

The Future of the WTO and the Multilateral Trading System

Remarks of

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The setting

This is a time when all too many are questioning whether a liberal international economic, social and geopolitical system can be maintained. They say that the original reasons for creating the present system, founded in 1947, are too distant; that memory does not survive the passage of two generations. This thought was also captured on the occasion of the death just a few weeks ago of former President George Herbert Walker Bush. Janan Ganesh writing in the Financial Times put it this way: “*Social order is to some extent self-cancelling, the longer people have it the more they take it for granted, historic events that warn them against such complacency pass from living memory to folklore to something more like rumor*¹.”

The view expressed by Robert Kagan in his book *The Jungle Grows Back* is more unsettling. He concludes that the last 70 years were an aberration, that it was an exceptional time unmarked by wars among major powers and characterized by ever-increasing freedom for

¹ Full text: *Social order is to some extent self-cancelling, the longer people have it the more they take it for granted, historic events that warn them against such complacency pass from living memory to folklore to something more like rumor. Ideas that would have made their forebears shiver become credible, even exciting. Think of the antic glee at the prospect of war in Britain in 1914. It defies understanding, until you remember the country's inexperience of mass-mobilized conflict since Napoleonic times.*

We might be living through a (so far milder) version of the same phenomenon: an openness to political extremes born of historic distance from their last trial and error. The implications of this argument are as bleak as the argument itself. For the west to rediscover its aversion to wild ideas, perhaps they must be tested to failure. <https://www.ft.com/content/921f8b8c-f7b3-11e8-8b7c-6fa24bd5409c>.

The two last Presidents to serve in the Second World War were George Bush (41st U.S. president) and John F. Kennedy (35th U.S. president). One was shot down by the then enemy and other whose boat was sunk from under him after a collision with a destroyer. They had a strong sense of the international order the United States had created and the necessity for maintaining it.

international trade. He tells us that this was an extraordinary period created by the United States with the help of a few others; that the system was created in the wake of two horrendous world wars separated by the Great Depression. He suggests that the garden we inhabit, if left untended, will succumb to encroachment by the jungle – with the consequent loss of the liberal world order.

I am with him part of the way. I fully subscribe to the view that the failure to maintain and improve the multilateral trading system can result in its deterioration or worse in these times of serious stress. However, there is a path forward to strengthen the system and assure its future. There is growing recognition that reform is needed, by the G20 leaders in their statement at their summit in Buenos Aires on December 1. They declared that “*The system is currently falling short of its objectives and there is room for improvement. We therefore support the necessary reform of the WTO to improve its functioning.*”² More recently, the meeting of the 164 members in a formal session last Wednesday, December 12, in Geneva authorized a process of consultation on what should be done in the way of reform, if reform there is to be.

The 164 countries of the WTO and the nearly two dozen countries seeking to join the organization regularly affirm that the multilateral trading system is essential. That is a fine sentiment. However, what is required is more than words; it will require deeds. This is not a criticism of the G20 statement nor the initiatives in the WTO, which are most welcome. It is a statement of fact.

The question is whether an effort to maintain and improve the system will succeed. It can, and I believe that it will. It may take more time than would be ideal, but it will be achieved.

I am decidedly optimistic about the future of the multilateral trading system and the WTO. This does not mean that the system will be free from serious challenges, far from it. There will be some low points, some that make the system appear to be sinking into a slough of despond³. It will, I believe, recover from any setback.

My purpose today is to lay out why optimism is justified, to outline the need for solutions to meet current major (some say existential) challenges to the multilateral trading system, to reference the growing interest in WTO reform, to suggest a measure of what remains to be done to increase the benefits of the system, and lastly to offer a personal perspective based on my current experience at the WTO. I will append to a text of these remarks a short inventory of specific areas of value the WTO delivers. And not least, I will suggest areas where the Peterson Institute might consider future analytical work.

² The full text of the relevant statement reads: 27. *International trade and investment are important engines of growth, productivity, innovation, job creation and development. We recognize the contribution that the multilateral trading system has made to that end. The system is currently falling short of its objectives and there is room for improvement. We therefore support the necessary reform of the WTO to improve its functioning. We will review progress at our next Summit.* <http://www.g20.utoronto.ca/2018/2018-leaders-declaration.html>.

³ The Slough of Despond ("swamp of despair") is a fictional, deep bog in John Bunyan's allegory *The Pilgrim's Progress*, into which the protagonist Christian sinks under the weight of his sins and his sense of guilt for them.

Part I. Reasons for optimism.

There are many solid reasons for optimism that the multilateral trading system and the WTO with it will endure.

First, there is the force of Ricardian physics. David Riccardo got it right -- open borders and, I would add, rules-based trade, are better for national economies on the whole than protection, and vastly better than seeking autarky. The need for efficiency is underlined daily. Those that fail to compete are left behind. This is even truer today than at any prior time as the world has shrunk due to advances in technology -- E-commerce and vastly more capable transportation systems than exist in much of the world.

Second, there is a widespread fundamental understanding on the part of nearly all governments of the utility of having the multilateral trading system. For this reason, despite very noteworthy exceptions, most of world trade is in fact currently conducted under the WTO's rules. To date there has been no contagion, no expansion to other products, no emulation by other countries leading to the widespread imposition of trade restrictions. While the rules do not cover all trade, they cover most of it, at least for trade in goods. Tariffs are on the whole levied within agreed bounds. Product standards, much more threatening to trade than tariffs, are within an area of the WTO characterized by excellent cooperation, with countries notifying proposed standards in draft, consulting with other countries, and paying attention to comments received -- fostering trade, both for imports and exports.

Third, outside the multilateral trading system, there can be no confidence whatsoever that access to foreign markets and supplies will be unimpeded. Pragmatism drives WTO members to honor the bargains that they make. In international law, a central principle is *pacta sunt servanda*⁴ -- agreements are to be honored. In all transactions including those among nations, keeping one's word, creating trust, counts. So far there is a large positive balance of trust present in the system, but it risks being eroded the more it is tested. An alternative basis for relying on the system would be morality. It may be that nations have morality as well as interests. I would hope so, but an answer to that question requires more reflection⁵, and will be reserved for another day.

⁴ Hugo Grotius: *natural law gives rise to the positive law of states; the latter depends for its validity upon the underlying grounds of all social obligation and especially upon that of good faith in keeping covenants (the notion that pacta sunt servanda).*

⁵ *while the national interest must be protected, it must always be subjected to strict moral limitations.* The Moral Politics of Hans Morgenthau, [A. J. H. Murray](#) re: Augustinian v. Hobsian-Machiavelian schools.

Fourth, the WTO delivers benefits through the multilateral trading system that cannot be duplicated in plurilateral or regional agreements. A few examples:

- Enforceable nondiscrimination on a global basis is a benefit only a global agreement can confer.
- As a practical matter, limits on agricultural subsidies cannot be negotiated bilaterally or regionally. There has to be an agreement covering all major subsidizers.
- The same is true for fisheries subsidies.

Fifth, The WTO agreements and procedures provide the baseline of multilateral rules that keeps world commerce from being carved up into trading blocs. All regional and bilateral trade agreements have the WTO rules as their foundation. The WTO rules underpin the USMCA (née NAFTA); the EU's free trade agreements, the Eurasian Free Trade Agreement; the Comprehensive and Progressive Agreement for Trans Pacific Trade; and the freshly-minted African Continental FTA.

Sixth, there is a common effort to improve the system not scrap it. The strongest critic of the WTO has said "If we did not have the WTO, we would have to create it." No Member has left the WTO and 22 countries currently seek to join it.

Seventh, the multilateral trading system will prevail because those nations that have tried alternative models, ignoring the dictates of global and domestic market forces, have in the long run, either changed their policies or failed. This conclusion is true most dramatically with the dissolution of the Soviet Union. There have been other examples as well. Most countries have now moved to apply more market-oriented policies. The lesson has been applied by major economies in Latin America; by the Japan we know today compared with the Japan that existed in the 1960s to the early 1990s bears witness to this pattern; and by the move toward market-based economies engaging in world commerce is to be found, among other places, in Central Asia and the region more generally – in Kazakhstan, in Moldova, and it is anticipated that this will be the case in Belarus and Uzbekistan.

