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Getting Back to the Negotiating Table

Alan Wm. Wolff

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ABSTRACT

The negotiation of multilateral agreements has stalled at the World Trade Organization (WTO). The action is among groups of like-minded WTO Members, either regionally or in open plurilateral agreements (OPAs) in Geneva at the WTO. There is currently no consensus among WTO Members to include plurilateral agreements officially in the set of WTO agreements. Many additional challenges require multilateral—that is, global—agreements: the pandemic, food security, and climate change, among them. A breakthrough is needed to get WTO negotiations back on track.

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Alan Wm. Wolff is a distinguished visiting fellow at the Peterson Institute for International Economics. Until joining the Institute, he was deputy director-general of the World Trade Organization. This paper is a chapter in his forthcoming book *World Trade Governance: The Future of the Multilateral Trading System* (Cambridge University Press).

A PLACE CREATED FOR TRADE NEGOTIATIONS

The multilateral trading system has three pillars: negotiation, dispute settlement, and administration. Of these, negotiation is the one of greatest importance. The World Trade Organization (WTO) is the only place where fully multilateral¹—that is, global—trade negotiations can take place. It has representatives present from 164 Members, accounting for more than 98 percent of world trade. Most of the remaining countries that are not Members, some two dozen, are in the process of accession and almost all of them are observers.

The WTO has unrivalled infrastructure to facilitate negotiations—a skilled Secretariat made up of experienced experts thoroughly versed in the existing rules of the trading system, teams of interpreters and translators on call, numerous meeting rooms with audiovisual equipment for simultaneous interpretation into three languages (and more on special occasions), and connections via the web for remote participation. It is the meeting place for a large number of working committees, a repository of their past proceedings, and beyond this, it holds the records of over 600 cases litigated among its Members. In terms of physical facilities and support staff, everything is ready for negotiations.

Almost all Members have resident missions located within a few minutes' drive from the WTO headquarters in Geneva. The missions have a core of staff attending committee meetings. The heads of delegation—the permanent representatives to the WTO who are ambassadors sitting as the General Council of the organization—have been delegated the full plenary powers of the Ministerial Conference. They are empowered, in the view of their counterparts, to commit their countries to trade agreements. Ever since the International Court of Justice issued its Eastern Greenland Decision,² ministers (particularly foreign ministers) have been able to bind their governments even with a verbal declaration, enough so that they can definitively transfer sovereignty to another nation of substantial tracts of their nation's territory. All the physical and legal elements are present for trade negotiations to take place.

1 Throughout this paper, the term “multilateral agreement” is used to refer to agreements that are formally accepted as part of the WTO body of agreements, and where either all WTO Members have signed the agreement or are expected to do so. Thus, the WTO's Trade Facilitation Agreement is multilateral. Open plurilateral agreements (OPAs) in the WTO context are administered by the WTO Secretariat and subject to WTO dispute settlement, but not all WTO Members are signatories. The Information Technology Agreement (applied on a most-favored-nation basis) and the Agreement on Government Procurement (benefitting only signatories) are OPAs rather than multilateral agreements in the sense used here. There are a number of multi-party agreements such as the Regional Comprehensive Economic Partnership (RCEP), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which are not considered “multilateral agreements” as that term is used in this paper. For a more complete discussion of WTO agreements, OPAs, and sub-multilateral agreements, and how they interrelate, see my remarks at Nanyang Technological University Singapore: “Plurilateral Agreements and the Future of the WTO.” Peterson Institute for International Economics. November 16, 2021. <https://www.piie.com/commentary/speeches-papers/plurilateral-agreements-and-future-wto>.

2 “Legal Status of Eastern Greenland—Denmark v. Norway Judgment.” International Court of Justice. September 5, 1933. http://www.worldcourts.com/pcij/eng/decisions/1933.04.05_greenland.htm.

While the Doha Development Agenda came to naught as an expansive new round,³ there are continuing mandates for negotiations and built-in agendas as part of the agreements reached in the Uruguay Round. Article 20 of the Agreement on Agriculture provides:

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...

Likewise, Article XIX.1 of the General Agreement on Trade in Services provides:

In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization.

Despite the physical facilities, the expert staff, and these important mandates for negotiations, there are no active multilateral negotiations at present at the WTO that show any visible movement on these two topics.

