



TRADE AND DEVELOPMENT SYMPOSIUM

Perspectives on the Multilateral Trading System

A Collection of Short Essays

A Way Forward for the WTO

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Introduction

The last vote I cast as a Member of the Congress of the United States in 1994 was a vote in favor of the U.S. law implementing the Uruguay Round trade agreements that established the World Trade Organization. Many of us, in the United States and elsewhere, assumed at the time that the Uruguay Round would be the last of the vast global rounds of multilateral trade negotiations. Our hope then was that the WTO would become a full-time forum and framework for ongoing negotiations on trade issues of all kinds for an ever-growing number of WTO Members. Our expectation then was that more trade agreements of all kinds would be concluded by WTO Members over time as they were needed to hasten the flow of trade and heighten the spread of prosperity in an ever-growing and ever-changing global economy. There would be no more need for the grand global trade “rounds” of the past.

Our hopes and our expectations at that time have yet to be fulfilled. Instead, the Members of the WTO launched the Doha Development Round of multilateral trade negotiations in 2001. A decade later, they are still negotiating on the Doha round. It is long since clear to almost everyone who cares about the fate of the WTO that the Members of the WTO must find a new way of negotiating if they hope to continue to lower barriers to trade worldwide, and to sustain and strengthen the WTO-based world trading system. To me, the answer is clear. We should make the WTO what many of us who helped create it have always intended it to be. The way to do so already exists under WTO rules -- through the negotiation and conclusion by some but not all WTO Members of less than fully global trade agreements as part of the WTO treaty.

Opportunity

Ten years on, the Doha round remains deadlocked for one fundamental reason that all who long to break that deadlock know all too well. Under the WTO treaty, the Doha round cannot be concluded successfully unless and until there is a “consensus” of all the 153 WTO Members. And any one Member can block the achievement of the needed “consensus”. There are, however, other provisions of the WTO treaty that allow WTO Members to lower barriers to trade in ways other than through protracted multilateral negotiations involving all WTO Members such as the Doha round.

These other provisions offer a better way forward for the WTO. In addition to fully “multilateral” agreements binding all WTO Members, such as those sought in the Doha round, the WTO treaty also permits “plurilateral” agreements among some but not all WTO Members. This has been so since the establishment of the WTO.

Significantly, “Plurilateral Trade Agreements” can be made part of the WTO treaty by adding them to Annex 4 of the overall WTO agreement. Under Article II.3 of the WTO agreement, such plurilateral agreements are part of the overall WTO agreement “for those Members that have accepted them, and are binding on those Members”. However, such plurilateral agreements “do not create obligations or rights for Members that have not accepted them”.

Under Article X.9 of the WTO agreement, “The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide by consensus to add that agreement to Annex 4”. Further, “The Ministerial Conference, upon the request of the Members parties to a Plurilateral Trade Agreement, may decide to delete that agreement from Annex 4”. Under Article X.10 of the WTO agreement, “Amendments to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement”.

Thus, under existing WTO rules, some but not all WTO Members can agree to go above and beyond their existing WTO obligations by making additional commitments in some area of trade where a consensus to go forward with those additional commitments does not yet exist, or indeed may never exist, among all WTO Members. In this way, the option of plurilateral agreements offers the Members of the WTO the opportunity to lower barriers to trade through what would otherwise be “WTO-plus” commitments within the context of the WTO and of the WTO treaty.

Response

Two such “Plurilateral Trade Agreements” already exist and have proven effective in lowering barriers to trade. One is the WTO government procurement agreement. The other is the WTO information technology agreement. Both the “GPA” and the “ITA” could benefit from having more signatories among WTO Members, but, by and large, both have been successful, and seem likely to become more so.

For all manner of commercial, political, and institutional reasons, it is still to be fervently hoped that the Members of the WTO will find some way to reach a consensus, and soon, on the successful conclusion of the Doha round. Looking beyond Doha, the Members of the WTO can then move forward on many trade-related fronts without an initial consensus of all WTO Members by negotiating and concluding more plurilateral agreements among “coalitions of the willing” among the overall WTO membership. As my colleagues and I on the Global Agenda Council on Trade of the World Economic Forum have recommended, the WTO can become a “club of clubs” dealing with a whole host of new trade-related issues within the framework of the existing world trading system.

These plurilateral agreements will bind those WTO Members who choose to be bound by them. They can be open to adherence by all other WTO Members that may choose to sign them later. But they will not in any way bind any WTO Members that do not sign them. Through such partial, premium, “state-of-the-art” agreements among some but not all WTO Members, the WTO as a whole can become a much more effective forum for addressing the varying array of “next generation” issues relating to trade that are not currently covered by WTO rules, not sufficiently covered by WTO rules, and not part of, or not sufficiently part of, the negotiating agenda of the Doha round.