If a country is large enough, it can try autarky, aiming at a high degree of self-sufficiency, but that as a goal leads only to a dead end. Mercantilism has its limits. Namely, others do not play along.

Eighth, without the rule of law there is chaos. Global commerce can only thrive with certainty. Bilateral and regional agreements can provide a patchwork of rules and compliance mechanisms. These sub-multilateral arrangements can increase trade and even contribute to an increase in global GDP. But for global trade there is only one place where rules of general application can be crafted and applied, and that is at the WTO. What makes the WTO stand apart from many other international arrangements is that it creates enforceable obligations.

Ninth, and finally, national politics will ultimately align with the underlying reality that it is in the fundamental interest of all countries to have a well-functioning world

trading system. Farmers, ranchers, manufacturers, service providers, inventors, investors, and consumers all have a bottom line interest in a functioning multilateral trading system. Those that think otherwise will eventually learn that this is the case. To be sure, it can be a difficult period until they do.

Part II. The System at Risk.

Most commentators would agree that the two most pressing challenges facing the world trading system are the U.S.-China exchanges of tariffs, and the termination of the WTO's Appellate Body.

- *The U.S. - China Tariff War*

As a WTO official, I am perforce a neutral observer. Despite Fred Bergsten's and my inclination toward barbed comment, I will not condone or condemn any conduct nor endorse any remedial proposals. My neutrality does not extend, however, to the relevance of the WTO's rules to improving trade and trading relations. If rulemaking can be part of a solution to trade hostilities, clearly that would be a good outcome.

Two of the three cornerstones of the WTO are adhering to contractually bound tariff levels and granting unconditional most-favored-nation treatment, the latter meaning not discriminating among imports based on the country from which they originate – absent some specified exception that allows a departure from these basic rules. To my knowledge neither the U.S. nor China has articulated a legal defense for the legitimacy of the over \$300 billion of mutual trade that have been subjected to additional tariffs.

My assumption has been and remains that part of the answer to the two finding a new equilibrium in their economic relationship should lie in changes in the WTO's rules so that more if not all of the conduct of each side would be within the WTO's rules. Rules-based trade provides greater certainty as to what trade measures are permissible. I borrowed a metaphor that a Chinese and a European negotiator had used in a different setting at the time of China's entry into the WTO 23 years ago, that it was of great importance that WTO members not drive on both sides of the road. Collisions are likely by trading partners if the road is not widened.

The trilateral effort, of Japan, the EU and the U.S., begun at Buenos Aires a year ago was aimed at expanding the coverage of the rules. It could widen the highway and reduce collisions. Clearly, China would have to see any changes in the rules to be in its interest if this is to become part of the path to at least a truce.

The last great contest in the trading system involving a rising economic power and the then dominant incumbent was that of Japan and the United States. What came to mind because of his recent passing were two brief exchanges that I had with President George Bush ("41"), one direct and one indirect. The first case was a brief conversation I had with the President on a

trade issue of that period. President Bush's instinctive response to me was that Japan would never deliver on trade. That did not prove to be correct. In the second instance, I asked the Chairman of the Senate Finance Committee, Senator Lloyd Bentsen, to ask the President to raise a trade issue with the then Japanese Prime Minister during the President's upcoming visit to Tokyo. Despite his skepticism, President Bush never gave up trying. That attitude of never giving up the attempt to resolve differences should still have relevance in today's circumstances.

- *The Death of the Appellate Body.*

In America, we do not expect elected officials to stay beyond their term of office. Cabinet Secretaries routinely clear out their desks before the inauguration of a new President though their former positions might not be filled by the incoming Administration for months.

At the WTO, Appellate Body members continue to render decisions after their terms expire. This was once done, I understand, with approval of WTO Members and then was adopted as a rule by the Appellate Body itself, in the interests, one would suppose, of good order, and this did not cause anguish or even concern on the part of most WTO Members. It is one of multiple counts in the U.S. indictment of what it sees as overreach by the Appellate Body.⁶ Most of the U.S. complaints are longstanding, dating back over several prior U.S. administrations.⁷ The list is not short, and it has been detailed at length by the U.S. in meetings at the WTO.

A former Appellate Body member accused the United States of asphyxiating the WTO's Appellate Body through refusing to allow its vacancies to be filled. The U.S. view might be that its actions are more of the nature of assisting a suicide. Either way the loss of an effective dispute settlement system should be avoided. No later than a year from now, absent resolution of outstanding issues, the Appellate Body will cease to exist. I strongly support any solution that restores legitimacy to WTO dispute settlement that would be accepted by all 164 WTO members.

Some of the U.S. complaints go to procedures, some run far deeper. Although statistically the U.S. wins most of the cases that it brings, it is also statistically accurate that it loses most of the cases brought against it when the subject is the use of trade remedies. Most of the other WTO Members who follow this issue welcome the rulings of the Appellate Body that have an effect of narrowing the scope for use of trade remedies.

⁶ The U.S. view is that the Appellate Body has, at least by default, become supreme in the WTO system as to what the rights and the obligations of the parties are. In other circumstances, this is left to another higher authority. See Isaiah 2:4. *The LORD will mediate between nations and will settle international disputes. They will hammer their swords into plowshares and their spears into pruning hooks. Nation will no longer fight against nation, nor train for war anymore.* New Living Translation. In the secular setting of the WTO, it appears that the Members were to be supreme.

⁷ In ancient Greek mythology, Icarus was warned several times by his father. – In Roman history, the warning of the Capitoline geese was listened to.

It is not my intent to speak on behalf of either school of thought, nor to question the legal correctness of any particular dispute settlement decision, but to address what is in essence a political problem. Unless there is to be a rule solely by judges, a *kritarchy*, a system of governance for balance requires a means for policy input from the governed. In the structure of WTO, this presumably was to come from the legislative functions of the WTO membership, amending agreements or crafting new ones, from guidance from the Dispute Settlement Body, a committee of the whole of the WTO membership, to which Appellate Body decisions are referred for approval, or the General Council, again a meeting of the whole membership. As it turned out, both the rule-making functions of the WTO and meaningful input from the Dispute Settlement Body or General Council never became effective.

In setting up WTO dispute settlement, there was a degree of ingenuity mixed with pragmatism. I believe that a solution can be found to the current impasse. There is now a consensus within the WTO membership to engage in a serious, in-depth discussion to resolve the current impasse. There is as of last Wednesday the beginning of engagement. Although positions are separated by a conservable distance, that is progress. The motto of the City of Geneva is *Post Tenebras Lux*, after darkness, light⁸. No one can predict with any certainty the outcome. We shall see.

I do not think that it would be possible to reach agreement to a return of the pre-existing GATT system, where the adoption of panel reports could be blocked by the losing party.⁹ That result would likely be unacceptable to most WTO members. Moreover, I do not think that what some might think were the **halcyon** days of the GATT era can be recaptured.

There are at least three tests of the future *halcyonicity* of a restoration to the GATT dispute settlement system. First, what if the losing party thought that the rule itself had no logical basis. If the DISC or FISC cases were relitigated today, with the U.S. view that there was no justification for a rule differentiating between the rebate of direct taxes (e.g. taxes on corporations) which is prohibited and the rebate of indirect taxes (e.g. the VAT) which is permitted, the result would be the same – a condemnation of the former. Is it likely that the decision would be accepted by the losing party in the current environment and the provision repealed? Were there a case brought by the U.S. against a grant from what dispute settlement said was not a “public body”, would the U.S. abide by the decision or just go ahead and retaliate? Lastly, if a Major Member’s claim of national security were not accepted by WTO dispute settlement, is there a high degree of likelihood today of compliance with that finding?

The GATT system depended entirely on voluntary compliance with panel decisions, and the compliance rate was high. That world may not be a virtue that can be easily recaptured.

