China in the World Trading System

The Role of China in WTO Reform

Remarks of

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I very much welcome the opportunity to visit with you today in this forum, and to share that honor with my former colleague, former WTO DDG Yi Xiaozhun.

For me there can hardly be a more important topic for the world trading system than WTO reform. China has a central role to play in this process.

The context

Two great forces affect international trade relations, one centripetal, and one centrifugal. They are, respectively, the need and aspiration for international cooperation to manage the external environment so that each country can prosper, and the desire of each government for unconstrained freedom to act as a sovereign in pursuing its immediate interests. The multilateral trading system embodied in the WTO is the construct within which global cooperation for trade

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\(^1\) China Finance 40 Forum (CF40) is a leading independent think tank in China. Starting from March 2021, PIIE and CF40 have jointly launched a closed-door seminar series named PIIE-CF40 Young Economist Forum, which is held every other month featuring one Chinese economist and one PIIE scholar as lead speakers each time on a chosen subject related to US-China relations. The goal is to provide a new venue for scholars from both institutions to be able to exchange views despite the pandemic and travel restrictions.
is to take place, and where sovereigns agree to limit their short-term actions where doing so would be in the collective, long-term interest.

There has been a growing chorus from all quarters for WTO reform.

The current drive for WTO reform was no doubt triggered by the demise of binding dispute settlement, added to by geopolitical rivals not seeking to resolve their economic differences at the WTO. But there were long-standing concerns before these issues came to a head. The WTO had a reputational problem. Despite its rules still governing by far most of world trade (98%), it was not being called upon to deal with the dominant issues of the day: the availability across borders of first essential goods to fight the pandemic and now vaccines, both very much trade concerns as well as production and investment issues. Nor have Members advanced very far with answers to the trade aspects of the looming challenge of climate change.

Even before that, the WTO Members had not made sufficient progress to expand the reach of the WTO’s rules, for example, to cover the global digital economy. There are many other examples: The WTO Members have not been able to agree to protect the oceans against illegal, subsidized over-fishing after over 20 years of talking. And they failed to maintain the steady movement toward more open trade. The last attempt at trade liberalization collapsed in

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2 When anyone speaks of the WTO being able to do something or not, it is really a reference to the WTO’s Members acting collectively. The WTO itself does not have legal personality other than for internal personnel issues and headquarters matters in interactions with the Swiss government. It is a shortcoming of the WTO that it has no independent executive. One area of potential reform is creating the expectation that the Director-General would table compromise texts and other negotiating proposals for consideration by the Members. In addition, the WTO Secretariat could be given a mandate to assure as complete transparency as possible of trade measures imposed or contemplated by Members without the need for further approval.
2008 without result. The momentum of trade liberalization, seen in eight great rounds of multilateral trade negotiations from 1947 to 1995, dissipated. The flavor of the day for many governments was more populist, with less investment by governments, business and civil society in the global trading system. The central challenge for the WTO’s Members today is to show their organization’s current relevance. In the success of the institution, China has no less a stake than any of its largest trading partners.

There are three ways in which WTO reform can be achieved: resolving current problems through the negotiation of new agreements, restoring enforcement of the rules of the system, and improving the administration of the trading system.

Today’s discussion is about looking at WTO reform through a single lens – China’s participation in international trade and the trading system.

The multilateral trading system was formed without reference to China. While China was one of the original 23 signatories to the GATT in 1948, its participation in the process of managing the trading system ended almost when it began, China withdrawing following the Chinese revolution one year later. China was not to resume its seat at the table until 2001 when it became a WTO Member six years after the WTO was founded. Today, China is the world’s largest exporter of goods. It is now an essential party to any global trade agreement. How it views the multilateral trading system and what role it takes, are of great consequence. So is how the other Members view China’s participation in trade.
The next two parts of this presentation address what the system needs and how China could play a central role in accomplishing it, and then takes a look at what the trading system would look like if what China has listed as its reform objectives were adopted in their entirety.

What is needed

Last November, I represented the WTO in a Meeting of G20 Leaders. I told the Leaders:

*With respect to trade, there are three immediate challenges: to utilize trade to help underwrite the economic recovery, to facilitate trade in essential medical products to deal with the pandemic, and to reform the institutional framework for world trade.*

Had I had one more minute beyond the allotted three, I should have added a fourth challenge, “to address climate change and the environment”.

I put institutional reform of the WTO in third place. Why? Because more than anything else, the pressing question for the WTO is whether it can respond effectively to current challenges. With the U.S. passing the 700,000 mark of deaths from COVID-19, part of the world’s tally of 4.5 million, and with most of the world short of needed vaccines, the pandemic, its effects on human health and the health of the world economy are very much on our minds.

*Trade and health.*

For the governments and authorities of most Members, the highest trade priority last year and now, should be, and in many respects is, doing whatever can be done to facilitate access to essential medical goods and vaccines to deal with the pandemic. Remarkably, the WTO
Members have done close to nothing collectively and formally as a whole to deal with the pandemic and future pandemics. This does not mean that Members did nothing. For example, agriculture-exporting Members led by Canada pledged not to interfere with their exports. In addition, Members generally cooperated with the Secretariat enabling it to make current information available with respect to trade measures, both facilitating and restrictive, as these affected essential goods, including food. As a result, better-informed decisions could be taken by governments. Many of the early trade restrictions have been rolled back, particularly for food. But vaccines remain in short supply.