For over two decades, negotiations have been under way to curb fisheries subsidies, which are depriving the ocean of feedstocks through overfishing. Those talks at present are not near closure with an agreement. Perhaps the closest WTO Members are to coming to a multilateral conclusion is in the ongoing discussion on how the WTO should deal with the pandemic, a global scourge that at the time of this writing is past its second year. Were an agreement to be reached, judging from what is on the table now, there would be no binding obligations. A collective decision would be limited to a statement of intentions and best practices, with the possible addition of one temporary change in the rules through the adoption of an alteration of obligations in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). A discussion may also have begun among the most interested parties on how to restore binding dispute settlement, but with no assured outcome in sight. These outcomes, even if achieved, are not good enough.

Where progress exists, it is among groups of like-minded WTO Members. There have been and are active open plurilateral agreement (OPA) negotiations in the form of joint statement initiatives (JSIs), as well as the structured discussions designed to lead to negotiated outcomes on environmental issues. The plurilateral agreements on domestic regulation of services and micro, small and medium-sized enterprises (MSMEs) are complete. The OPA on investment facilitation is said to be close to conclusion, and the negotiation on e-commerce has made very substantial progress on drafting text but has not reached an agreement on the most sensitive and therefore most difficult issues. There have been no negotiated outcomes during the time the WTO has been in existence other than a 2015 agreement on the part of developed countries to ban agricultural export subsidies (a political commitment), guidance documents for telecom and financial services, and the Trade Facilitation Agreement reached in

3 What one astute commentator described as the Doha Development Agenda having “lost the will to exist.”

2013—a coming together of developing and developed country interests that is not clearly replicable for other subjects. The WTO faces an extensive catalogue of challenges. Governments have many reasons for not moving forward; some stated, most not. In sum, there is no clear likelihood of major international negotiations taking place on a multilateral basis in the foreseeable future.

There is only one path forward at this time for the WTO to become a serious negotiating forum for major agreements, and that is for the parties that wish to negotiate OPAs to find a way to do so within the framework of the WTO. It is highly unlikely that the e-commerce or environmental talks can result in fully multilateral agreements, that is, with the prospect of all WTO Members agreeing even in principle to join them. Some, perhaps most, Members will not be ready to join. Some Members are clearly unwilling to allow like-minded participants to register their agreements as part of the WTO *acquis*, which would make them enforceable on signatories through WTO dispute settlement.

For the WTO to be a forum in which trade agreements can be reached is an existential question for the institution. It would be a profound error to test the limits of the WTO's relevancy, to imagine that nations choosing to solve their problems elsewhere may not be extremely detrimental to the health of the organization. Critical emerging issues are increasingly being taken to other venues for negotiation. **It is imperative that OPAs, open agreements of the like-minded, become a normal way of doing business at the WTO and be recognized as fully legitimate.**

Two options to reach this result come to mind:

A great power diktat

Getting OPAs accepted as the new normal is in the first instance a political not a legal question. The WTO was created in its current form, with the simultaneous strength and serious flaw of the “single undertaking”—that all must agree to participate and be bound by all agreements. Over 100 nations did not suddenly agree on everything that was involved in the Uruguay Round (1986–94) negotiations. The mechanism for forcing change was the cancellation of the prior multilateral trade agreement, GATT 1947, giving no option to any then-GATT Contracting Party but to join the WTO. This created GATT 1994, an integral part of the WTO agreements. Not going along with the package risked being cast outside the multilateral trading system altogether. The formation of the WTO was a shotgun marriage. There was no real choice but to join. In institutional terms, a metamorphosis took place—the chrysalis of the old was left behind and a new butterfly, the WTO, emerged.

Would the great powers of today be aligned? During the 1990s, the United States, the European Union, Japan, and Canada provided much of the leadership for the negotiation of the Uruguay Round. In today's world, China is by far the world's largest exporting country.⁴ China may have divided interests. While championing the interests of developing countries, many of whom regard the

4 China accounts for 14.7 percent of world exports, compared with the US share of 8.1 percent and German share of 7.8 percent. “Evolution of the World's 25 Top Trading Nations.” United Nations Conference on Trade and Development. April 6, 2021. <https://unctad.org/topic/trade-analysis/chart-10-may-2021>.

JSIs as illegitimate, China has been an active proponent of the two remaining JSIs—investment facilitation and e-commerce. India and South Africa take the point of view that the WTO cannot accommodate plurilateral agreements unless all WTO Members agree to allow them to be part of the WTO. They may be wary of these JSI negotiations taking the spotlight off their needs as articulated in the Doha Development Agenda. The two clearly indicate that they have no desire to see OPAs legitimized in the multilateral trading system. The first two JSI negotiations (on MSMEs and domestic regulation of services) skirted these objections by being implemented without the requirement of adding them officially to the WTO *acquis*—the MSME result does not require rule changes and the domestic regulation of services results are being incorporated into Members’ schedules of services commitments.

