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### **1. Introduction**

Since its launch in 1995, the World Trade Organization (WTO) has contributed to the liberalisation of international trade on a global scale. This has fostered the globalisation of the economy, the relocation of many companies and the formation of global value chains. For years, among other factors, the WTO has promoted economic growth, the expansion of transnational corporations and the development of emerging economies, particularly China and other rapidly industrialising Asian countries.

Even at its height, the WTO faced criticism, with various social movements holding resounding protests against neoliberal globalisation and its asymmetric beneficiaries during the 1999 Ministerial Conference in Seattle. But many voices have also defended the WTO and globalisation, stressing that opening up global markets has played a large part in lifting hundreds of millions of people in emerging economies out of poverty. It was also argued that a rules-based multilateral trading system guaranteed by an advanced dispute settlement mechanism chaired by the WTO Appellate Body would bring more legal certainty and predictability to international economic relations.

But the days of a rising WTO are gone. Its rules have not been updated to fit the large-scale, rapid transformations seen in the international sphere, and it is immersed in a deep crisis.

To a large extent the WTO continues to rely on the original agreements signed in Marrakesh in 1994, which focused on promoting free trade in goods and, to a lesser extent, services – the General Agreement on Trade in Services (GATS) is notable for its flexibility.

However, new technological advances (such as the increasing digitalisation of many services), the rise of China (with its peculiar political and economic system) and other emerging countries, and the increasingly urgent need to better combine free trade with fairer and more sustainable international trade mean WTO rules require modernisation.

The clearest cause of the blockage is the growing difficulty reaching major global consensuses.

The continuing failure to achieve this is due to the serious disagreements between advanced and emerging economies. This brief chapter aims to reflect on the various manifestations and causes of the WTO's current crisis and to evaluate the feasibility of its reform in this complex setting.

## 2. The Doha Round runs aground

The current crisis in the WTO has multiple manifestations. It first emerged in the form of deadlock in the Doha Round of multilateral trade negotiations, which began in 2001 with a highly ambitious agenda. As well as continuing to promote further liberalisation of international trade in goods and services, it sought to incorporate new issues into the multilateral system like the regulation of foreign investment (traditionally covered by bilateral treaties), anti-competitive business practices, transparency in government procurement and trade facilitation (removing or reducing bureaucratic barriers to cross-border trade).

But although the Doha Round was meant to be concluded in 2005, it remains uncompleted today and has thus far borne little fruit. The clearest cause of the blockage is the growing difficulty reaching major global consensuses. In the Uruguay Round (1986–1994) the consensus rule worked remarkably well. The clear hegemony of the United States at the time and the support of the European Union (EU) and Japan on many issues established a triad that proved decisive in building consensus and bringing then highly dependent developing countries with them.

The Doha Round, by contrast – at least since the Ministerial Conference in Cancún in 2003 – has demonstrated the growing prominence of certain emerging countries. Among others, India and Brazil defend their own priorities in the negotiations, which often run counter to those of the advanced countries. Likewise, successive WTO enlargements have seen a substantial number of countries join, including China in 2001 and Russia in 2012. Both make their renewed weight felt on the international stage and inevitably condition the formation of consensuses in the WTO.

## 3. Proliferation of preferential trade agreements

Another symptom of the WTO crisis is the growing proliferation of bilateral and regional trade agreements in recent years. The multilateral trading system has always co-existed with preferential trade agreements, but the Doha Round impasse has led some countries to promote an ambitious agenda of restricted trade negotiations with countries with whom they have closer relations or more compatible interests. These agreements tend to be very extensive, regulating multiple issues on the international trade in goods, services, intellectual property, government procurement, foreign investment, competition, sustainable development, e-commerce, and so on.

The EU clearly fits within this trend, calling its most recent agreements with third countries “New Generation Free Trade Agreements”: the negotiations with South Korea, Colombia-Peru-Ecuador, Central America, Canada, Singapore, Japan, Vietnam and Mercosur are some examples.

Under Obama's leadership, the United States also promoted the Trans-Pacific Partnership (TPP) with 11 other Pacific-basin countries (and the notable absence of China) and the Transatlantic Trade and Investment Partnership (TTIP) with the EU; President Trump hobbled both initiatives. The other TPP-negotiating countries decided to continue and adopted the Comprehensive and Progressive Agreement for TPP (CPTPP), which entered into force on December 30<sup>th</sup> 2018 and currently has seven states parties: Australia, Canada, Japan, Mexico, New Zealand, Singapore and Vietnam. Perhaps, following Biden's victory, the United States will re-engage in such initiatives.

China has also pushed for negotiations on other agreements, such as the Regional Comprehensive Economic Partnership (RCEP) with the countries of the Association of Southeast Asian Nations (ASEAN) and others in the Asia-Pacific region, where it is particularly keen to project its growing influence (Kelsey, 2019).

The proliferation of these preferential trade agreements – whose regulatory models vary according to the respective conceptions of the major powers driving them – could have the positive effect of establishing new regulations on international economic relations, but they may also deprive the WTO of relevance.

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#### 4. Rising trade tensions and geopolitical friction

In recent years, especially since the 2008 global financial and economic crisis, tensions have grown over key aspects of multilateral trade regulation. In particular, the United States and the EU have been closely watching certain Chinese practices that may or may not violate the letter of multilateral trade rules, but certainly go against their "spirit" (Steinberg, 2019). It has been alleged, for example, that China undervalues its currency exchange rate to obtain unfair competitive advantages; that it practices social and ecological dumping; maintains a highly interventionist economic model; imposes restrictions on the establishment of certain foreign investors; and requires forced technology transfer.