What does the U.S. want in order to settle the Appellate Body impasse? It has not said. The most authoritative statement is the one from a year ago – that it should not be possible to

⁸ The influence of John Calvin.

⁹ As I understand it, under WTO procedure, the adoption of any agenda, report, decision, or declaration can be blocked by any Member – with the exception of dispute settlement reports.

gain through litigation what could not be obtained through negotiation¹⁰ -- a view that the U.S. still maintains. Pragmatism and ingenuity will be needed to find a solution. I believe that an appellate function is highly useful to correct egregious errors and to assure consistency in interpretation of the WTO rules. Members may not agree. It is worth the effort to find an agreed solution, and the beginnings of thoughtful reflection on the subject are in evidence in Geneva at present.

Part III. *The Reformation*

The WTO Ministerial Meeting in Buenos Aires one year ago, in December 2017, all contemporaneous reports to the contrary notwithstanding, may in the future be considered a turning point for the multilateral trading system.

- The U.S. was present, which was not a foregone conclusion, and spoke in favor of the system and sounded a call for three specific systemic reforms.
- Four major joint initiatives were established, open discussions on how to create a positive environment for electronic commerce, how to be more inclusive of small enterprises and to increase the participation of women in the benefits of trade, as well as improve the global environment for investment and to deal with domestic regulation of services.
- Japan, the European Union, and the United States announced that they were beginning work on specific areas of potential rule changes. (The first of the trilateral initiatives in which some others have joined has been tabled for consideration in the WTO General Council. It is an enhanced enforcement mechanism to help assure that notification obligations are honored.)¹¹

In May, French President Macron called for WTO reform, and since then Canada called a meeting of trade ministers in Ottawa on reform accompanied by a thoughtful paper, and the EU, Canada, Honduras and China tabled proposals for consideration in Geneva. The European

¹⁰ Here I suggest we apply Occam's razor [Latin: *lex parsimoniae*](#) "law of parsimony") is the problem-solving principle that the simplest solution tends to be the correct one. When presented with competing [hypotheses](#) to solve a problem, one should select the solution with the fewest assumptions. The idea is attributed to English [Franciscan](#) friar [William of Ockham](#) (c. 1287–1347), a scholastic philosopher and theologian.

¹¹ The WTO has problems of a kind first [articulated](#) in 1927 by the German physicist [Werner Heisenberg](#), that the position and the [velocity](#) of an object cannot both be measured exactly, at the same time, even in theory, at least for sub-atomic particles. This is known as the **Heisenberg uncertainty principle** or **indeterminacy principle**. Trade depends on certainty, but in the absence of required notifications, there is uncertainty as to the conditions under which trade is currently taking place. With lack of ability to predict whether rules will govern large segments of trade and trade distortions in the future, the future of world trade is likewise uncertain. A system that has too many unknowns is deficient for the conduct of international trade, and is the key deficiency in the multilateral trading system.

Union, representing countries accounting for one-third of world trade, has forcefully engaged with extensive proposals for reform (which largely did not garner agreement in substance by the United States but begin a process of engagement on issues raised). However, a joint proposal, originated by the U.S. that notifications should be made as obligated, thus providing greatly improved transparency, has been tabled. And of course, now Buenos Aires has come through yet again with the recent G20 call for WTO reform.

The above listed areas for reform are heavily aimed at resolving crises. But there is also some attempt by members on how to make the conduct of work of the WTO more effective. **It is timely for Member and academic work, including at the Peterson Institute to review how well the WTO functions.**

Governance of any societal structure is composed of three functional elements – administrative, rule-making and dispute settlement.

Executive functions

Within national governments and sometimes within international organizations, the executive proposes initiatives, monitors compliance, prosecutes noncompliance, and in general administers the agreed rules. In the WTO the executive function is not explicitly provided for. Temporary committee chairs are chosen from the ambassadorial corps.¹² Initiatives are expected to come from Members not from the chair. The secretariat supports chairs and Members, as called upon to do so. Monitoring of compliance is confined to Member counternotifications and Member-initiated dispute settlement.

The legislative function.

I am told that the WTO was intended to be a forum for continuing negotiation. Some of this does occur in the often ignored progress made in the regular committees of the WTO, largely recorded in informal conclusions.¹³ The formal rule-making or legislative function has been limited to a few not unimportant items since the WTO was created – e.g., a ban on agricultural export subsidies, adoption of the Trade Facilitation Agreement, and the expansion of the coverage of the Information Technology Agreement. The need to form a consensus of the whole, the 164 members of the WTO has stymied progress. One important alumna of the WTO officialdom has said that consensus does not mean unanimity. In other words, not all may agree that a proposition should be adopted, but neither will they impede the process. Reasons for blocking a decision range from opposition on substance to holding an item hostage as leverage to gain something else. Hostage-taking is not unknown in any political body, but when abused it leads to malfunction, to a deadlock of the system. Stasis is the result of Members pursuing a

¹² In almost all cases, the body of Member Permanent Representatives are anything but permanent. The corps of Ambassadors are as a whole composed of skilled, experienced and articulate advocates for their country's policies. But the body of the whole is deciduous. There is always a turnover in representation.

¹³ An example is the creation in the Committee on Technical Barriers to Trade of a list of best practices for standards,.

tactic of “me before you”. No one gets anything, unless they bypass the obstacles to progress. That is itself a major threat to the multilateral trading system.

The world has changed dramatically since the period of negotiation of the Uruguay Round (1985-94) when the WTO rules were negotiated, and even more distant was the founding of the GATT in 1947. Consensus based on common purpose probably always shifts over an extended period and may even fail. Any institution after a span of time would need some review in terms of the relevance of substantive rules as well as finding more effective ways to facilitate rulemaking. A path that a substantial number of members, representing three quarters of global GDP, have chosen is to work in a plurilateral format but one that is open to all. Participation has extended far beyond the original signatories. Questions not yet resolved are how new rights and obligations will apply to non-members, and how the results will be accommodated within the existing WTO structure.

Dispute settlement

(Dealt with in the context of the Appellate Body impasse).

Leadership

To achieve reform among 164 Members, or even a subset of them, what is required is leadership. The U.S. Ambassador to the WTO correctly points out that the United States is highly active in all the WTO committees and in many of the joint initiatives, as well as being the originator of the transparency through notifications proposal that is the first concrete reform proposal tabled in the WTO. However, the U.S. would not claim that it does not differ from prior U.S. administrations in the trade policies it pursues and perhaps its role in the WTO. Near as I can tell, at least at this point, the United States does not see itself as being guarantor, the prime mover, of the multilateral trading system.

More is required of other Members, and it has begun to be forthcoming. As noted, papers on reform have been introduced last week for consideration by the Membership, by the European Union, by Canada based on the initial discussions held in Ottawa in October among 13 WTO members, by Honduras and by China. There will be ongoing discussions on the margins of the World Economic Forum in Davos on reform and a series of meetings leading up to the next G20 meeting in Japan at the end of June 2019. There is ferment, which means that attention is being paid to improving the WTO. It is early days yet, but it is possible that some form of collective consensus can help move the WTO forward.

What is needed from all Members who would lead or would share in collective leadership (and in principle, this should include all) is making a *net positive contribution* to the multilateral trading system. Except when it comes to dealing with the problems of the least developed, and some others who are closer to that end of the development spectrum, the philanthropic instincts of trade negotiators and the ministries which craft their instruction, are generally underdeveloped. What has to be understood is that the multilateral trading system is a benefit that requires maintenance. This goes beyond swapping market access concession on a reciprocal

basis. An investment is needed in the system itself for the common good. The return on investment is having the trading system.

Part. IV. *Policy space.*

When I travel on behalf of the WTO to visit with government ministries, I make it a point to speak to students at universities. Upon my concluding a talk on the multilateral trading system, a student at a university in Eurasia, put the first question. She asked, “what was the WTO going to do about the death penalty?” I answered that the WTO does not regulate domestic conduct unless it impedes or otherwise distorts trade. It leaves enormous policy space for its members.