There is no reason to believe that China at this stage would force the issue of formal recognition of the JSIs in the WTO. While Europe has evidenced a more active, newfound interest in multilateralism, it is not clear that Brussels would opt to face the criticism from many quarters if it tried to force all Members to accept JSIs as legitimate WTO agreements. At present, the United States, the original architect and guarantor of the trading system, has not demonstrated a willingness to make the necessary investment in the WTO to revive it as a negotiating forum and insist on the formal adoption of JSIs as WTO agreements. The United States might instead choose to look elsewhere, for example, to a sub-multilateral agreement in which to subscribe to e-commerce rules. There is likewise no indication from the mid-sized friends of the multilateral trading system—the middle grounders⁵—of their willingness to join in a showdown to take the WTO’s self-preserving step of recognizing the legitimacy of plurilaterals within the organization despite opposition. In short, at this time neither the largest and most developed trading nations nor the mid-sized friends of the system are likely in the near future to force the shedding of the old order, an order kept in place by a consensus rule employed by JSI non-participants to block their adoption as a formal part of the WTO *acquis*.

A grand bargain

Commercial diplomacy is at least a possible alternative to the use of force. This option is not cost-free. The question comes down to whether JSI proponents have enough desire to pay for the privilege of having the agreements acknowledged within the WTO *acquis*. Key benefits of bringing JSIs formally into the WTO would be to have a skilled and experienced ready-made Secretariat in place and to reinforce part of the infrastructure of the liberal international order that JSI proponents consider to be central to their interests. Would they offer enough to persuade those who do not wish success for the JSIs—who fear having the WTO agenda being outside their control—to change their minds? At present, nothing of this kind seems to be within reach.

5 There is no precise definition of this term. It encompasses forward-leaning multilateralist Members. A reasonable proxy for a list of participants would be those who are in the Ottawa Group working on WTO reform: Australia, Brazil, Canada, Chile, European Union, Japan, Kenya, South Korea, Mexico, New Zealand, Norway, Singapore, Switzerland, and the United Kingdom.

There are two approaches to cutting deals: (1) a self-balancing single object agreement, as was the case of the Trade Facilitation Agreement (TFA), or (2) bundling agreements in a larger package. The TFA was the last and only truly multilateral deal struck in the WTO. Diminishing red tape at borders was a public good, but that by itself was not sufficient to bring closure to reach an agreement. The TFA not only was based on a perceived mutuality of interests, developing and developed alike, but also had accommodations and sweeteners in terms of self-selected speeds for implementation, the promise of technical assistance, and a trust fund set up to assure that assistance would be forthcoming. The TFA may be difficult to replicate for other negotiations.

The alternative negotiating approach depends on whether there is a package that can be constructed, which includes, for example, a plurilateral agreement on e-commerce, to gain voluntary acceptance and buy-in by all. There are many GATT precedents, eight rounds of them, for achieving this kind of breakthrough, particularly in the Tokyo and Uruguay Rounds, but these examples are now receding into a distant past. The theory of these rounds was the same as the one said to govern poker games, having enough in the pot so that no player can afford to walk away.⁶ With the demise of the Doha Development Agenda, there is no WTO precedent for successfully packaging agreements in a new negotiating round. The first question to determine whether a negotiated solution is possible is to consider what trading stock exists. This is something that can be explored. For the least developed and some of the developing countries, this might be in the form of aid and investment—for capacity-building, for infrastructure, for whatever will promise their peoples a better future. Trade-offs must be found, such as in food security or curbs on subsidies.

The default option

Absent change at the WTO, nature will dictate that those who want to accomplish something will take their efforts elsewhere. The current *zeitgeist* appears to be a movement away from globalization to regionalization (or more extreme, to an even greater contraction, seeking to pull back within national borders). Eleven nations have a Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).⁷ The Regional Comprehensive Economic Partnership (RCEP) has 15 parties.⁸ The Digital Economy Partnership Agreement (DEPA) has three members, Singapore, Chile, and New Zealand. Some trade pundits see DEPA as an agreement that the Biden administration will consider having the United States join as an opening to consider re-entry into the TPP, although there is no evidence that the United States would go that far.⁹ But at a minimum, the administration will likely consider joining DEPA. The African Continental Free Trade Area (AfCFTA) comprising 55 nations has come into

6 The theory of the success of the Tokyo Round as articulated by then-US trade negotiator Robert S. Strauss.

7 Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

8 Australia, Brunei, Cambodia, China, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, South Korea, Thailand, and Vietnam.