The furthest that Members have gone collectively (meaning multilaterally) to deal with trade and health is have before them a draft General Council decision on trade and health put forward originally by the Ottawa Group of 13 WTO Members, including the EU (for its member-states). As of last count, 52 WTO Members, including China, have put their names down in support of the initiative. Were it adopted by consensus, WTO Members would take the following actions:

- Export restrictions –
  - Commit themselves to review and promptly eliminate “unnecessary” existing restrictions on exports of essential medical goods and exercise restraint in imposing new ones.
  - Ensure that any export restrictions do not disrupt humanitarian shipments nor COVAX distribution of vaccines.
  - Should notify export restrictions
  - Justify export restrictions upon request
  - Duration should not exceed 3 months, which would be renewable, and not outlive the crisis.

- Customs procedures
  - This may include digital customs procedures, and services such as freight, logistics, distribution and transport, which have proven an effective tool in facilitating the frictionless movement of essential medical goods across borders
  - Will share experiences with respect to identifying best practices
o Will fully engage in the work of the relevant WTO bodies, including the Trade Facilitation and Technical Barriers to Trade Committees as well as the Council for Trade in Goods and Council for Trade in Services.

- Tariffs
  o Will make best endeavors to temporarily remove or reduce tariffs on goods that are considered essential to fighting COVID-19 pandemic, as far as possible, taking into account each Member's circumstances.

- Transparency and review
  o Will respond swiftly to requests for information on trade measures adopted during the present health crisis, including on measures undertaken to implement this initiative, from any other Members.
  o Will engage fully with the trade monitoring exercises done on a regular or an ad hoc basis in the WTO, including the bi-annual Trade Monitoring Report, and pay particular attention to complying with all WTO notification requirements during the Covid-19 crisis.

- Cooperation of the WTO with other organizations
  o We [the undersigned] commend the work of the WTO Secretariat resulting in an extensive database of measures related to COVID-19 and a range of dedicated studies and reports allowing them to have a comprehensive and accessible overview of the situation. The WTO Secretariat is encouraged to continue that work, focusing on the causes and effects of the disruptions in the supply chains of essential goods and drawing on research of other international organizations.

  o The WTO Director-General is strongly encouraged to intensify cooperation with other relevant international organizations such as the World Health Organization, the World Customs Organization, the World Intellectual Property Organization, the Organization for Economic Cooperation and Development, the United Nations as well as the G20 with the aim of improving the analytical capacity of WTO Members to monitor market developments in trade and production of essential medical goods. This would enhance WTO Members' preparedness for a health crisis and contribute to the creation of an early warning mechanism in the event of critical shortages of essential medical goods.

- Considerations for the 12th WTO ministerial conference
  o At the 12th WTO Ministerial Conference, we will take stock of the effectiveness of the above actions with the view to adopting possible commitments regarding trade in essential medical goods.
I have used bold font above to indicate words of commitment as opposed to statements of intent, or best efforts. This draft decision contains elements useful to improving the WTO, but it must be kept in mind that this is a draft which has not been adopted, that the actions are at this stage recommendations to the Membership. It is praiseworthy as a way to try to have the world’s trading nations engaged in collective action to meet this and future pandemics. When and if the decision is adopted, there can be an assessment of its effectiveness and whether its provisions are enforceable.

What more could be done?

A practical step for WTO Members to take now would be to commit themselves to make sure that global value chains are as free as is possible of any obstacles to speeding medical supplies and equipment to wherever they are needed. As vaccines, therapeutics and diagnostics are produced, barriers at borders must be reduced. A new accord on trade and health should contain a binding international understanding limiting the use of export restrictions, defining the WTO-rule-promised “equitable share” of supply that is to be made available to the world outside one’s own national boundaries (required by GATT Art. XX(j) when export controls are put into place). Assigning a number to that share would be a crude but potentially effective way to make the WTO rule have clear effect. Commitments should be made to have tariffs on imports of essential goods duty-free.

The WTO rules should require much greater transparency, through notifications and proactive independent monitoring by the Secretariat, and through immediate improvements in
trade facilitation efforts (such as e-customs filings, pre-clearances), particularly for the poorest countries where crossing borders is more likely to result in impeded trade.

One additional positive response in adapting the WTO rules to pandemics, suggested by a colleague of mine at PIIE, Chad Bown, is to agree to a positive approach to subsidies when the object of support is the production of inputs for vaccines and vaccine manufacture itself.

There are also means to respond to the needs of pandemics directly relevant to China. In 1995, 90% of global trade in pharmaceuticals was duty-free under the WTO’s Pharmaceutical Agreement. That number has dropped to closer to 66% or less today, as China and India have become major factors in this trade since the Pharmaceutical Agreement was originally negotiated and they have not joined the Agreement. Joining should make both commercial and political sense for China and India. It would counter the current widespread view that the WTO Members are unable to move forward to liberalize trade further.

A second area in which China would be an important player would be immediate action to make medical equipment duty-free in an update of the Information Technology Agreement (ITA). A review of the coverage of the Agreement was to have taken place in 2018. It should be undertaken now without delay with an added emphasis on pandemic and climate change readiness. China should be at the forefront of this negotiation.