A common misperception is that somehow the WTO rules impede, for example, the adoption of environmental regulations. The relationship of trade to the environment was the subject of a high-level panel at the WTO Public Forum in early October of this year. Environmental regulations are never prevented, they are only limited by the WTO’s rules if they discriminate against imports, in other words are used as a disguised protectionist measure. And that is rare.

A major current issue in the WTO is the excessive use of domestic subsidies in both industry and agriculture. Domestic subsidies are about creating an increase in employment at home and increasingly about gaining a larger share of future industries. A consequence can be where employment in other countries will decline and what those countries see as impairment of the future development of their economies.

There is a consensus that there is too much policy space for domestic subsidies (although no current agreement on which and whose subsidies need to be subject to international disciplines). Any country that can afford domestic subsidies, and perhaps some who cannot, uses them. They are almost completely unregulated by the WTO rules. Notionally subsidies are of concern when they shift the burden of adjustment from the country employing them to others, the effects transmitted through distortions of trade or investment. In the 1930s, measures that offloaded adjustment costs on others were called “beggar-thy-neighbor” policies, a colorful and accurate phrase that has fallen into disuse.

The one area that all WTO members have pledged themselves to resolve by the next Ministerial Meeting to be held in Astana in June 2020, is to create disciplines on fisheries subsidies. There is a desperate need for a breakthrough in this area, and a major attempt is being led by Mexican Ambassador Roberto Zapata, a veteran of the TPP negotiations to deliver positive results. This, as opposed to some other negotiating challenges, is South-South issue. I will give you one illustration. Two weeks ago, looking out at the sea from my hotel room window in Djibouti, there was within view an assortment of large tankers and freighters. Djibouti is a major port for the Horn of Africa. Also present was always a warship. I do not know its nationality. Djibouti is host to a major military presence of Germany, Spain, France, Italy, Japan, China and the United States. One of the serious problems in that part of the world is piracy. The presence of heavily subsidized huge foreign fishing vessels is said to have wiped out

the livelihood of Somali fishermen, resulting in the need to pursue alternative employment, in many cases, piracy. The subsidies create nothing short of exporting adjustment costs, increasing employment at home at the expense of employment abroad.

This is a prime example of domestic policies that require international disciplines. Most domestic policies do not. There will always be major areas of domestic policy that will remain unregulated by the rules of the world trading system. As to the benefit of that freedom, much depends on how the absence of international rules is used. Policy space alone does not boost domestic economic progress. The countries of the USSR had 80 years of policy space, unencumbered by international rules. These economies lagged to so great a degree that the former USSR collapsed, and market-oriented reforms are now taking place. And this is not the only example.

A question for possible academic inquiry is the extent to which freedom from international obligations, to allow for protection of domestic industries, can be effective in a digitalized world. Not all countries can, or perhaps even should, develop their own platforms for e-commerce, maintain their own cloud services, their own server farms, and the like, while refraining from using foreign services and foreign origin applications in the hope that domestic applications will be created and would suffice if they were. A major topic of current international interest is the digitalization of agriculture. This was the subject of a conference I attended in Beijing earlier this year and is the subject of a major conference of Agriculture Ministers in which I will participate in February in Berlin. The digital world has become part of the environment in which trade now takes place, as well as nearly as omnipresent as the air we breathe. Digital protectionism would have profound negative consequences for the economies of nations that practice it.

PART V. MIND THE GAP – what remains to be done

I find disquieting, from the viewpoint of what it says about the multilateral trading system, the UK Treasury memorandum on the costs to Britain of Brexit. It states that the loss of GDP for the UK by the year 2035 would be 2% if Brexit resulted in the UK getting a Norway-style deal (accepting most of the rules of the EU for much of its trade), a 5% hit if it got a CETA, an EU Canada type FTA, and a 8% loss of GDP if the UK-EU trade relationship is subject solely to WTO rules. Applied globally, that is a loss of nearly \$90 trillion by 2035. To put that in perspective, the entire GDP of the African continent is currently \$3.3 trillion.

While a global single market is no country's goal, of necessity there are major areas for improvement in terms of both market-opening and new international rules. The Peterson Institute has hosted presentations on the gains from liberalization of business services alone. The gains would be very large. Here is another area for PIIE inquiry. Many years ago, there was the Williams Commission that focused on the economic gains from attacking nontariff barriers. That work laid the foundation for international negotiations. **A start could be made by the Peterson Institute, and perhaps it has already, on the gains to be made by filling parts of the shortfall from the absence of movement toward a global single market.**

Part VI. *Hope and Peace*

There are many areas of the WTO where progress is hard to come by. I have mentioned the long effort to rein in fisheries subsidies. Agricultural issues are also always difficult. Industrial liberalization, such as an agreement to have no tariffs for environmental goods, has not even been mentioned as far as I know by anyone in the 15 months I have been at the WTO.

But there are areas of great value that do not receive much public notice where excellent cooperation within the WTO is always present. With the luck of the draw, there are two areas in which I am particularly fortunate to be involved and are extraordinarily satisfying.

I chair the Director General's Consultative Forum on Cotton Development Assistance. The moving force behind this initiative are four of the poorest WTO Members, four West African countries – Benin, Chad, Mali and Burkina Faso. Our meetings are characterized by goodwill and good deeds in the form of concerted efforts of all cotton producing and consuming countries, as well as international institutions, to assist development in countries whose growth in future income is heavily dependent on cotton.

A second area in which I am privileged to participate is the accession to the WTO of new members. Many are fragile and are now or have been conflict-affected. These include Somalia, Sudan, South Sudan, Syria, Ethiopia, and East Timor. What these countries seek is integration into the world economy, in order to raise the standard of living of their peoples, and thus have a better chance at stability and peace.

The last two countries to be admitted into the WTO, in 2015, were Liberia, recovering from civil war and Ebola, and Afghanistan. Their ambassadors are leading advocates and give the most convincing and eloquent testimonials to the value of the WTO. At our conference on WTO accessions held in the Horn of Africa, the representative of Sudan concluded his presentation with the words: "If there is trade there will be peace."

The multilateral trading system was created as part of the institutional framework for reconstruction and development, and to help assure peace after World War Two. One cannot travel far in Europe without coming across a memorial or museum to the catastrophes of the last century – at the museums dedicated to the Great Patriotic War in Moscow and Minsk, to the memorial to the gulag 30 kilometers south of Astana, the capital of Kazakhstan, to the museum of the resistance and deportations in Nantua, France, within an hour's drive from Geneva, and to the plaques almost everywhere. The physical scars are still present.

The multilateral trading system embodied in the rules and processes of the WTO is part of the firewall against a return to appallingly bad times, an assurance that those experiences are not to be repeated. It is a place where the liberal world trading order can be nurtured and improved. It holds great promise. It is a garden to be tended.

Select Inventory of WTO Activities In Administering the Multilateral Trading System

Introduction: What is not covered much in the press, as the current crises overshadow the WTO's daily work, is that the WTO is fully functioning and in myriad ways supports international trade and development. The following, with some additional background are some examples, provided by senior WTO secretariat members, of what the WTO provides:

Overview

The eighth round of multilateral trade negotiations, the Uruguay Round, which concluded with the Marrakesh Agreement establishing the WTO along with a significant range of other agreements, stands out for particular mention since the rules negotiated in this Round are those on which the overwhelming proportion of global trade still currently trade under. It made multilateral a number of earlier GATT Plurilateral Codes as well as concluding new Agreements on trade in goods, services and the Trade Related Aspects of Intellectual Property.

Market access for agricultural products was for the first time brought comprehensively within the GATT framework of rules through a new Agreement on Agriculture. All quantitative restrictions had to be converted into tariffs through a tariffication process and agricultural tariffs required to be subject to legal commitments or bindings.

In relation to Non-Agricultural Goods, which in practice account for 95% of world goods trade, the Uruguay Round considerably increased the number of bound tariffs and reduced tariffs by 40% for developed countries on nearly 800 billion dollars' worth of trade in industrial goods.

The Agreements reached on Technical Barriers to Trade and on Sanitary and Phytosanitary measures further complemented the market access openings through new disciplines applicable to non-tariff regulatory barriers in place for both agricultural and non-agricultural goods.

