actions to bind one's own country and extends to not allowing any others to proceed. Not even a remarkably anodyne agreement to refrain from imposing export restrictions on purchases of the World Food Program for humanitarian purposes could clear the hurdle of consensus decision-making. The realization of the promise inherent in the Joint Statement Initiatives -- the open plurilateral agreements -- has been called into question earlier this year by two members in no uncertain terms.⁶

There was a time, in 1979 during the Tokyo Round, when two members of the multilateral trading system (the United States and the European Communities) could dictate to others, such as for closing the negotiations. A slightly larger group could dictate the outcome of the Uruguay Round. Now any WTO Member can in theory seek to stop agreements from being reached, and it is clear that at least two Members will do so with respect to the Joint Statement Initiatives. For the WTO, this is a recipe for atrophy and decline. An answer must be found. One distinguished group of believers in the multilateral trading system has already suggested that those who are willing to go ahead simply do so and do so outside the walls of the WTO.⁷

For the WTO to regain credibility, it is necessary to demonstrate that agreements can be reached. Happenstance has placed the negotiations on fisheries subsidies disciplines closest to completion. Its successful completion could spur efforts to meet other challenges.

3. The absence of complete agreement on fundamental principles and shared values.

The Saudi presidency of the G20 revealed through its Riyadh initiative⁸ the absence of a complete consensus on the full range of objectives and values of the WTO. The Saudi chair noted a list of principles that all G20 Members stated were agreed. Not all could agree that the following four were common principles of the WTO:

⁶ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W819.pdf&Open=True>.

⁷ <https://www.csis.org/analysis/time-trade-compact>.

⁸ <http://www.g20.utoronto.ca/2020/2020-g20-trade-0922.html>.

- Employing “market-oriented policies”;
- Special and differential treatment;
- Sustainability;⁹ and
- The practice of consensus decision-making.

Each of these disagreements reveals a fault line that runs through the WTO’s membership.

Market-oriented principles. The headline disagreement that divides China and the Western trading nations is whether or not the foundation principle upon which the WTO rests is that market forces will determine competitive outcomes. Utilizing “market-oriented policies” is not an explicit requirement of WTO Membership. That it is an underlying assumption of the WTO, however, should be beyond debate. The Marrakesh Declaration, bringing to a close the negotiations that established the WTO states that the founding parties are:

Determined to build upon the success of the Uruguay Round through the participation of their economies in the world trading system, based upon open, market-oriented policies and the commitments set out in the Uruguay Round Agreements and Decisions, . . .

[emphasis supplied]

Of necessity, the WTO is about convergence not co-existence. If it is to be more limited, if it is to be about co-existence, then it would have to be a different organization. Either countries evolve, as a number of Asian countries have done, or the system will have to adapt. If the latter, it will not be the WTO as it stands today. China, which asserts that the organization of a Member’s domestic economy, including widespread state ownership, is not a matter for the WTO to address, has not suggested fundamental changes to the existing multilateral trading system.

The place of development in the system. It is an article of faith for most observers -- ever since Adam Smith and David Ricardo spoke to the issue -- that trade leaves nations better off. A corollary is that development will ultimately require open markets – open abroad so that trade can take place, increasingly open at home so that domestic producers become internationally competitive. Few would say that open markets will be sufficient. There are preconditions. There must be investment, there must be capacity. These can be the subject of assistance. There would be no African Continental Free Trade Agreement if it were believed that greater openness would stifle development. The division at the WTO (it is no longer a debate) is over whether there should be blanket special and differential treatment for all who call themselves developing. The situation is nuanced in that China, a standard bearer of and

⁹ Perhaps to some extent the disagreement over sustainability was cured by the most recent U.S. presidential election. For others, agreeing that “sustainability” is a principle of the WTO might not have been acceptable by some who felt that it might impinge upon development by giving it a higher priority. Sustainability is, however, in the Marrakesh Agreement, and one could be forgiven for thinking that it would be wholly unobjectionable to Members.

target for the right to self-declaration of developing country status, states that it would in any negotiation take on the responsibilities in line with its capacity.

To pragmatists, this might be seen as the necessary resolution of the issue. But that is not the end of the story. There is a question of sequencing. “Tell me what I am going to get before I tell you what I am going to give” is not a recipe for successful trade talks. Whether the rhetorical impasse is a roadblock in substance can only be determined in a negotiation.