Trade finance

When I spoke nearly a year ago at that G20 Leaders meeting, assisting the rebound of trade to restore the world to economic health was still a paramount concern. For the poorest
countries, it still is. According to UNCTAD, the COVID-19 pandemic brought about the worst growth performance in 30 years for the least developed countries, reversing progress achieved on several development dimensions, especially poverty, education, nutrition, and health.³

Knowing the plight of particularly the least developed WTO Members, I called for the restoration of trade finance for the developing world. The $1.5 trillion gap last estimated in 2018 between what is needed and what is being supplied to finance trade is now very likely an understatement. Not only is trade finance not at levels prevailing before the pandemic; it is not back to levels that existed before the 2008/09 financial crisis. The rejection rate for trade finance applications globally is over 50% for SMEs, over 30% for mid-size companies, and only 10% for large companies.⁴ The lower the level of a country’s income, the higher the gap. This is because in low-income countries, it is more likely that SMEs are the main traders. Hence, the rejection rate of the trade finance applications of these companies will be higher overall in low-income countries. This problem has also been the subject of additional regional examination by the Asian and African Development Banks, both of which confirm the need to remedy the trade finance deficit.⁵

Trade finance gaps are to a large extent structural – with macroeconomic reasons (low local saving rates preventing large lending rates relative to GDP and in comparison to the trade/GDP ratio), financial reasons (low capacity to mobilize savings, low risk capacity by financial sectors), but there are also market failures (large gaps between the perception of risk of

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⁵ Ibid.
operating in developing countries against low default rates on trade finance, even in the lowest income countries; as well as confusion between the country risk and counterparty risk). Market infrastructures can be improved, such as through international recognition of documents and signatures, among other regulatory issues. In a relatively specialized service sector like this one, there are huge information asymmetries particularly in poor developing countries, including on the part of traders, who too often have little idea of existing trade finance facilities and how to apply properly (explaining in part the high rejection rates).

This is a subject for the WTO because all matters fundamentally affecting trade cannot be said to be outside the purview of the world’s trade organization. Over a decade ago, to address the financial crisis, the WTO used its convening power to bring together large commercial banks and international financial organizations to focus on closing the trade finance gap. It should do so again. China has famously taken a leading role in financing the physical infrastructure for trade in the developing world. China could take a parallel share in leadership with other industrialized countries to work to solve this problem.

*The negotiating function*

The most important element of WTO reform is restoring the negotiating function. Here deeds, not statements of intention, matter. The only way to demonstrate that the WTO’s negotiating function is restored is for the Members to conclude new trade agreements addressing the world’s needs. Tackling the trade issues involved in the pandemic is vitally important, but it is only a start.

There are a number of important opportunities for Chinese leadership in negotiations.
A positive substantive outcome is necessary in the fisheries subsidies negotiations, which it is hoped will be concluded shortly. China has by far the world’s largest long distance fishing fleet. China’s full and active participation is essential to attaining this objective.

Another marine issue in which China is prominent is its co-sponsoring with Fiji of an environmental initiative targeting the problem of plastic waste in the oceans. This is a praiseworthy endeavor in which all should join.

China should also take a lead in re-starting and concluding an Environmental Goods Agreement (EGA).

_The Joint Statement Initiatives (JSI)_

Other than the negotiations on fisheries subsidies, all of the foregoing suggestions are in the realm of “what could be” on the WTO agenda, not what is currently well advanced. There are other areas of current work. The newest and most promising activity consists of the Joint Statement Initiatives (JSIs). China is active in each of the JSIs. The one with the most trade coverage is e-commerce. Here China is likely to hold a key to the level of ambition that will be needed for there to be an effective agreement. The most difficult issues have yet to be faced – privacy, cross border data flow, and forced localization of servers. China has strong defensive, and one would think, given its advanced standing in many of the technologies of digital commerce, forward-leaning interests as well.
China is also a major proponent of the JSI for Investment Facilitation for Development. It mirrors in most respects the Trade Facilitation Agreement. China is also a participant in the negotiations taking place in the JSI for Domestic Regulation of Services.

Any results from the JSIs will add to the world trade rule book and constitute reform. It remains to be seen how valuable these agreements will be, and it is not yet clear how they will be incorporated into the WTO *acquis*. Either the WTO will be a venue for the negotiation of these crucial open plurilaterals or it will not, and China will have to make a choice as to its position on the subject. Open plurilateral agreements are essential to the future health of the international trading system.

Turning to the third item that I raised with the G20 Leaders – reform of the institutional framework for world trade, there has been no visible progress.

*Dispute settlement*

A second but equal WTO reform priority to restoring the deliberative and negotiating functions of the WTO is to put into place binding dispute settlement seen as legitimate by all. China has not been a major combatant in Geneva on this reform topic, although it has a major stake in the outcome. The hallmark of the rule of law and the WTO is that rules are to be enforceable. With no agreed appellate level and conclusions reached by panels deemed not to be final due to notional appeals being filed (“appeals into the void”), the system has for most issues
The Members who have been most active in exploring solutions should continue to do so, knowing that for any dispute settlement system to apply to all will require a consensus of all.

The return to binding dispute settlement will require not only changes in how the panel and appellate level operate but also in making the WTO rulebook more complete. Based on the concerns expressed, it is likely that new rules on industrial subsidies, state intervention in the economy and technology transfer will need to be fleshed out for binding dispute settlement to be fully restored. China needs to be a full party to the discussion and any negotiation of new rules in these substantive areas. Simply calling for the appointment of additional Appellate Body members will continue to have no practical effect.

As a major economy and important stakeholder in the multilateral trading system, China has a pivotal role to play which it should approach positively and constructively – rather than defensively, engaging actively in deliberations on reform. There is a choice between seeing areas of emerging rules as targeting or threatening China’s practices or, more fruitfully, seeing how they can serve the trading system more broadly. Either the WTO will be the venue for setting the rules of engagement or it will be done regionally, bilaterally or unilaterally. It should be in China’s interest to seek resolutions where it has a seat at the table.

Transparency

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6 China faced a WTO challenge within three years of it joining the WTO. It decided to withdraw the practice in question in response to consultations rather than seeking adjudication by a panel. China is a major user of the dispute settlement system, both as the target of cases and as complainant. It has joined the Multi-Party Interim Arrangement (MPIA).
The Members at MC12 should require that notification commitments be implemented conscientiously and that the WTO Secretariat independently and aggressively report on all measures affecting trade flows, those that impede trade and those that facilitate it. Chinese support is essential to a robust outcome.