9 Matthew P. Goodman. "DEPA and the Path Back to TPP." Center for Strategic and International Studies. July 15, 2021. <https://www.csis.org/analysis/depa-and-path-back-tpp>.

force.¹⁰ The United States announced on February 11, 2022, its Indo-Pacific Economic Framework (IPEF), with somewhat vague economic content and an emphasis on working with the Asia Pacific Economic Cooperation (APEC) forum.¹¹

What these non-Geneva-based agreements have in common is that they are vibrant endeavors covering emerging trade issues of importance to their participants. They assume the existence of the WTO, they rely on the existence of the WTO, but they do not yet contribute directly to the future of the WTO.

There is an added layer of complexity with respect to the CPTPP. China, Ecuador, Taiwan, and the United Kingdom have applied to join the CPTPP, and South Korea and Thailand have indicated an interest in joining.¹² Montessori education teaches us that one of these applicants is not like the others. The United Kingdom does not border on the Pacific. If it does join, it would make CPTPP seem less like a regional answer to globalization than a prototype for a new and revived global order, built not by the United States as a top-down endeavor as in the last half of the 1940s, but as a bottom-up approach necessitated by the United States dropping out of the agreement.

What is one to make of these sub-multilateral agreements other than the fact that they contribute more acronyms to the vocabularies of those interested in trade? They each have merit on their own terms. But they could have been, and still could be, more. A hope for TPP when it was negotiated, and included the United States, was that it would lead to a progression, with the next step being the fruition of US-EU talks in a Trans-Atlantic Trade and Investment Partnership (TTIP). Steppingstones would have clearly been present then: building on the TPP, TTIP would take economic integration even further, potentially on a road back to Geneva, to the WTO and multilateralism. But this did not happen. The TTIP talks failed, and then the Trump administration celebrated US withdrawal from TPP as one of its very first acts in office.¹³

A global set of rules for international trade makes good sense and is the most practical answer to maximizing the benefits of trade for most inhabitants of this planet. Economic efficiency can be ignored only at a great cost. One cannot discount the world making it back to a common effort to improve world trade governance. The saying “all roads lead to Rome” had a sound basis two millennia ago.¹⁴ For trading rules, all roads lead back to Geneva. But at present, reaching that result is a matter more of faith than strenuous efforts on the part of nations.

10 “AfCFTA Secretariat.” African Union. <https://afcfta.au.int/en>. <https://afcfta.au.int/en/who-we-are>. Anabel González. “The African Continental Free Trade Area Is Coming into Force. Is It Really?” Peterson Institute for International Economics. May 31, 2019. <https://www.piie.com/blogs/trade-and-investment-policy-watch/african-continental-free-trade-area-coming-force-it-really>.

11 “Indo-Pacific Strategy of the United States.” The White House. February 2022. <https://www.whitehouse.gov/wp-content/uploads/2022/02/U.S.-Indo-Pacific-Strategy.pdf>.

12 Jeffrey J. Schott. “Which Countries Are in The CPTPP and RCEP Trade Agreements and Which Want In?” Peterson Institute for International Economics. January 3, 2022. <https://www.piie.com/research/piie-charts/which-countries-are-cptpp-and-rcep-trade-agreements-and-which-want>.

13 “Trump Scuttles Trans-Pacific Trade Pact, Jan. 23, 2017.” *Politico*. January 23, 2019. <https://www.politico.com/story/2019/01/23/trans-pacific-trade-pact-2017-1116638>.

14 *Mille viae ducunt homines per saecula Romam*, “A thousand roads lead men forever to Rome.” First recorded in writing in 1175 by Alain de Lille, a French theologian and poet.

The absence of desire¹⁵

There must be a reason why G20 leaders' calls for WTO reform over several years have not resulted in any major reform activity in Geneva. There is at least a score of identifiable reasons why agreements on a global scale are not coming together. One is that populists see trade as unfair and disruptive. For them, globalization was a mistake and has already gone too far. Organized labor in America has not been keen on trade liberalization for the last six decades. For some environmentalists, trade is seen as degrading the planet. Most of big business may believe that it can live sufficiently well with the world's trading rules as they are, so a substantial investment in efforts to obtain new WTO agreements is unwarranted, or it may think that progress in Geneva is unlikely, or both. Entrepreneurs, operating on a micro or small scale, may find existing digitally enabled markets sufficiently open. Fracture lines within the WTO may not be overcome. Industrialized and developing countries at odds on priorities may have reached an impasse on an appropriate balance between having common rules to provide order and openness versus preserving policy space. Trust is lacking. Do all even really seek to cooperate? China and its trading partners may not be on the same page as to how they view the objectives and limits of trade. Geopolitical rivalry intrudes. Adjusting the trading rules further to clarify that the rules rely on the market and not state intervention determining, in the main, competitive outcomes may be non-negotiable at present. War for the first time between two WTO Members—Russia invading Ukraine—may divide the Membership further.