Investment. Competition. Green energy. Digital commerce. Global supply chains. Currency practices. Services. Intellectual property. Regulatory harmonization. Standards and technical regulations. Trade facilitation. Product safety. These and other pressing issues of international commercial concern could be suitable topics for additional plurilateral agreements.

Is this a new idea? No. Not at all. Indeed, this is an echo of how, over time, we created the WTO. Old GATT hands will recall that a number of “codes” were negotiated in the Tokyo Round -- on standards, subsidies, dumping, and more. These Tokyo Round codes were binding only on those GATT Contracting Parties who agreed to them. Later, a number of Tokyo Round codes emerged from the Uruguay Round as full-blown multilateral agreements, and are now among the covered agreements in the WTO treaty.

Would these plurilateral agreements, like those Tokyo Round codes, eventually become fully multilateral agreements that would bind all WTO Members? Not necessarily. Some might. Others might not. Certainly this has not yet happened with either the GPA or the ITA. Again, only those WTO Members that choose to be bound by such plurilateral agreements are in any way bound by them. It may be hoped by their advocates that some plurilateral may become fully multilateral, and the cumulative effect of the operation of the obligations in a plurilateral agreement may create over time a critical commercial mass that may help to encourage other WTO Members to make it fully multilateral. But there is no way under the WTO rules that some WTO Members can make other WTO Members sign a plurilateral agreement if they do not wish to do so.

Would these plurilateral agreements go beyond what was originally intended in creating the WTO by extending the reach of the WTO too far? No. The preamble of the WTO agreement is far-reaching in suggesting the appropriate range of WTO concerns. It speaks of conducting “relations in the field of trade and economic endeavour... with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and 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 both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with (the) respective needs and concerns (of WTO Members) at different levels of economic development”. All this involves much more than merely customs and tariffs.

Would the “consensus” requiring for adding “Plurilateral Trade Agreements” to Annex 4 of the WTO treaty prove to be a political obstacle? No. It should not be. Why should some WTO Members object if other WTO Members wish to negotiate “WTO-plus” obligations that will not bind them unless they choose to be bound by them? And shouldn’t all WTO Members, who share a common stake in the ongoing success of the WTO-based world trading system, prefer that new trade agreements among WTO Members be made part of that overall system? Isn’t that one good way to ensure the

“security and predictability” of the system and otherwise to enhance it.

Should disputes arising under these plurilateral agreements be resolved by WTO dispute settlement? Yes. Absolutely. Perhaps the greatest advantage of including “WTO-plus” plurilateral agreements within the WTO is the availability -- and especially the enforceability -- of the WTO dispute settlement system. The GPA and the ITA are both enforceable on those WTO Members that have chosen to sign them in WTO dispute settlement. Other plurilateral agreements could -- and should -- be as well. New trade-related agreements are worth having only if they can be enforced. To be enforceable, any agreement concluded outside the framework of the WTO will need to establish an entirely new and untried dispute settlement system.

Conclusion

In conclusion, where do we go from here? The negotiation and inclusion of “Plurilateral Trade Agreements” as part of the WTO treaty does not require any change in WTO rules. The legal authority already exists. So where should we start? Three immediate opportunities are obvious.

One opportunity is the “Anti-Counterfeiting Trade Agreement” currently under consideration by a number of like-minded Members of the WTO that wish to add “WTO-plus” protections against infringements of intellectual property rights beyond those provided for all WTO Members in the WTO Agreement on the Trade-Related Aspects of Intellectual Property Rights. Although intellectual property comprises an ever-increasing part of the value of every good and service traded in the world, this issue is not on the Doha agenda. Making the “ACTA” a plurilateral agreement under the WTO treaty would be a way move forward within the WTO without need of a consensus of all WTO Members.

A second opportunity is a “Sustainable Energy Trade Agreement” that would eliminate the barriers to trade and investment in the new green technologies that are needed everywhere to spur sustainable growth. Thus far, the Members of the WTO have fallen short of consensus on reducing or eliminating barriers to trade in environmental goods and services in the Doha round. That issue and other issues relating to the spread of sustainable energy technologies and practices could be addressed in a plurilateral agreement under the WTO treaty.

A third opportunity is the proposed “Trans-Pacific Partnership”. All of the countries negotiating the “TPP” are Members of the WTO. If the “gold standard” of trade-related commitments sought by those negotiating the TPP would enhance the growth of some WTO Members, why not make that opportunity available to all WTO Members willing to be bound over time by those additional commitments by making it, too, a plurilateral agreement under the WTO treaty?

More than half a century has been spent building a world trade organization that serves billions of people in the world in endless ways. Why reinvent the wheel in trade now? Why not add more spokes on the well-proven wheel of the world trading system by addressing our new, 21st-century trade agenda through new plurilateral trade agreements within the WTO?

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Please note that this paper is in draft form. It will be revised and included in an e-book that ICTSD will publish shortly after the WTO ministerial conference.

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