Areas of difference that specifically involve China

There are apparent fault lines that run through the WTO. One could prove to be more of a problem than the other. China causes consternation when it claims as a red line maintaining developing country status as a matter of self-designation. However, this position may have more political than substantive importance, as China also states that it will accept obligations commensurate with its capacity. China would say that its economy has a greater range of incomes and stages of development by sector than most, and the fraction of world population affected is, of course, far larger. While China has made dramatic progress in lifting hundreds of millions of its people out of extreme poverty importantly assisted through its integration into the world economy, all too many Chinese are still near the poverty line. Rural farmers on small holdings present one picture of China. However, another picture of China is to be found in China’s advances being made by scientists and engineers who are at the leading edge of new technologies such as artificial intelligence (AI). Any trade negotiation must take into account China’s capabilities and its standing in the world economy, as well as its internal realities. China is too important to claim much in the way of special and differential treatment the likely effect of which would be to undermine finding agreed results in trade negotiations with other WTO Members.
More serious than the rhetorical issue of whether China is or is not a developing country is the heated discussion over “market-oriented policies”. The Riyadh Initiative for the Future of the WTO reached a highly interesting outcome in its November 2020 G20 meeting. The Saudi chair reported that all members agreed to the following list as part of the principles of the WTO under the heading of “Rule of Law”:

- Transparency
- Non-discrimination
- Inclusiveness
- Fair competition
- Market openness
- Resistance to protectionism
- Reciprocal and mutually advantageous arrangements, acknowledging that agreements provide for differential and more favorable treatment for developing economies, including special attention to the particular situation of least developed countries

The Saudi chair reported that Members could not reach agreement that “market-oriented policies” is a principle of the WTO.

China defends the role of the state in its economy. However, whether it should be as sensitive as it is to the adoption of this principle is questionable. China already committed in the Working Party Report accompanying its Protocol of Accession that its state-owned enterprises (SOEs) would behave in effect in a market-oriented manner:

44. In light of the role that state-owned and state-invested enterprises played in China's economy, some members of the Working Party expressed concerns about the continuing governmental influence and guidance of the decisions and activities of such enterprises relating to the purchase and sale of goods and services. Such purchases and sales should be based solely on commercial considerations, without any governmental influence or application of discriminatory measures. . . .

46. The representative of China further confirmed that China would ensure that all state-owned and state-invested enterprises would make purchases and sales based solely on commercial considerations, e.g., price, quality, marketability and availability, and that
the enterprises of other WTO Members would have an adequate opportunity to compete for sales to and purchases from these enterprises on non-discriminatory terms and conditions. In addition, the Government of China would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises, including on the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO Agreement. The Working Party took note of these commitments.

This commitment already applies to government influence over private or quasi-private enterprises as well, foreign or domestic, where the role of the state is even less overt, because any government intervention that favors national goods, services, or IP, or treats one foreign supplier less favorably than another, violates fundamental and binding WTO non-discrimination rules: National Treatment and the Most-Favored Nation Principle. The hurdle is often not the legal principle involved but adducing proof of the influence.

China’s Accession Protocol itself, providing other Members with additional flexibilities to restrict imports from China, indicates a belief of the negotiators for China’s entry into the WTO that there would be continuing progress toward China allowing market forces to determine competitive outcomes in its market, to determine investment, and to avoid artificially supporting its exports.

The golden rule of the multilateral trading system is that competitive outcomes should be determined by market forces and not state intervention. Without this rule, the system cannot function as intended. As the world’s largest exporting country, China should recognize that this fundamental principle is in its commercial interest. Its enterprises require access to markets around the world. That market forces are to determine competitive outcomes is the basis for the WTO and the GATT before it. Were this principle not accepted and applied, there would no effective alternative but to adopt additional interface mechanisms, far beyond the transitional
antidumping and safeguard flexibilities applied to China in the first 12-15 years of its WTO membership under the terms of its accession.

It remains to be seen whether there is a third major area of difference among Members regarding how to deal with climate change. At present this is shaping up to be a fault line within the organization. The WTO must come to grips with the trade aspects of climate change, specifically with respect to carbon border adjustment measures (CBAM) and a series of other environmental issues under the heading of stewardship of the planet, such as creating disciplines over fossil fuel subsidies. CBAMs will be for a number of sectors a large multiple of current tariffs. Either there will be extensive consultations and agreements reached on how to deal with border adjustments for carbon measures, or there will likely be a level of trade hostilities that will make recent trade measures of the prior U.S. administration seem pale by comparison. China has a large stake in avoiding others’ climate-related policies adversely affecting its trade. On the other hand, China has a large stake in global warming being brought under control. This will play out as one of the largest trade issues of the current decade.

China has led on one environmental matter, plastics pollution in the oceans. This is a worthy endeavor but is unlikely to occupy center-stage in environmental talks when the largest challenge is climate change. The effort is said to be exploratory and not yet a negotiation.

A WTO with Chinese characteristics

As a thought experiment, one can assume that the full body of WTO Members simply embraces the trade agenda of any one of its Members who have articulated in some detail their vision. China has been among the WTO Members the most comprehensive in articulating where its WTO reform priorities lie. These were statements rather than texts of proposals ready for
adoption. A WTO shaped solely by existing Chinese reform ideas would have the following contours:

- The basic WTO framework (core values) would be retained: nondiscrimination, transparency and binding dispute settlement.

- Priority in the reform process would be given to restoring the Appellate Body.

- Individual development models would be respected, with no right to challenge self-designation as a developing country, which would be an immutable right. Development would also be a primary objective. Special and differential treatment would be key. Greater flexibility would be accorded to developing countries, for example, with respect to transparency requirements. The least developed would be given favorable treatment with lighter obligations.