If all of this were not enough to discourage the onset of major global negotiations, working through regional agreements or only with the like-minded seems much easier as compared with the heavy lift needed to make progress on a global scale, carrying 164 very diverse economies in the same direction. The record does not challenge this conclusion. As noted, negotiations on fisheries subsidies, which have been ongoing for over 20 years, are (at this writing) still not coming close enough to a robust and mutually agreed conclusion. Do the governments of WTO Members not care enough to find common ground or is there really not enough common ground to be had?

The WTO must once again be regarded as a place for global negotiations. Its reason for existence goes beyond administering existing agreements negotiated during the last century. The liberal international order requires active defense or it will become eroded. Ambassadors being accredited to the WTO must come to Geneva with the mission to improve the multilateral trading system through deliberation leading to negotiated outcomes. A recent breakthrough, whether adopted formally or not, is instructive. There was a sharp division among WTO Members as to whether easing intellectual property protection would increase the supply of COVID-19 vaccines to the developing world. The pandemic prevented in-person meetings involving ministers and experts in capitals. A small group of four WTO Members—the United States, the European Union, South Africa, and India—reached a tentative agreement among themselves to put before the WTO membership as a whole. The four accomplished this with an iterative process virtually, of ministers talking to ministers, experts to experts

¹⁵ Something akin to libido, the energy, the drive as a component of the life instinct.

in capitals, and Geneva delegations to Geneva delegations. They overcame the obstacles of the convoy system where all participate and the physical limitation of not being able to have in-person meetings of all those necessary to the process. Whether or not the tentative agreement to waive intellectual property rights is the right solution to the real problems inhibiting delivery of vaccines to places where they are scarce, the four parties met the negotiating problem and at least among themselves overcame it.

Nations have common interests that require multilateral solutions. It is not impossible to find them. G20 leaders and ministers continue to call for WTO reform year after year. These 20 countries, which together account for 85 percent of global GDP, 75 percent of international trade, and two-thirds of the world's population, appear to have a degree of common interest. But the stated commitments at the level of national leaders and ministers dissipate in transit to Geneva and do not find more than an echo at the WTO. Those sent to Geneva to represent their countries need an instruction to negotiate, to improve the system. They need the experience or the training to do so. Likewise, the WTO Secretariat must be motivated by its Director-General to obtain results and receive the professional training to do so. Ambassadors handed the gavel to chair a committee should likewise be told to be mission-oriented. A series of Chairs of the Agriculture Committee in Special Session have had the motivation and skill set to move negotiations forward but have been met with intransigence on the part of too many Members. The current state of inertia must be overcome.

Is there nothing further to be negotiated among nations?

A well-known management consultant in the last century, Peter Drucker, informed corporate CEOs that seeking to control the external environment for their businesses was an important part of their responsibilities. While this is true for corporate CEOs, it is far more important as a requirement for national leaders. They have a much greater ability to shape the global ecosystem upon which the welfare of their citizens depends. Yes, forces are at play that make progress in negotiations at the WTO elusive. This does not mean that there is nothing governments need in terms of international cooperation. In a rules-based trading system, cooperation is best delivered through reaching new agreements. Testament to this is the multiplicity of cooperative efforts among nations, from continental Africa's AfCFTA to Asia's RCEP, the expansion of CPTPP and DEPA, and a growing number of bilateral trade agreements. Progress in building the system must proceed on the global level as well.

Regional efforts are expanding the range of subjects to be covered by trade agreements. They should be regarded as incubators of ideas and approaches for the multilateral trading system.

Back to the future

One can view the founding of the multilateral trading system in 1948 as an aberration. Was it an idiosyncratic idea of a headstrong and idealistic hegemon? Was it created in circumstances that no longer pertain so that a multilateral approach is simply now an anachronism? When world leaders came together in 1998 to celebrate the 50th anniversary of the GATT, and heralded the beginning

of a new World Trade Organization, were they engaged in an atavistic ritual celebration of something that was already growing out-of-date? Were they short-sighted when they expressed their strong support for multilateral trading rules in the liberal world order? I do not think so.