The Uruguay Round also saw the revision of the procedures and rules concerning antidumping measures as well as safeguards, which along with subsidies, were the subject of separate new detailed agreements. Other goods related agreements expanded or tightened existing rules dealing with import licensing procedures, customs valuation, pre-shipment inspection, trade-related investment measures and rules of origin.

Services represent the fastest growing sector of the global economy, accounting for two thirds of global output, and are estimated to account for over 40% of global trade. The General Agreement on Trade and Services (GATS) which contains three key elements: the main text

containing general obligations and disciplines; annexes dealing with rules for specific sectors; as well as individual countries' specific commitments set out in Schedules which provide for access to their markets. The Services telecommunications reference paper shaped the regulations and liberalization of the telecoms sector which is reflected in a range of Member scheduled commitments is a notable achievement.

The Trade Related Intellectual Property Rights Agreement (TRIPS) was created to reduce the amount of conflict over the protection of IP by member states due to different standards. The agreement also defines what types of materials members must protect and creates "obligations for members to provide procedures and remedies under their domestic laws to ensure that intellectual property can be effectively enforced by foreign right holders as well as their own nationals."

The commitments between WTO Members concern 98% of all trade. And in spite of the tremendous growth of regional initiatives over recent years, the overwhelming bulk of world goods trade - some 80% - remains non-preferential MFN trade which is regulated by WTO market access commitments.

The array of standing Committees and Councils established under the various WTO Agreements which provide a forum for Members to discuss concerns about trade regulations of other Members and to find solutions. The objective is to try to resolve concerns through informal processes before they escalate further to formal disputes and Members have been successful at doing this in a number of cases. Similar work is done by practically all Committees of the WTO. But if they do so escalate, the WTO provides a comprehensive framework for dispute settlement in relation to any of the so-called "covered" agreements.

The decision taken to the Uruguay Round to move to a much more automatic or compulsory dispute settlement than that which had hitherto applied under the GATT was a very conscious one. It was all about ensuring that there was a way to hold trade partners to account through an effective system, in the full knowledge that the price for this was that you yourself would be similarly exposed to challenges relating to non-compliance.

The original system of dispute settlement under the GATT had been an extremely informal one during its first years, even if it became more formalized through a panel process in later years. However, a defendant could block a complainant's GATT panel request or adoption of final reports of the 136 dispute reports during the GATT, only 95 were adopted, while the remaining 41 (30%) were left unadopted for various reasons.

The WTO Dispute Settlement System ushered in by the Uruguay Round was very much a reaction to this "blocking" experience from the GATT. In particular, the WTO Dispute Settlement Body, which oversees the implementation of the "Dispute Settlement Understanding", not only automatically establishes panels to examine complaints but also automatically adopt the findings of panels and the Appellate Body—unless WTO Members agree unanimously not to do so, through "reverse consensus."

In addition, Members could, under the new system, appeal rulings to a new institution, the WTO Appellate Body. The rationale behind this right of appeal was that it would act as an additional safeguard against panel reports that were legally defective in some way. This consideration was seen as particularly important given that under the new rules panels would be automatically established, and their reports adopted, unless Members by consensus determined otherwise. The new system also provided a way to seek redress in the event of non-compliance by providing for the Dispute Settlement Body to authorize suspension of concessions (retaliation).

As of today, around 600 disputes have been brought for member to-member resolution at the WTO. Around 110 Members of the 164 Members, developed and developing countries, have been involved in WTO disputes, as complainants, respondents, or third parties. The United States has been the most active, initiating over 125 disputes and serving as respondent in over 150 cases, with the European Union a close second.

The WTO is a forum for ongoing trade negotiations. Many of the Uruguay Round agreements when they entered into force in 1995 set timetables for future work, including in the key areas of agriculture and services. This “built-in agenda”, which included over 30 items of work, started almost immediately in the aftermath of the Uruguay Round. In some areas, it included new or further negotiations.

The basic formula that has guided the organization is agreement through a consensus among all Members to adopt new rules. All WTO Members technically have a veto as consensus is required for outcomes.

In 2013 there was the adoption for the first time since the Uruguay Round of an entirely new WTO Agreement, the Trade Facilitation Agreement. This Agreement, which entered into force last year contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues and contains provisions for technical assistance and capacity building in this area.

The WTO’s Tenth Ministerial Conference was held in Nairobi, Kenya, from 15 to 19 December 2015. The Package of outcomes adopted at that meeting contained a series of six Ministerial Decisions on agriculture, cotton and issues related to least-developed countries (LDCs) as well as a further agreement to reduce IT tariffs valued at 1.3 trillion dollars a year. Importantly, among these decisions was a very historic one in which Ministers agreed to fully eliminate agricultural export subsidies. This has widely been seen as the most significant step in the reform of agricultural trade since the conclusion of the Uruguay Round.

The WTO Director General, Roberto Azevêdo, in his closing statements at MC11 in December 2017 meeting, after acknowledging the fact that consensus had proved impossible in most areas summed up how he saw things going forward from Buenos Aires. He said:

"If we really all support the WTO, if we really do, we have to bear in mind that multilateralism doesn't mean that we get what we want. It means we get what is possible.

It's not compatible to expect multilateralism to work and at the same time to expect to walk out with everything you wanted. This is a recipe for failure.

If we prize the system, we have to come knowing that we'll need to make compromises. Sometimes painful compromises."

It's important to realize, however, that the fact that significant multilateral deals have continued to be elusive, does not mean that Members of the organization have stopped working for further trade reform. Within the WTO active negotiations continue in the area of Fisheries Subsidies along with discussions on a range of other issues. Notably, in Buenos Aires sub-groups of members also came forward to endorse a number of plurilateral initiatives, in areas such as e-commerce and investment facilitation.

In the area of implementation of existing commitments, one key area of focus of a number of Members is around the need to improve transparency through more timely and higher quality information about trade policies that Members are required to submit by way of formal notifications. Compliance with notification obligations has not been even, it is low in many cases, with the exception of SPS and TBT measures.

A second area of recent attention has been calls from some WTO Members, and particularly the United States, EU and Japan but also other Members, for improving the existing WTO rules in areas like subsidies and TRIPs, where, some Members consider the current rules unbalanced for not dealing effectively with what they perceive to be unfair trade practices of certain Members.

The question of developing country status and who this should apply to in the WTO of today has also emerged as a key focus of attention. This was not really an issue if you read the Punta del Este Declaration that simply assumed a separation of the membership between developed and developing countries, a separation that is today in many cases highly contested. None of these issues are likely to be easily or quickly addressed through consensus agreements but it is clear they will continue to be a focus of ongoing debate and discussion in the period ahead.

A number of core challenges have emerged over the 23 or so years that the dispute settlement system has been in place.

First, a number of disputes in recent years have been rather more complex and complicated in terms of the measures involved and legal arguments, than was the case when the system started over 20 years ago. Submissions and exhibits can be voluminous, and this has a significant impact on the size of panel reports and timeframes. Second, more panel reports are being appealed, reaching a peak rate of 90% in 2016, and more claims of non-compliance have been filed, requiring panels to examine whether Members have implemented the recommendations and rulings of panels and the Appellate Body. These compliance panel determinations can, too, be appealed, which prolongs the time-frame to bring a dispute to a close. Third, in various areas the DSU procedural rules are not crystal clear in the view of WTO Members. The most obvious example of this is the debate between Members on the so-called "sequencing issue".

More generally, throughout its history the results generated by dispute settlement panels and the Appellate Body have in some cases attracted criticism from Members. This is not surprising.