- Any country would be completely free to organize its economy with as much state involvement as it wished, without WTO scrutiny. SOEs would not be subject to any greater disciplines than companies with no state involvement.

- Unilateral measures would be condemned, resort to the national security justification for imposing trade restrictions would be curbed. The use of trade remedies rather than the conduct that gives rise to their deployment would be constrained. The requirements for tabling specific trade concerns (STCs) would be tightened. [China has mixed interests. It is an active user of the system, and its measures are often the subject of STCs].

- WTO as an institution would not be much changed. The consensus rule for WTO decision-making would be retained, without some Members dictating the rules applicable to others. “Inclusiveness” would be a key principle of how the WTO operated.

- EU and U.S. flexibilities to subsidize agriculture would be cut back, but not China’s or India’s.

- Cross-border flows of investment would be less encumbered. The JSI on Investment Facilitation would be adopted.

- The routine aspects of the e-commerce JSI – electronic signature, electronic payments, etc., would be adopted.

- Plastic waste in the oceans would be greatly reduced.

- Administrative features of domestic regulation of services would be made clearer and procedures more internationally compatible.
Fisheries subsidies would be subject to some degree of discipline, with due account taken of developing country status where disciplines might be applied.

Industrial subsidies would not be subject to constraints. Transparency obligations would not be enforced.

With respect to climate change, no new disciplines are suggested. Concerns are raised whether the EU’s CBAM proposal is consistent with the Paris Accord, as well as the first three articles of the WTO/GATT.

With respect to trade and health, mostly non-binding steps would be taken to deal with pandemics. China would have Members explore whether national competition laws and policy could be used to attack restrictive licensing of intellectual property, and whether patents prevent capacity building.

Little new trade liberalization would be called for – but China states that it would welcome re-igniting the negotiations to obtain an EGA.

This is a snapshot. Few of the WTO participants would fare all that well if one attempted to summarize what the WTO would look like if all of their statements resulted in an immediate reshaping of the institution. Few, for example, would be championing broad trade liberalization.

Also, in fairness to China, it holds a belief which may well be true that if it takes the lead on tabling formal proposals, it doing so would diminish the chances of other Members being receptive to the initiatives. Given that leadership is not present in overabundance among other WTO Members (as a broad generalization), the risk that China taking the lead would be counterproductive would be worth taking.

Further, this stated concern would not explain why China could not simply join the Pharmaceutical Agreement, where its absence is notable. Nor is it clear why it could not press for an Environmental Goods Agreement. Reticence based on the notion that its leadership might be
counterproductive is insufficient as an excuse for not putting its shoulder to the wheel to move the WTO forward.

The EU must deal with its member states to get a mandate to negotiate. The United States must get support from the Congress. Chinese negotiators can be constrained by the defensive interests of key ministries. All have domestic constituencies that too often press against the scope for trade liberalization. It is the task of each to lead internally as well as at the WTO.

Geopolitics and the Future of the WTO

What effect will there be on the WTO of great power rivalry between the United States and China? During my 42 months of service as Deputy Director-General, the effects on the organization of this contest were, in my view, minimal. In the JSIs, the two countries were not yet at odds. Fisheries subsidies talks had not gotten to the final stage. There were no other negotiations moving forward where differences would be crucial and revealed. It is true that the U.S. had problems with the Appellate Body over its interpretation for the purpose of finding a subsidy of the term “public body” as it applied to Chinese entities. But the U.S. had many other major problems with WTO dispute settlement pre-dating this issue. Thus, the problems it had with the dispute settlement system were not all about China.

Attending a General Council meeting, one could often be witness to vigorous exchanges of rhetoric between the U.S. and China. But aside from trade litigation, other matters were attended to in effect by a fistfight in the parking lot, in other words, trade measures imposed
largely outside the WTO. Inside the WTO beyond the occasional verbal pyrotechnics, there were no disruptions (nor for that matter much in the way of resolution of their differences).

This is not to write off areas where China and the United States could join with others in cooperative endeavors. The most promising could be trade and health. The WTO Members must also meet the challenges posed by climate change, a serious concern of both Beijing and Washington, and collaborating on responses may be possible. Both competitors have a fundamental interest in working together to find solutions.

Conclusion

China’s participation in the WTO has evolved over the twenty years that it has been a Member. In the earlier years, it appeared to be largely defensive, tabling few if any proposals, providing little intellectual input. Defensiveness has not worn off completely, as evidenced by China’s attempt to fit its rather large and successful economy into the role of being just another developing country. But China has also in fact become increasingly pro-active. It learned much over the years about WTO dispute settlement, not just from being the target of cases, but studying the process very carefully and then bringing cases of its own. It has passed out of a phase of reticence, but it has not yet fully embraced a position of leadership.

What can and should be anticipated going forward with respect to WTO reform, including China’s role in it?

1) Despite the valuable everyday work of the WTO -- from standards notifications, assisting developing countries with a wide variety of challenges posed by trade, to trade policy reviews that are among the most civilized interactions of sovereign nations in accepting scrutiny of their policies -- absent negotiation of new agreements
the WTO will continue to lose credibility. In particular the WTO Members must act to allow their organization to rise to the trade challenges of pandemics and climate change and conclude the fisheries subsidies negotiations. China is central to making the WTO responsive to current challenges.

2) China is active in JSIs. It should press for open plurilaterals to become a regular and accepted feature of the WTO system.

3) There will be no restoration of an appellate function for dispute settlement without dealing with issues surrounding China’s trade practices. This will of necessity include addressing substantive rules, and not just how the appellate and panel functions are managed. It will be a difficult negotiation.