Secretary of State Cordell Hull and President Franklin Roosevelt, and a series of their successors, as well as the creators of the European Union, saw a direct relationship between open trade and peace. To date, there have been no world wars since the second one. This lesson read from history is not a mistaken case of *post hoc ergo propter hoc*, that because peace followed the creation of the international economic institutions, they of necessity would have a positive influence on avoiding war. The policy was not simply high-flown rhetoric. It was believed in, and it was implemented. Peace was not the only objective, even if for some it was the most important one. Economic well-being, reconstruction, and development were deemed to be essential. Economic efficiency, pursuant to the beliefs and efforts of Richard Cobden, Adam Smith, David Ricardo, and their acolytes, was sought not just for its own sake. It was pursued to better the lives of the world's peoples, and this was in fact the overall result. The system delivered the results that were desired. In current times, economic efficiency has come to be paired with the goals of sustainable development and care for the environment. It is also very likely to increasingly reflect other societal values, rewarding workers with dignity and a fair income. The world trading system can continue to evolve, to continue to deliver positive results.

Because there is one globe, some matters cannot be successfully negotiated, nor meaningful results achieved, on less than a global scale. The global digital economy requires nurturing before it fragments. Industrial subsidies need to be disciplined. Domestic support for agriculture and food security must be addressed in a manner responsive to today's needs. Movement of goods should be freer to meet global challenges from pandemics to climate change. Some agreed basic rules should be established for digital commerce before it becomes balkanized. These issues cannot be successfully dealt with in sub-multilateral fora. It is not practical for some countries to discipline domestic subsidies while others choose not to do so. Battling a global pandemic with some but not all countries participating is far from fully effective. This is even more true for combatting global warming. Collective, multilateral responses will be necessary.

Fragmentation of the trading system is not a sustainable long-term trend. There will be a return to multilateralism. This is not to denigrate regional agreements. They should be viewed as laboratories for the world trading system, to discover fruitful ways forward, pointing to broader agreements negotiated multilaterally. Sub-multilateral agreements should not be used, however, for mercantilist ends, being more trade distorting than trade creating.

What is uncertain is the degree of vision and commitment of world leaders that causes them to work together for a common purpose. Before Russia's invasion of Ukraine, it was hard to argue with the fact that the motivation to do so, to act together, was either absent or too weak to drive international cooperation on an almost global scale. Staring at the potential of a third world war may change attitudes. At this writing, it is too early to tell.

What causes world leaders—a Xi, a Biden, a Scholz, a Macron, a Modi, a von der Leyen, and their successors—to work together? It is probably not the gravitational pull of economic theory. Even a global pandemic, which threatened their economies and the health of their peoples, was not enough to pull them together and reform the trading rules promptly to meet that crisis. It may be that the next cataclysm galvanizes them to collective action. It could be climate change that unifies them, when it is self-evident to all, and perhaps irreversible without great scientific breakthroughs as yet unanticipated. Enlightened self-interest must and will at some point come into play.

For the trading system, Geneva is the only place where all the players can come together. The pursuit of national commercial interests and global public goods will eventually bring them there.

The key to a positive future for the WTO is for it to be a welcoming home for the JSIs, the open plurilateral agreements already being negotiated at the WTO, as well as receiving contributions from sub-multilateral agreements, the regional and specific purpose multi-party agreements as well as bilateral arrangements. The GATT was, and the WTO is, not a one-speed system. There is differentiation among Members by capacity, willingness, and interest. This will always be the case, even if differences should diminish over time. This reality needs to be recognized, and flexibilities provided. There must be an openness to what those in the trade field call “variable geometries.” A new ecumenicism is needed for the multilateral trading system to thrive.

The rules-based trading system needs a rebooting, which can only come from a reawakening and recommitment on the part of at least its leading Members. The system is facing a fundamental, existential crisis. In the future, trade policy officials and academic scholars will look back upon this time as an inflection point. Is the universality of the trading system viable, or will it be shattered by divisions? Does there have to be a reconfiguration? Leadership will be required. There are not only great challenges but great opportunities. To fail to respond is to allow the jungle to grow back.¹⁶ Time is not our friend.

The steady underlying validity of multilateralism, that it is not just a theoretical good but a pragmatic way to deliver results, can bring together the nations of the world to work for the common good.