The WTO Dispute Settlement Understanding (DSU) incorporates a specific warning against over-reach by adjudicating bodies. In Article 3.2 it states:

"2...The Members recognize that [the dispute settlement system] serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. *Recommendations and Rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.*"

So that's very clear guidance to both panels and the Appellate Body about what they should and shouldn't do. They should not fill gaps but there is a lively debate about whether they do. The consequences of no resolution to this issue become more serious for the functioning of the WTO DS system as time passes. In particular, if the AB is reduced to the point where it can no longer compose divisions of 3 members to hear appeals, the consequences would be significant. This is because any party to a dispute may appeal panel findings. If a panel ruling is appealed, the panel report cannot be submitted for adoption, until the outcome of the appeal has been finalized, at which time the panel report, as amended by the appeal rulings, will be submitted for adoption to the DSB. If the AB was reduced further to the point where it could not convene a Division for an appeal, unless disputing parties agree that a panel report will not be appealed and can be put forward for automatic adoption by the DSB, it would not be possible to adopt the report. This would mean that the implementation of the ruling and further steps in support of compliance could thereby be avoided, simply by lodging an appeal.

The ability of WTO members to hold each other to account for perceived legal wrongs through a process that always end, in the final event, with automatic adoption of rulings (unless there is a consensus not to adopt them), would be lost. It remains to be seen how WTO Members will manage dispute settlement in the event the system faltered in this way. For example, some have suggested disputing Members could agree not to appeal panel outcomes or might agree to alternative dispute settlement arbitration procedures under Article 25 of the DSU. Others have pointed out that this would see a return to the consensual dispute settlement of the GATT days, whereby any losing party could in effect block the adoption of a report. While this allusion to the GATT may be partially correct, it still fails to recognize that under the GATT consensus was required to even establish panels. However, within the WTO the situation remains that panel establishment is automatic and that will not change unless the current DSU rules are amended, which would require consensus. In short, in relation to the dispute settlement system, absent an agreement that resolves the current impasse, we will be heading into uncharted territory.¹⁴

Economic impact of the WTO

¹⁴ This section is a much-shortened version of excellent and comprehensive remarks delivered by John Adank, Director of the WTO's Legal Affairs Division, at the University of Manchester on November 30, 2018.

- Several studies show that the predictability of trading conditions that WTO has ensured since 1995 has a large economic value. Here are some data.
- An important component of trade costs that is often neglected is trade policy uncertainty. Exporters evaluate the risk associated with the possible increase in barriers to trade in the destination market when deciding whether to export, and delay exports to risky destinations. The mere reduction of policy uncertainty and not tariff changes explains 22% of Chinese export growth to the U.S. following China's entry in the WTO.
- Empirical evidence clearly suggests that the WTO acted as a restraint to the use of trade-restrictive actions during the crisis. Research by the WTO shows that the world would have experienced tariff increases on 9.5 per cent of tariff lines more than actually took place. (Groppo and Piermartini, 2014).
- World Bank-WTO research shows that the predictability of trading conditions that WTO commitments ensure boosts trade by approximately between 10 to 30% compared to a world where at any moment tariffs could be raised to an arbitrarily high level. (Osnago, Piermartini, Rocha, 2018).
- Absent the WTO, prices would be higher. Economists have estimated that reduced policy uncertainty due to WTO binding commitments lowers prices. For the US, research has estimated that reduced prices following China's accession to WTO increased consumers' income by at least 0.8 percent, the welfare equivalent of an 8-percentage point tariff decrease (Handley and Limão, 2013)
- Economists estimate that the success of the WTO at preventing trade wars (where countries freely fix tariffs unilaterally to their national optimum) is worth up to \$340 billion per year. (Ossa, 2014)
- Only a multilateral system based on WTO principles can provide solutions for trade policy externalities that would otherwise drive large countries into inefficiently protectionist trade policy (trade war). In other words, multilateral trade cooperation is essential for countries to satisfy domestic interests while not hurting foreign interests.
- The WTO is criticized for failing to agree on new trade deals but when there is no trade war, that is already a testimony to WTO's success. The multilateral trading system has weathered many shocks, not the least the financial crisis of 2008.
- Predictable trade environment is essential for firms to engage in international trade and make investments. Commitments made at the WTO and their enforceability substantially reduce policy uncertainty.
- The worst-case scenario of a trade war would cost about 17% of global GDP. (Ralph Ossa, University of Zurich).

- The WTO is well-suited for negotiation about long-standing and new issues as it has the structures to support such arrangements. (Bernard Hoekman, European University Institute).
- Preferential trade agreements (PTAs) are not a solution. First, new issues became difficult to resolve even in more limited settings. Second, PTAs are often restricted to a fixed club of members and hence have a limited impact on reducing costs of regulatory barriers.

Rules

The area of "Rules" has been a key aspect of the multilateral trading system since its inception in 1947. It aims at guaranteeing that trade liberalization does not go hand in hand with the development of unregulated or unfair trade practices. "Rules" encompass disciplines on subsidies, state trading enterprises, investment, and the important topic of trade remedies. WTO disciplines in this area have been substantially developed and modernized over time. They are as close as it gets to a unique set of competition rules at the international level.

They have two main functions: - Discouraging public policies having an adverse impact on trade competition; - and, at the same time, offering a temporary safety valve to Members whose domestic industry is affected by imports.

- The first function is achieved by setting rules on such important topics as subsidies granted by Members; the non-discriminatory administration of State monopolies and other State trading enterprises; and the limitation of trade-restrictive and trade distorting investment measures. None of these practices are prohibited per se, but WTO rules guarantee that the most trade-distorting measures are sanctioned: this is the case, for example, for export subsidies and subsidies contingent upon the use of domestic goods over imported goods. In addition to setting substantial rules on these issues, WTO rules provide for transparency: Members notify and submit their measures to peer-review by other WTO Members.
- At the same time - and this is the second important function of the rules-based trading system - WTO rules allow Members to respond to unfair trade practices by the imposition of remedial border measures. Anti-dumping duties aim at preventing the injurious effects of dumped imports; countervailing measures aim at preventing the injurious effects of subsidized imports. Safeguard measures allow for temporary restrictions or increased tariffs on imports in the event of an unforeseen increase in imports. These instruments play the role of a safety valve, without which Members would be deterred from entering into additional tariff concessions and from engaging in further trade liberalization.

The rules area has attracted tremendous attention over the last few years. Interestingly enough however, Members do not call for less disciplines in this area, but for a more precise and more

predictable set of rules. The modernization of existing rules is seen as one of the key aspects of the so-called "WTO reform".

Assisting Development through Technical Assistance

In order to ensure that Developing, Least-developed Members and developing country observers benefit fully from their participation in the WTO, the WTO provides trade-related technical assistance, whose main purpose is to enhance the human and institutional capacities to take full advantage of the rules-based Multilateral Trading System (MTS), meet their obligations and enforce their rights as Members, and deal with emerging trade-related challenges.

The WTO's technical assistance and capacity building focuses on the needs and priorities of beneficiary Members and Observers. Members allocate 20% of the Organization's resources to support this area of WTO work in addition to voluntary contributions illustrating Members' commitment to this work of the WTO with a view to ensure that all members enjoy the privileges provided by belonging to the WTO and the security that the trading rules provide.

Apart from targeting government officials as beneficiaries of training, specific programmes are provided to non-Government officials and entities to ensure their effective participation in negotiations and other areas of WTO work. Between 2013 and 2017, the WTO trained a total of more than 79,000 participants. The support provided by the WTO focuses on achieving the following:

- Government officials are implementing WTO Agreements and fully realizing Members' rights and obligations;
- Acceding governments are participating in accession negotiations;
- Academic institutions and other stakeholders are analyzing WTO issues and reaching out to policy makers; and
- Non-governmental stakeholders are aware of and knowledgeable about WTO work and issues.