4) The WTO must adopt and implement an explicit rule that market-forces will determine competitive outcomes. China is already pledged to this. This prospective fight can be avoided because it is unnecessary and because it cannot be won by China. But then China would have to have its economy be consistent with any resulting new rules that might be constructed. China is not the only economy with state involvement, although it is more pervasive and has more global systemic relevance than is true for any other country. For the sake of the future of the WTO, for the multilateral trading system, this challenge, however daunting, must be met for the WTO to survive as an effective system of rules for global trade.

5) China, the U.S. and the EU each need to recognize the essential value of the WTO and invest in it accordingly. (This goes for India, South Africa, and others as well.)

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7 Two distinguished academics, Mavroidis and Sapir, have written that the WTO Members must reinforce the WTO’s fundamentals, which means market-based trade. They say that China must evolve its system to be compatible. There is little belief in academia that this will occur. It does not seem to be the direction of change in China at present.
6) De-globalization, were it more than a correction for overly lean and extended supply lines, is not in the interests of any of the WTO Members, least of all, China. It is, avoidable. Re-balancing too far inward, over-emphasizing near-shoring, will hurt all economies, disproportionately for the largest trading WTO Members. Some shortening of supply lines as a hedge against disruptions can be expected but will be limited by the need to avoid unnecessary costs.

7) International agreements function on trust. It is up to the Members with the largest trade to increase the level of trust in the system. Trust is not created by stipulating it; it must be earned by experience. To say that there is a trust deficit between the two largest trading nations would be a gross understatement. Within the WTO, it is time to consider how they can engage in putting into place confidence-building measures.

8) If the WTO is not able to function, regional agreements will be where serious trade negotiations take place. This will be against the interests of all, including the big three.

9) China needs to become an effective champion in the cause of preserving and enlarging the scope and effectiveness of the WTO. A major objective of China’s national interest must remain integration into, not retreat from, the world economy. This can only be achieved through investing in the multilateral trading system.

A cautionary note

There is a natural law governing trade agreements, a Newtonian law, that they are all about openness, a concept that is not static, but continuing. There is an ultima thule, a true north to which the compasses of all who enter into broad trade negotiations point, toward greater
openness. This was the lesson that the EU taught the world through the creation of Europe’s single market. It is the axiom that the US Supreme Court impressed upon the constituent states with respect to domestic commerce. It is the pattern of eight rounds of GATT negotiations culminating in the Uruguay Round and the creation of the WTO. And it was for the multilateral trading system last manifested in the creation of the Trade Facilitation Agreement.

Openness, agreed to by all G20 Leaders as a principle of the WTO is opposed by another force, sovereignty, handed down from the Treaty of Westphalia. Sovereignty in turn is implicitly invoked by all governments enabling state intervention to some degree affecting commerce, all too often to the detriment of open borders. The invocation of sovereignty becomes excessive -- and inconsistent with the common interests of all in the WTO -- when the state puts its thumb on the scale in favor of domestic interests in their competition with foreign producers.

The life span of any trade agreement, including the WTO acquis, depends on the underlying evolution of the commerce of the parties toward greater openness. If there is stasis, or retreat from openness, then the duration of the agreement will be short.

The WTO is about convergence not coexistence. That is why transition periods exist to deal with differences rather than permanent exclusions. The rules emerging from a process of “WTO reform” will either trend toward reinforcing convergence or increasing the use of interface mechanisms, the safeguards against governmental measures that distort the market. There is no middle ground if the WTO is to be effective. What we do not know is how long the multilateral trading system can endure if convergence is not going to take place.

Tectonic plates, where they collide, give rise to earthquakes. This is also true of the interaction of differing economic (and perhaps political) systems, although there will be
differences of opinion as to which system is slipping under the other. Strained international relations at best and risk of far worse characterized the Cold War that dominated much of the last half century. The endurance of the multilateral trading system requires recognition of fundamental differences when they persist and coming to terms with them, which does not mean living with them at the cost of the multilateral trading system that was painstakingly created for the benefit of all.

China now has a seat at the table for the crafting of rules applicable to all nations. A near-existential question for the WTO will be what the term “open plurilateral” can reasonably be expected to mean. It obviously means that in the WTO any country that wishes to join an agreement should be allowed to join, either while it is being negotiated or once it has entered into force. But does it also mean that the benefits of a plurilateral must be extended to non-participants or will this be decided on a case-by-case basis? The rock upon which the WTO and the GATT before it is founded is nondiscrimination. The relationship to MFN goes to the heart of WTO rules. I suspect that China at this point would make MFN with no exceptions a core principle without deviation for the JSIs. The problem for China is that this may drive “like-minded countries” including itself to conclude agreements outside the WTO (as the Trade in Services Agreement, TISA, would have been). Outside the WTO, there is no guarantee that China will retain a seat at the table, and the trading system might fracture, much to the detriment of China’s commercial interests.
Post-script—straws in the wind

On November 21, 2019, Premier Li Keqiang held, at the Diaoyutai State Guesthouse, the fourth "1+6" Roundtable with the world’s multilateral economic institutions, the World Bank Group, represented by its President David Malpass, the International Monetary Fund represented by Managing Director Kristalina Georgieva, the World Trade Organization represented by myself as its Deputy Director-General, the International Labor Organization represented by Director-General Guy Ryder, the Organization for Economic Cooperation and Development represented by Secretary-General Angel Gurria, and the Financial Stability Board represented by Chairman Randal Quarles. No other world leader hosts a meeting of this kind with the six major organizations supporting the liberal international economic order. It does not happen in Washington or Brussels. It happens only in Beijing.

There are at least two equally valid interpretations of China’s hosting this annual gathering. One reading is that it is a tribute to China’s importance to the world economy that the leaders of six institutions come annually to this event. It is also testimony to the importance to China of the multilateral world order that these institutions represent.