RECOMMENDATIONS TO CREATE A WTO 2025 TO RENEW THE WTO AS A FORUM FOR NEGOTIATIONS

- The G20 Leaders should seek to create an action program to move beyond general statements issued on WTO reform, by tasking their Trade Ministers to have an agreed agenda for WTO reform with a six-month deadline for making proposals and engaging in negotiations.
 - » Saudi Arabia, in hosting the Leaders’ Summit in 2020, launched the Riyadh Initiative for WTO Reform. In doing so, the G20 reached a partial consensus agreeing to a list of WTO principles.

¹⁶ Robert Kagan. *The Jungle Grows Back, America and Our Imperiled World*. (New York: Knopf Doubleday Publishing Group, 2018).

- » India will hold the presidency of the G20 from December 1, 2022, to November 30, 2023. There is little that could catalyze the WTO Members more to finding common ground for meaningful WTO reforms than were India to find concrete areas of agreement among the G20 Members for the WTO reform agenda.¹⁷
- Germany and Japan, respectively, will host the 2022 and 2023 G7 summits, which should spur serious cooperation on WTO reform, going to fundamental issues of WTO governance.
- The United States will host the APEC Leaders' Meeting in 2023. The United States should use the occasion to reinforce the opening messages of the Biden administration's commitment to multilateralism. APEC should become an alliance for progress in the WTO.
- The United States and China, and the European Union and China, should each explore bilaterally where common ground may exist for forging institutional and substantive progress at the WTO.
 - » There would appear to be a possible confluence of interests, reading the statements of President Xi at the China International Import Expo,¹⁸ China's application to join the CPTPP, and the joint work of the Trilateral (US/EU/Japan) WTO reform group.
- The Trilateral should reach a consensus on the reform issues it is seized with and seek to gain additional adherents to its agenda.
- The United States and the European Union should agree to binding dispute settlement between them, potentially joined in by others, as a New Multi-Party Interim Appeal Arbitration Arrangement (NMPIA). This should be possible—the United States renegotiated the North American Free Trade Agreement (NAFTA) to reach a US-Mexico-Canada agreement (USMCA), which (remarkably, given the US action to block the full functioning of the WTO dispute settlement system) retains binding dispute settlement for trade remedy cases in an extreme form with arbitral panels substituting fully for domestic courts.
- The middle grounders should continue to launch initiatives. When they choose subjects of broader common interest, the largest players will often join in, as was the case with a number of the joint statement initiatives. The idea is “build it and they will come.”¹⁹

17 There is little understanding within the WTO diplomatic corps of what India wishes for the WTO. It professes dedication to multilateralism, but its daily positions are opposed to what most see as progress. To a somewhat lesser extent, this is how South Africa's participation is viewed as well. Was the *ad referendum* agreement among four Members on a solution for the TRIPS/vaccine issue an indication that there can be a meeting of the minds?

18 “Full Text: Xi's Keynote Speech at 4th CIIE Opening Ceremony.” China International Import Expo. November 4, 2021. <https://www.ciie.org/zbh/en/news/highlights/20211104/30424.html>.

19 *Field of Dreams*, an American movie (1989), where a farmer builds a baseball diamond, and the players are attracted to it (from a great distance).

- Members who do not wish to participate in a spirit of constructive engagement, or lack sufficient domestic support for participating, should step aside and allow others to progress without them, understanding that they will not be bound by the negotiated outcomes that they do not sign up for, nor may they in all cases benefit from them.

Specific elements

- The G7 and G20 Trade Ministers should instruct their permanent representatives to the WTO, with a deadline for making proposals and engaging in negotiations, to address specific priorities, including:
 - » Within six months,
 - Restoring a form of binding dispute settlement on an interim basis, while working on a permanent solution.
 - Obtaining a clear positive outcome on the legitimacy of open plurilateral agreements in the WTO, which are consistent with the values of the WTO.
 - Providing a mandate for the development of the executive functions of the WTO, with stated goals:
 - * enhancing transparency through the gathering of trade intelligence,
 - * assuring greater compliance by WTO Members with their obligations,
 - * providing in-depth analyses of trade conditions, and
 - * engaging in strategic foresight and policy planning.
 - Creating negotiating agendas for key priorities, including rules and procedures to deal with the COVID-19 pandemic, future pandemics, food security, and climate change.
- Trade Ministers should gauge success in participation in the WTO by agreements reached and not by initiatives blocked.
- The Director-General should draft and circulate a proposed negotiating agenda if the Members fail to do so within six months.
- The Secretariat should be charged with compiling reports for Members on the subjects covered in sub-multilateral agreements (and negotiations) that may be useful in considering future coverage of multilateral agreements and go beyond the current scope of the WTO, such as by covering additional services, the environment, trade and health, trade and labor, etc., and provide models for consideration for formulating multilateral rules.
- The Secretariat should prepare, and the Members should approve, model provisions for regional and bilateral trade agreements, including on e-commerce and other cutting-edge issues.