4. The absence of an executive.

It is rare among organizations of any size that they lack an executive. Corporations have CEOs. Governments have an executive branch. The larger the organization the more necessary are executive functions. The WTO has at best an underdeveloped executive branch. The Director General is not expected to table proposals to move negotiations forward. She is not expected to intervene to head off major disputes. The WTO secretariat is not expected to independently report upon its Member’s trade measures without their clearance. These shortcomings are a major net negative for the organization. An expectation of reticence can breed further timidity among what is and should be a source of enormous trade experience and insights. Starving the organization of resources rather than right-sizing them to the challenges that exist now and can be foreseen is short-sighted. A budget that has remained at the same level for over a decade together with a mandate to hang back and wait to be called upon promotes a culture among Members and staff of seeing limits more quickly than possibilities.

5. The necessity for leadership.

Harry Truman, in a very fine speech on world trade that he delivered at Baylor University in 1947, said:

We are the giant of the economic world. Whether we like it or not, the future pattern of economic relations depends upon us. The world is waiting and watching to see what we shall do. The choice is ours.

The world has changed a lot since then, but the role of the United States is still crucial. The United States is the second largest goods exporter in the world and the largest goods importer, as well as the largest services exporter and importer.¹⁰ It has been a motivating force in multilateralism since its inception until relatively recent times, but it could never act alone. In the Tokyo Round, for the first nontariff agreements, it was joined by the European Communities (EC). By the time of the Uruguay Round, it was joined not only by the EU (successor to the EC), but by Canada and Japan (as the “quad”) to provide impetus for progress.

To move forward now there must be a firm transatlantic trade policy alliance geared to multilateral outcomes, combined with other friends of the system, mid-range countries,

¹⁰ According to USTR.

including the chief proponents of the Joint Statement Initiatives and similar endeavors, countries such as Australia, Singapore, New Zealand, Switzerland, Colombia, Uruguay. For a truly multilateral agreement, China, India, and South Africa would be needed. It is an open question whether a broader consensus can be reached and for what objectives. That these countries could come together cannot be excluded – for example to deal with the pandemic or climate change.

To some extent leadership can come from the Director General. It did in the case of Arthur Dunkel, GATT Director General, without whom there would not have been a WTO, and it could under Ngozi Okonjo-Iweala. I believe that is why she was chosen for the job. But she cannot succeed without the largest trading countries putting their shoulders to the wheel to make progress. Declarations by leaders are not enough.

6. The place in the system for plurilateral agreements

One of the most fundamental systemic challenges is how, in an organization founded on nondiscrimination, some can move forward faster than others, if doing so creates benefits for others that may never be reciprocated. This is far more than a technical question. Creation of extramural agreements, as the Trade In Services Agreement (TISA) might have been, raises an existential question for the WTO. The global organization co-exists with regional agreements. Can it as readily meaningfully co-exist if whole new subject areas, such as the digital economy, are agreed outside of the global system by countries accounting for a large share of world trade.

7. The impact of geopolitical rivalry

There are ways in which the WTO can be helpful in finding areas of cooperation between two global competitors. It can reflect bilateral agreements between them in the rules of the system if the resolution is more general applicability, and on occasion a broader negotiation involving other parties may facilitate resolution of issues that might have been intractable in bilateral talks.

That said, the strategic competition can overshadow many of the problems listed above including resolution of seeking to impose additional disciplines on industrial subsidies, agricultural domestic support, fisheries subsidies, and carbon border adjustment mechanisms, and reconstituting binding dispute resolution. The discussion here of these issues has not dwelt on the strategic competition because while the WTO will be affected by geopolitical strains, it is far more likely to reflect rather than control the contest.

If this is the case, it is best for those interested in improving the system to push ahead with resolution of issues that are needed by the system compartmentalized from the broader

contest. Those WTO Members should act with serenity to accept the things they cannot change, courage to change the things they can, and the wisdom to know the difference.¹¹

Conclusion – the future of the world trading system

World trade takes place to serve people. It exists because people need or desire goods and services that are sourced outside national borders. It will take place to a substantial degree whether there are agreed institutions and rules or not, but absent the liberal world economic order, it will take place at a much lower level and at much greater cost. The founders were motivated by creating a system that promotes economic well-being as a condition for achieving and maintaining peace. Indeed, underwriting peace is a primary motivation of leaders of a number of conflict-affected countries that have joined or seek to join the WTO today.