In my remarks at the 1 + 6 Roundtable, I emphasized the need for “enhanced multilateral co-operation to promote openness” which would require “a net positive contribution from all WTO Members in line with their capabilities”. I did not shy away from the fact that there were problems. I urged “China and its trading partners to begin to work out solutions to contentious issues that are affecting the global economy”. I noted that the “concerns raised by WTO members regarding trade with China are not confined to a single member” and that “it would be
a disservice to this forum and to the future prospects for harmonious international relations to avoid citing some of these concerns.” I said that WTO Members were raising “issues regarding Chinese policies in the areas of industrial subsidies, support for state-owned enterprises, protection of intellectual property, and data flow restrictions.” As I am ever optimistic, I said that there would be “ways forward that would be good for China's own business environment and good for the world economy.”

The 1 + 6 Roundtable a year later, during the pandemic, was held virtually. The participants were the same, although I now participated as an Acting Co-Director-General of the WTO. Premier Li Keqiang described the 2019 meeting as “sending a strong signal of upholding multilateralism and free trade, jointly tackling economic downward pressure and enhancing international cooperation.” According to official Chinese commentary on the meeting, the IMF chief stated her appreciation for “the Chinese side's further opening-up and its measures of upholding multilateralism, ...” There is much about a meeting of this kind that leaves a strong impression. The Fund and the Bank leaders, along with the Premier and the WTO were all working for the same stated objectives with respect to the world trading system.

At present, China has formally applied to join the CPTPP. Motives of governments are often complex, and hard to judge from the outside. One take is that this is simply clever one-upmanship vis-à-vis United States given that it withdrew from the agreement. Or it could be just

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9 A personal aside: one aspect of a visit with the Premier was to travel in a small convoy at speeds usually found only on major highways, along the length of Chang'an Avenue, the most famous street that bisects Beijing, at a time of normal peak traffic, with the traffic being cleared from the route to the meeting. The trip back to the hotel, on the same route, faced the normal congestion of this thriving city. Perhaps it was a sign. It is far easier to go to a meeting and state objectives, than it is to come back from the meeting and achieve actual results.
forestalling Chinese Taipei’s entry into the Agreement. Another alternative is that it could be a signal that China is willing to accept greater openness and that joining would strengthen the disciplines on its SOEs? Time will tell.

A defensive posture in global economic affairs is no longer in accord with the facts, given China’s prowess in industry and its international competitiveness. Britain and the United States at the pinnacle of their economic prominence were ardent free traders. This should be China’s stance as well now. China should be in the lead in an effort to preserve, strengthen and modernize the world trading system. It has done so only very selectively. Most noteworthy is China’s putting on the WTO reform agenda dealing with plastic waste in the oceans and in supporting an array of e-commerce proposals (although these are unlikely to be seen by its largest trading partners as going far enough).

Would Chinese leadership to strengthen the system be counter-productive? It is small risk and the opposite pole, being inert, is clearly a higher risk to the maintenance of the multilateral trading system. A new chapter of liberalization from China is fully justified by China’s growth since it concluded its WTO accession market access negotiations over twenty years ago. Per capita income has grown by at least a factor of ten since then, yet China’s tariff and services commitments reflect its economy of the 1990s. Of course, more would be needed than commitments at the border, if market forces were not to determine competitive outcomes within the Chinese market. This is a political rather than a legal argument but provides a powerful message of the need for further liberalization in China.

I am told that China has hundreds of experts on the world trading system. They should be making positive suggestions for reforms that would ensure that the system on which China’s
prosperity depends is maintained and improved, not through a narrow lens of Chinese commercial advantage, but in making the world economy objectively better. If there is a positive role for wolf-warriors, it should be to make sure the multilateral trading system endures and constantly improves.
Annex – China’s Reform Objectives in Its Own Words

On May 13, 2019, China tabled a comprehensive paper on WTO reform that led with the following observation:

*China believes the necessary reform of the WTO should cover the following four areas for concrete actions: First, resolving the crucial and urgent issues threatening the existence of the WTO; Second, increasing WTO’s relevance in global economic governance; Third, improving the operational efficiency of the WTO; and Fourth, enhancing the inclusiveness of the multilateral trading system.*

China proceeded to enumerate the changes in the WTO rules that it wished to see adopted:

- The appointment process of Appellate Body members should be initiated without delay to fill the vacancies so as to ensure the effective functioning of the dispute settlement mechanism.\(^{11}\)

- It is necessary to enhance the notification requirements on measures such as imposing import tariffs on the ground of national security exceptions, and carry out multilateral reviews on such measures. Meanwhile, WTO Members whose interests have been affected should be entitled to take prompt and effective remedies, so as to maintain the balance of their rights and obligations under the WTO.
  - Unilateralist measures [under a claim of national security] should be constrained through, inter alia, enhancing the multilateral review mechanism, authorizing the Members affected to take prompt and effective provisional remedies in cases of urgency and accelerating relevant dispute settlement proceedings.

- The AMS [aggregate measures of support for agriculture] entitlements of developed Members should be eliminated in gradual instalments. In the meanwhile, Members should reach an agreement on the permanent solution for public stockholding for food security purposes.

- We should curb the misuse and abuse of trade remedies, eliminate discriminatory rules and practices, and give consideration to the special situations of developing Members and SMEs as well as public interests.
  - First, the provisions on non-actionable subsidies should be reinstated and their coverage expanded.
  - Second, efforts need to be made to clarify and improve relevant rules on and relating to price comparison in anti-dumping proceedings, improve the rules on

\(^{10}\) WT/GC/W/773. 13 May 2019.
sunset review and explore the possibility of harmonizing the rules on anti-circumvention.