The WTO also has a role and responsibility to ensure that all its Members can effectively participate in - and benefit from - smooth, predictable and fair trade. The WTO's Aid for Trade initiative helps developing countries to build the trade capacity and infrastructure they need to benefit from trade openings. To give one concrete and practical example: there is the work of Standards and Trade Development Facility (STDF), a global partnership housed and managed by the WTO. The STDF supports developing countries to meet sanitary and phytosanitary (SPS) standards and gain and maintain market access. It provides a global forum for effective coordination among leading agriculture, health and trade experts from relevant organizations, such as the Food and Agriculture Organization (FAO) of the United Nations, the World Bank Group, the World Health Organization (WHO) and the World Organization for Animal Health (OIE). To date, the STDF has developed and funded over 180 collaborative and innovative

projects across the world, supporting farmers in Uganda, processors in Sri Lanka, and traders in Guatemala. WTO Members appreciate STDF's role in facilitating safe and inclusive trade from developing countries"

Trade and the environment

Trade policy does not and cannot exist in isolation from other public policy objectives. Trade is a means to an end and not an end in itself. It is for this reason that Parties to the founding agreement recognize clearly on page one, paragraph one, that their relations in trade should be conducted with a view to:

"... expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking to both protect and preserve the environment..."

This principle has been very powerful and effective, and we have seen it put into practice in more than 20 years of jurisprudence in the WTO. In the few cases in which environmental measures were considered in contravention of WTO rules, the environmental objective was never put in question. In all the cases on the fishing of shrimp or tuna, one or more elements of the measure were arbitrary or unjustifiable discriminations that worked against the environmental objective, not in its favor. The WTO has led the way in ensuring that trade does not trump environmental goals, while targeting the protectionist element of the measure. The WTO jurisprudence has settled many concerns and reduced tensions on the impact of trade rules on environmental measures, as well as the impact of environmental measures on trade.

We should also not forget that trade, under the WTO, has lifted millions out of poverty and made possible resource efficiency gains, all of which has benefitted the environment. The better we use our resources, the more people we lift out of poverty, the better it is for the environment. These are not my words but those of a former Executive Director of UN Environment. There is no doubt we need more dialogue and understanding on how trade contributes to society. This is why we have the WTO Committee on Trade and Environment, where members can debate, exchange experiences, learn from each other and discuss how to better achieve "win-win-win" policies in a systematic way. Its creation was a very significant step in the WTO system. Without such a multilateral forum to debate, channel concerns and launch ideas, we would have much more frustration from civil society that governments are not listening to their wishes at the international level and potentially many more protests in the streets! This would fuel protectionist tendencies and foster more misunderstanding on the role of trade.

Technical barrier to trade (TBT)

Most goods traded today that cross borders are affected in one way or another by standards and regulations. Indeed, it is often when standards fail that we notice them: electrical plugs that don't fit foreign sockets, or complicated and parallel safety requirements in different countries that

render uneconomic registration of vehicles while supposedly aimed at the same thing: safe cars. High costs from standards which are unnecessary or unjustified are particularly inefficient. To gain access, foreign manufacturers may need to redesign products specifically for that one market when the required level of health or safety protection is already achieved by its existing products; or when products must undergo duplicative or excessively burdensome inspection, testing or certification procedures.

While a tariff might make a product more expensive, it usually does not actually prevent access to the market. In addition, a tariff is both transparent and predictable and there is not much uncertainty involved. This is not to suggest that tariffs are a welcome trade instrument, they are just preferable to those which are worse. Yet we can't live without standards and regulations. They are necessary for compatibility and interoperability in an ever more interconnected world with value chains that are fragmented and geographically dispersed. They are critical tools for addressing shared global challenges in spheres from health to the environment. Standards help deliver needed trust and confidence throughout the supply chain. More than that, standards provide incentives to innovate and cooperate, and help disseminate innovations.

It is in balancing the right to regulate and the need to reduce the cost of that regulation on trade that the WTO Technical Barriers to Trade Agreement, and its corresponding committee, has made a very vital contribution to society. The disciplines of the agreement enhance transparency on measures that are often opaque and nebulous, it curbs discrimination and unduly burdensome regulation while safeguarding the legitimate objective of regulating for public policy objectives. The strong encouragement on the use of international standards provides a common basis for regulation which reduces divergence, and therefore costs. The TBT Committee has built up an impressive range of decisions and recommendations which improve transparency, establish principles for international standard setting, provide guidance on good regulatory practices and international regulatory cooperation. These are all vital tools that we need to keep markets effective, products safe and international trade flowing. The Committee through its discussion of specific trade concerns has also headed off trade concerns before they become serious problems for dispute settlement. Of the over 500 specific trade concerns, only a handful have ended in a dispute panel report. The TBT Committee has done all of this because it has broad governmental and private sector support. It is one of the bright spots on the WTO system. If we did not have this multilateral agreement, we would have a far less efficient patchwork of divergent practices and many more obstacles

Agriculture

The work of the Committee on Agriculture (CoA) provides the essential foundation for work in other parts of the organization (i.e. Negotiations and dispute settlement). Under the Agreement on Agriculture Members are required to submit notifications relating to their scheduled commitments. The data provided in these notifications are essential for informing discussions in the negotiations. In the CoA's Review process WTO Members can pose questions relating to notified information, amplifying the value of the information by clarifying concepts and identifying data gaps. These types of information exchanges deepen the transparency of

measures affecting agricultural trade. Members use the Committee to put collective pressure on their trading partners to provide notified information particularly in areas where public data is scarce, such as on agricultural subsidies. Over the past few years public databases have been developed that contain notified data as well as the full text of the questions and responses posed in the Committee, further enhancing the transparency of government measures that influence the agricultural trade landscape.

The CoA Review process also provides a mechanism for Members to monitor the measures taken by their trading partners that may have impacts on international agricultural markets, unrelated to notifications. This monitoring is an essential element for building and sustaining trust, as well as a way to pre-empt the need for more formal dispute resolution. Without this monitoring the rules contained in the Agreement on Agriculture, which are intended to limit distortions in international trade, would have less traction.

The Committee's review process works better the more Members actively participate. At the same time, smaller delegations can benefit from the additional transparency and monitoring with little cost. As noted above, the notified data and exchanges in the committee are publicly available through on-line databases. The Committee thus provides a public good for policy makers, private firms, and civil society through enhanced transparency and predictability.

Individual Member Trade Policy Reviews

- Transparency in trade and trade-policy making is of utmost importance for global trade. It allows Governments and economic actors to make informed decisions and markets to operate more efficiently.
- Transparency is provided in the WTO through regular notifications (although it must be recognized that the record of compliance with notification obligations can be significantly improved), and the Trade Policy Review Mechanism (TPRM).
- The WTO undertakes the Trade Policy Review of all its Members. There is no other global institution or organization doing this type of transparency exercise. There is no other place where Governments and private sector representatives can find objective, impartial and comprehensive descriptions of the whole array of trade and trade-related policies of all Members.
- The TPRM provides all government representatives with a unique opportunity to ask questions, make an assessment, and request clarifications from the reviewed Member. And this is done through a collective review exercise which is done in a non-confrontational manner. It is also a unique opportunity for the Member under review to obtain an "audit" and assessment of its trade policies and practices. The exercise provides a unique opportunity to exert peer pressure for trade policy reforms. For example, where else can countries review the Trade Policies of China, or India, or the Russian Federation?
- The WTO provides a forum for all Members to assess developments in Regional Trade Agreements (RTAs). There is no other global institution or organization that provides for a

multilateral review of RTAs. There is no other place (than at the WTO) where Members can collectively assess the contents and implications of RTAs. For example, where else can countries assess the implication of the Eurasian Economic Union (EAEU)?

- The WTO provided a sort of insurance policy against protectionist tendencies at the time of the Global Financial Crisis in 2008/2009. Many factors helped resist temptations to erect trade barriers as a response to the crisis. One of them was the collective Trade Monitoring exercise under the WTO. The Trade Monitoring exercise provides a unique opportunity to exert peer pressure and to have a collective discussion on the basis of an up-to-date factual reporting of all trade measures. There is no other place where this type of information can be found.

Trade Related Intellectual Property Rights (TRIPS).

It is important and timely to reflect on the fundamental transformation that the implementation of the TRIPS Agreement represents. The TRIPS Agreement underpins the availability of enforceable rights of inventors and innovators. It has led to an unprecedented strengthening of IP protection in almost all jurisdictions across the globe. It has occasioned the introduction of thousands of new laws worldwide; IP administration and enforcement have been overhauled and strengthened, and in many cases the necessary institutions built from the ground up, trained IP judges are now in place in many countries where there were none.