Businesses require certainty. Supply chains must be more resilient to meet challenges that with hindsight should have been foreseen. Workers equally require a rules-based global trading system. It must be a system that is inclusive in its benefits -- for women, for small business, for farmers and industrial workers, for goods and for services, for traditional commerce and for digital commerce.

These times require a new humanism for trade policy. A broader lens than that of economic efficiency is needed. That should be a lesson of the pandemic. The discussion at the WTO on vaccine availability is more than a question of narrow national self-interest. It has a moral dimension. So does the movement of essential medical goods and equipment. So does the flow of food across borders. A well-informed critic of U.S. performance in dealing with the pandemic said that the U.S. performed well with respect to the hard scientific issues but failed on the soft social science issues, which is what the political system should be designed to deal with.¹² This kind of analysis needs to be applied now as well to the multilateral trading system, an essential part of the world economic order.

Three weeks ago, in a new Atlantic Charter, the leaders of the US and UK stated:

we intend to strengthen the institutions, laws, and norms that sustain international cooperation to adapt them to meet the new challenges of the 21st century, and guard against those that would undermine them. We will work through the rules-based international order to tackle global challenges together; embrace the promise and manage the peril of emerging technologies; promote economic advancement and the dignity of work; and enable open and fair trade between nations.

¹¹ The Serenity Prayer is attributed generally to American theologian Reinhold (1892–1971).

¹² Andy Slavitt, former senior adviser to President Biden's White House pandemic response team, in a discussion of his new book, *Preventable*, about the U.S. government's response to the COVID-19 pandemic.

These are fine sentiments but need to be expressed by more than the two signatories.

The Communiqué of the ensuing G-7 Summit meeting in Cornwall on June 11-13 provided a more detailed pledge in the form of a roadmap for what should be accomplished to repair and update the multilateral trading system:

30. We will provide the sustained effort and momentum necessary to ensure progress is made in the modernisation of the WTO to promote fair competition and help secure shared prosperity for all. We will work together at the WTO and with the wider WTO membership ahead of MC12 to advance the following points:

- ***modernisation of the global trade rulebook** so that it both better reflects, with new rules, the transformations underway in the global economy, such as digitalisation and the green transition; and strengthens rules to protect against unfair practices, such as forced technology transfer, intellectual property theft, lowering of labour and environmental standards to gain competitive advantage, market-distorting actions of state owned enterprises, and harmful industrial subsidies¹³, including those that lead to excess capacity;*
- *stronger adherence to the existing and modernised rulebook, including through greater respect for and **compliance** with transparency obligations, and a strengthened WTO monitoring and deliberating function;*
- *a fairer approach to countries' different responsibilities under the rulebook, including through addressing the arrangements for special and differential treatment so they reflect developments in the global economy but continue to **account for the special needs of the least** developed and low-income developing countries;*
- ***proper functioning of the WTO's negotiating function and dispute settlement system**, requiring addressing long-standing issues; and,*
- *support for the interests of the least developed and low-income developing countries, including in the full implementation of WTO rules to integrate into the*

¹³ While the communiqué did not focus on it, agricultural domestic support will also require additional disciplines.

world trading system, so that any modernisation of the global trading system supports the social and economic growth and development of these countries.

[emphasis supplied].

To convert these statements into reality will require a very large investment of energy and political capital not seen in recent years. It will take the tabling of concrete proposals, engaging in text-based negotiations, pressing forward with a negotiating process with a single-minded dedication to achieving agreements of wide applicability. To succeed there must first be a firm transatlantic alliance between the United States and Europe, working in tandem. They can then lead a coalition of the like-minded, to bridge a number of key differences among major trading nations and manage those that cannot be bridged.

The fact that there is a global economic order at all is because there were dedicated individuals who decided three-quarter of a century ago that they would accomplish what had never before been achieved. It was very hard won. It is of great value. It must be treasured, but to sustain the order, it must be improved, and the time to start is now.

This school, you as students and as practitioners, have a role to play. The trading system needs a number of you willing to invest your time, thoughts and energy in creating WTO 2.0. There are many avenues through which you can participate – in public service in government, civil society, or an international organization, or more directly in international commerce. Do your part to make the world better. It is exciting and rewarding to take part, to try to make a difference.