- Third, the subsidies and countervailing rules relating to subsidy identification, calculation of benefits conferred and application of facts available should be clarified and improved to mitigate abusive applications of countervailing measures.
- Fourth, transparency and due process of anti-dumping and countervailing investigations should be improved and the assessment of their effectiveness and compliance be reinforced.
- Fifth, more consideration should be given to the special situations of developing Members and SMEs as well as public interests.

- The agreement to be reached on fisheries subsidies should provide comprehensive and effective disciplines to prohibit certain forms of fisheries subsidies contributing to overcapacity and overfishing and to eliminate subsidies contributing to illegal, unreported and unregulated (IUU) fishing. The negotiations should be conducted in a pragmatic and consensus-seeking manner. Transparency and inclusiveness should be ensured in these consultations.

- China and 75 other WTO Members issued a joint statement on E-commerce, confirming their intention to commence negotiations on trade-related aspects of E-commerce on the basis of existing WTO agreements and framework. China proposes the following actions:
  - First, conduct the rule-making process in an open, transparent, inclusive and flexible manner, and welcome participation of all Members.
  - Second, uphold the development dimension and focus on cross-border trade in goods enabled by the Internet, as well as on such related services as payment and logistics services; and establish rules on cross-border E-commerce facilitation, electronic signature, electronic authentication, and online consumer protection etc.
  - Third, formulate provisions on development cooperation so as to strengthen technical assistance and capacity building for developing Members, particularly least-developed country Members.
  - Fourth, respect Members' right to regulate and accommodate specific concerns of developing Members.
  - Fifth, strike the balance among technological advances, business development and such legitimate public policy objectives as Internet sovereignty, data security and privacy protection, so as to reach a balanced and pragmatic outcome acceptable to all through equal consultations.
  - Sixth, continue in-depth discussions in relevant WTO bodies pursuant to the Work Programme on Electronic Commerce in 1998.

- Trade and investment are closely interlinked in today's world underlined by the in-depth development of global value chains. Investment facilitation measures play an increasingly important role in improving business environment, attracting inbound cross-border investment and promoting trade and sustainable development. On investment
facilitation, a dedicated mechanism should be established to enable Members to carry out efficient policy coordination and explore the establishment of multilateral framework. This process should focus on such elements as improving transparency, streamlining administrative procedures and enhancing international cooperation, while paying due respect to Members' right to regulate. With the process centering on development, developing Members will benefit from technical assistance and capacity building.

• At present, Members’ overall fulfilment of notification obligations still falls short of the requirements under various WTO agreements.
  o First, developed Members should lead by example in submitting comprehensive, timely and accurate notifications.
  o Second, Members should improve the quality of their counter-notifications.
  o Third, Members should increase exchange of their experiences on notifications.
  o Fourth, the WTO Secretariat needs to update Technical Cooperation Handbook on Notifications as soon as possible and intensify training in this regard.
  o Fifth, developing Members should also endeavour to improve their compliance of notification obligations. Technical assistance and capacity building should be provided to developing Members, in particular LDCs, if they are unable to fulfil notification obligations on time.

• Viable options should be explored to improve the efficiency of the WTO in the following areas, among others:
  o First, improve the rules of procedures of the subsidiary bodies.
  o Second, adjust the frequency of regular meetings in light of the specific situation of each body.
  o Third, encourage the Secretariat to conduct more research on important economic and trade issues, enhance cooperation with other international organizations, and help developing Members address and resolve specific trade concerns at regular meetings.
  o Fourth, further improve the representation of developing Members in the Secretariat and steadily increase their share in the staff.

• Development . . . is at the centre of WTO work. The WTO agreements have set forth special and differential treatment (S&D) provisions for developing Members. However, most of these provisions are best-endevour clauses in nature and their implementation leaves much to be desired. Furthermore, some Members are challenging the entitlement of developing Members to S&D, disregarding the systemic gaps between developing and developed Members. They even request some developing Members to assume the same obligations as those of developed Members. China, together with some other WTO Members, has submitted joint proposal\(^ {12} \) on S&D and calls for continued preservation of the rights of developing Members to S&D. China further proposes the following:

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\(^{12}\) WT/GC/W/765/Rev.2, 4 March 2019.
First, enhance the implementation and monitoring of existing S&D provisions, particularly the implementation of Duty-Free and Quota-Free treatment and the Preferential Treatment to Services and Service Suppliers of the LDCs.

Second, provide more targeted and concrete technical assistance to ensure the integration of developing Members into the multilateral trading system and global value chains.

Third, advance the negotiations on S&D provisions in accordance with the Doha Ministerial Declaration.

Fourth, accord adequate and effective S&D treatment to developing Members in future negotiations on trade and investment rules.

Fifth, encourage developing Members to actively assume obligations commensurate with their level of development and economic capability.

Some Members have come to set differentiated rules on the basis of ownership of enterprises. For example, they label indiscriminately all SOEs as 'public bodies' within the meaning of the Agreement of Subsidies and Countervailing Measures, set forth additional transparency requirements and disciplines for SOEs, and discriminate against SOEs in foreign investment security review. Such practices are detrimental to creating an institutional framework for fair competition and, if left unchecked, would give rise to more discriminatory rules in the future. Actions shall be taken in the WTO to uphold the principle of fair competition, so as to ensure that enterprises of different ownerships operate in an environment of fair competition. China proposes the following:

First, during discussions on subsidy disciplines, no special or discriminatory disciplines should be instituted on SOEs in the name of WTO reform.

Second, foreign investment security reviews shall be conducted in an impartial manner and follow such principles as transparency and due process. Non-discriminatory treatment shall be given to like investment by enterprises with different ownership structures.