TRIPS has also helped to reframe how we think about trade and its social and economic benefits. It epitomizes how knowledge and trade in knowledge have come to the center of trade and development policy. Just as the ink was drying on the text of TRIPS, the internet was emerging as a conduit for knowledge-rich trade, making it possible now to trade in IP as such, and Paul Romer, this year's Nobel laureate, was publishing his landmark works on endogenous growth theory – that an increase in the share of people working in the knowledge sector will increase economic growth.

Statistics demonstrate the benefits of TRIPS in concrete terms, and underscore how we need to look behind conventional trade in goods statistics when assessing national trade policy interests. TRIPS is not a zero-sum game. The healthy growth in trade in IP as such, and the IP licenses that build global value chains, explain a remarkable increase in earnings from licensing its intellectual property. It is a key area determining international competitiveness and job creation.

The Government Procurement Code (GPA)

The GPA is an area of considerable dynamism within the WTO, demonstrating that negotiations can deliver on the basis of common interests among trading partners. Entry into force of the modernized and updated GPA in 2014 has given a further fillip to this area of work. Accessions to this plurilateral agreement have accumulated at a steady clip, the conclusion of Australia's negotiations this year setting the scene for all industrialized economies now to be included. The

GPA currently encompasses 47 WTO members (comprising 19 parties to the agreement), while 10 more members are in the process of accession.

Interest in GPA participation continues to grow in developing country regions – and what is striking is that this interest is not only based on traditional trade interests and the quest for value for money for major infrastructure development. It is also founded on a desire to ensure good governance and to combat corruption. Recently, the Government Procurement Committee welcomed its first LDC (least developed country) observer, Afghanistan, which has taken an active interest in the Agreement.

The Agreement provides legally guaranteed access to a global procurement market of some \$1.7 trillion, increasingly covering emerging and transition economies, among the world's most dynamic. The GPA schedules are now in an accessible online database, the eGPA, which helps businesses to identify new market access opportunities. Active work continues on key issues in the GP Committee, and the Secretariat's technical assistance in this area is under heavy demand, reflecting the strong interest in sound government procurement policy and trade liberalization in this area in many developing countries.

Accessions

One of the objectives of the WTO is to ensure that all countries wishing to do so can use trade as an instrument for promoting economic growth and development. This is why WTO accessions continue to be a systemic priority. Since 1995, the Organization has dealt with 58 accessions, 36 of which have been already concluded successfully with 22 remaining on the agenda. The continued strong interest from governments wishing to join the WTO is a testament to the systemic value of the Organization.

Recent developments:

WTO Members responded positively to the request for accession by South Sudan - currently the world's newest nation, which gained independence in 2011 - by agreeing to establish an accession Working Party.

Progress is continuing for the accession of Bosnia and Herzegovina. The accession of Belarus is also moving forward. Belarus is the final member of the Eurasian Economic Union (EAEU) in the WTO accession process, following the accessions of Russian Federation (2012) and Kazakhstan (2015) and, as such, is addressing complex questions associated with the integration of a regional economic and customs union in a rules-based multilateral system. Completing this accession process is, therefore, of systemic importance for both the WTO and the EAEU.

Good progress was also registered in the accession of The Bahamas after six years of inactivity. The Working Party held its first meeting on the basis of a substantial set of technical inputs. This is the last remaining WTO accession in the Western Hemisphere.

Progress is expected with the government of Serbia, Ethiopia and Uzbekistan. The accessions of Somalia, South Sudan and Timor-Leste remain at the initial activation stages after

the establishment of their respective Working Parties in the last 24 months. In addition, Equatorial Guinea, which graduated from LDC status in 2017, has recently indicated renewed interest in moving forward with its accession process.

Addressing Members' standing request to widen the outreach and support to acceding governments, in 2018 the Secretariat offered technical assistance and capacity building activities to over 600 participants from acceding governments. In particular, the Secretariat carried out accession-specific national seminars, workshops and technical missions in the case of eight acceding governments. Furthermore, since the circulation of the last Annual Report, three accession related experience-sharing activities were carried out: The Sixth and Seventh China Round Tables on Accessions, hosted respectively by Argentina and Kazakhstan, and sponsored by China; and the second Regional Dialogue for acceding governments from the Greater Horn of Africa, hosted by Djibouti. In early 2019, the Secretariat will offer a specialized training on WTO accessions rules which will provide an in-depth focus on the WTO legal disciplines at issue in the accession Working Party Reports.

A new initiative, a g7+ WTO Accessions Group, was launched on the margins of the Ministerial Conference. The objective of this Group is to facilitate the integration of post-conflict and fragile economies into the multilateral trading system through WTO accession-related reforms. Established as a subgroup of the larger g7+¹⁵ it comprises eight LDCs associated with WTO accession, including three Article XII Members (Afghanistan, Liberia, Yemen) and five acceding governments (Comoros, Sao Tomé and Príncipe, Somalia, South Sudan and Timor-Leste). The Group aims to facilitate the integration of post-conflict and fragile economies into the multilateral trading system through WTO accession-related reforms.

An Informal Dialogue of Acceding LDCs was established to promote cooperation among acceding LDCs. Both of these initiatives are led by acceding governments. In addition, a series of new activities, including experience-sharing events, were launched under the "Trade for Peace" initiative, coordinated by the Accessions Division. These new initiatives as they create additional support networks that can play an important role in addressing the challenges associated with the WTO accession process, which remains complex, multifaceted and demanding. This is of particular relevance for many of the applicants which are currently in the accession queue – i.e., small and medium-sized economies, including a number of conflict-affected and fragile states.

By acceding to the WTO, governments send a message that they are committed to the core values of openness, transparency, good governance, and the rule of law. But each accession is also a building block for the multilateral trading system itself. This synergy is particularly relevant today as fundamental questions are being raised about the validity of the rules-based approach to international trade.

¹⁵ The g7+ is an association of 20 fragile and conflict-affected states, established in 2010 in Dili, Timor-Leste, with the aim of forging pathways out of fragility and conflict and to facilitate transition and economic development of its members. Its members are: Afghanistan, Burundi, Central African Republic, Chad, Comoros, Cote d'Ivoire, Democratic Republic of Congo, Guinea, Guinea-Bissau, Haiti, Liberia, Papua New Guinea, Sao Tomé and Príncipe, Sierra Leone, Solomon Islands, Somalia, South Sudan, Timor-Leste, Togo, and Yemen.

Accession-related technical assistance and capacity building activities were also provided by other institutions, and often in partnership with WTO Members. This year, the Secretariat continued to work in partnership with the Advisory Centre on WTO Law, the African Development Bank, the Asian Development Bank, the International Monetary Fund, the Enhanced Integrated Framework, the International Trade Centre, the Islamic Development Bank, the United Nations Conference on Trade and Development, the UN Economic and Social Commission for Asia and the Pacific, the UN Development Programme, the US Agency for International Development, the World Intellectual Property Organization, and the World Bank.

Concluding thoughts

- The WTO boosts trade; while RTAs are usually negotiated with geopolitical allies or “similar” countries, the WTO has been notably useful for boosting trade on a global basis, including among “different” countries (regardless of other relationships, etc.);
- Therefore, the WTO promotes peace through trade (One does not attack his main markets) while also raising living standards;
- The WTO simplifies trade rules and enhances the predictability of the trading environment; and therefore reduces the cost of trading;
- Without the WTO, we would end up with a spaghetti bowl of rules (multitude of regional trade agreements, RTAs, with their differing rules);
- Without the WTO, we would end up in a world of mega-regional agreements that would favor stronger (more developed) countries over the weaker ones; with greater divergencies in the types of rules applied, often incompatibly with one another:
- A trading environment composed of preferential agreements only would undermine the rule of law;
- Without the WTO, “discrimination” would replace the principle of ‘most-favored nation’ (MFN);
- Without the WTO, there would not be any effective dispute settlement. (What would be the alternative to the WTO dispute settlement?)