- The Secretariat should provide Members with estimates of subjects that may require changes in existing rules or warrant new rules, drawing upon current trends in world trade and issues that are anticipated through foresight exercises, as well as drawing upon its annual *World Trade Report* and the results of its enhanced trade intelligence activities.²⁰
- The Director-General should supply suggested negotiating outcomes based in large part on her consultations with Members and on her own responsibility, whenever the Director-General decides it is productive to do so, or upon the request of Members.
- The Secretariat should supply the Members annually with a list of issues where dispute settlement panels had probed what in the Secretariat's opinion appear to be gaps in the current rules.
- The Secretariat should inform the Members of the results of its strategic foresight exercise, indicating where the current rules may need to be modified or supplemented. For example:
 - » Having identified future pandemics as likely, the Secretariat would compile a list of steps to be taken to create a sufficient response to future epidemics. This could include:
 - Upon identification of a possible pandemic, the formation of a cross-divisional Secretariat task force to specify possible responses, working closely with a ten-Member Pandemic Response Group under the chairmanship of a facilitator chosen by the Chair of the General Council for this purpose.
 - » A similar approach could be taken with respect to climate change.
- The Director-General should assure that the Secretariat is mission-oriented to obtain negotiated outcomes and have a training program for all staff designed to support a better understanding of negotiating methods.
- Ambassadors and their staff assigned to WTO missions should receive an appropriate orientation course that emphasizes, on an interactive basis, reaching agreed negotiating outcomes.
- WTO committees should have participation from capitals, as the OECD does, to connect directly those engaged in trade policy formulation with their counterparts in other capitals via their WTO committee work.
- Advances in information technology should be deployed as they were during the pandemic to accelerate the work of committees and deepen engagement, for example, with respect to the treatment of “specific trade concerns” in the Committee on Technical Barriers to Trade.
- An advisory board of trade experts, former trade negotiators, and former WTO senior staff should be constituted to advise on improvements to be made to facilitate multilateral trade negotiations.

20 Alan Wolff. “WTO 2025: Enhancing Global Trade Intelligence.” Peterson Institute for International Economics Working Paper 22-6. April 2022. <https://www.piie.com/publications/working-papers/wto-2025-enhancing-global-trade-intelligence>.

CONCLUSION

Absent dramatic institutional change, the WTO is unlikely to ever reach its full potential, the place where global rules for trade are negotiated. Worse, it risks deterioration into irrelevancy with respect to emerging challenges that require adopting a single set of rules for the worldwide digital economy. These challenges include, prominently, managing the trade aspects of climate change, meeting food security needs, and supporting health for a world threatened with pandemics. It is not enough to arbitrate differences, as important as this is, through an effective dispute settlement system. Nor is it enough to administer the trading system more effectively with a stronger, more proactive Secretariat. It is essential that the rules-based system continue to evolve. This can occur only through negotiations—reaching single-subject agreements in any of these areas where feasible or packages of agreements where balance cannot be found with a narrower focus. The multilateral trading system was founded 75 years ago to formalize international cooperation and open trade among nation-states to maintain peace. To fulfill its promise, the WTO's negotiating function needs to be revitalized.

The long peace was due in no small part to the creation of a liberal international order by the United States as the hegemon. The case for this point of view is forcefully made by Robert Kagan in the lead article in the May/June 2022 issue of *Foreign Affairs* with respect to geopolitics.²¹ The same logic applies to the United States as a global economic hegemon. The last US administration adamantly rejected this role. The current one has not embraced it. There are costs to its not doing so. The basic tenet of the multilateral trading system as it was conceived is that market forces are in the main to determine competitive outcomes in world commerce. Any rejection of this premise must be seen as unacceptable and must be challenged. The resistance cannot be passive. It must take place on the global stage, not just in a series of bilateral understandings to reduce friction between the two global economic powers. The United States needs to rally a coalition similar to the one it has pulled together to oppose the Russian invasion of Ukraine, not against any one country, but for a principle. These countries share a common interest and purpose, which is to reinforce the open and rules-based multilateral trading system and to increase its relevancy. The WTO is the primary tool to maintain this order, and within the WTO the primary tool is negotiation.

21 Robert Kagan, "The Price of Hegemony Can America Learn to Use Its Power?" *Foreign Affairs*, May/June 2022, <https://www.foreignaffairs.com/issues/2022/101/3>.



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