While continuing to defend the foundations of the multilateral trading system, the EU stresses that any such defence must not be naive. The EU believes that some emerging countries have benefitted handsomely from the opening up of markets promoted by the WTO without assuming the necessary responsibilities, and that it is necessary to level the playing field. For example, in 2017 the EU decided to reform its regulation on anti-dumping measures, envisaging a specific new regime for countries with "distorted markets". Its compatibility with the WTO's current Anti-dumping Agreement is questioned by China and other emerging economies (Huyghebaert, 2019).

During the Obama presidency the United States insisted that China could still not be considered a proper market economy and must continue making profound reforms to its system. But under Trump the tone of US criticism has sharpened, explicitly accusing China of abusing the multilateral trading system. It has unambiguously lamented the failures of the current WTO regime to prevent this and unilaterally launched aggressive trade wars, violating the most basic institutional and substantive multilateral rules.

The great powers are vying to lead the Fourth Industrial Revolution.

On January 15<sup>th</sup> 2020 the United States and China announced a truce in their trade disputes and presented the Phase One Trade Deal. However, the content of this truce (which includes some commitments that run contrary to the WTO's most essential principles) and the way it has been developed undermine the credibility of a multilateral trading system based on objective rules by subordinating commercial transactions to the variable balances of power between the great powers.

All of this has also coincided with the progressive escalation of geopolitical friction between the great powers. As well as vying to lead the Fourth Industrial Revolution (with the development of 5G networks and artificial intelligence), their interests clash in various areas of the planet, such as Hong Kong, Taiwan, Iran, Ukraine, Belarus and Venezuela, making the achievement of major global consensus even more difficult. Unsurprisingly, some authors already speak of the advent of a new kind of Cold War or of a trend towards the fragmentation of the world into large blocs (Zhao, 2019).

Joe Biden's recent victory may bring about some thawing, but he too has underlined that China is currently the United States' great systemic rival and that American "economic security" is also a matter of "national security" (Biden, 2020).

## **5. Blocked appointments of new members of the Appellate Body**

Trump's dissatisfaction with the current WTO regime has even led the United States to block the renewal of members of the Appellate Body. With only one member since December 11<sup>th</sup> 2019 it can no longer examine new appeals, for which a minimum of three is required. For years, it has been customary to call the WTO's dispute settlement system the jewel in its crown. The United States began criticising some aspects of the mechanism as early as 2002, presenting a proposal (alongside Chile) aimed at making it more flexible, arguing that the special groups and the Appellate Body in particular had been engaging in excessive judicial activism (doc. TN/DS/W/28, December 23<sup>rd</sup> 2002). But only Trump has gone as far as blocking the Appellate Body. It is hoped that Biden will take a more conciliatory stance on the matter.

## **6. Impact of the COVID-19 pandemic**

The COVID-19 pandemic inevitably affects the WTO. The serious health and economic crisis has shown the fragility of certain basic supplies that depend on global value chains. Plans to ensure certain levels of self-sufficiency of essential products have been revived. The drift among states towards certain forms of protectionism that began following the 2008 crisis and its aftermath is growing, encouraging the relocation of companies and government support for national champions.

The EU continues to defend the opening up of international trade, but now insists on promoting greater "resilience" and "strategic autonomy" to reduce foreign dependence, promote reindustrialisation and foster European high-tech companies that can effectively compete with large

US and Chinese corporations (European Council Conclusions, October 1st and 2nd 2020).

The pandemic has also heightened mistrust between certain countries, which reproach each other over its origins, management and the information disseminated. For example, shortly after Australian authorities raised the need for an independent investigation into the origins of the disease in China, Beijing (coincidentally?) imposed a series of trade restrictions on Australian products (Palmer, 2020).

There is a drift among states towards certain forms of protectionism.

## 7. Is WTO reform feasible now?

In this complex global setting, it has become a commonplace to say that the WTO needs reform. Recent G20 meetings generically repeat it. But when attempts are made to define which specific substantive and institutional aspects of the WTO should be reformed and how, the same disagreements that have hamstrung the Doha Round also emerge.

In terms of doctrine, Petersmann (2019) argues that the WTO's substantive rules require deep reform to prevent them from serving either uncaring neoliberal capitalism or excessively interventionist state capitalism, and to promote a model of social capitalism that seeks to effectively encourage the defence of free and fair competition on a global scale, while taking into account crucial social and environmental factors and simultaneously promoting free, fair and sustainable trade.

Among the proposals for reforming the WTO made by its members, the EU's are worth highlighting. Alongside Canada, the EU has been leading the so-called Ottawa Group of countries seeking to identify areas of convergence on the improvements to be made (Akande, 2018). In September 2018 the European Commission presented an EU concept paper on WTO reform, pointing out the need to thoroughly update WTO rules. It argues, for example, that more provisions should be incorporated on social and environmental issues. It also points out the need to make certain institutional reforms (e.g. facilitating the conclusion of plurilateral agreements) and to modernise multilateral regulation in order to better tackle the unfair competition practiced by countries with markets distorted by the excessive intervention of their authorities. In particular, the EU has been calling for reform of the Agreement on Subsidies and Countervailing Measures (SCM) to expand the list of prohibited industrial subsidies.

On this last issue, the EU proposals match those of the United States and Japan, with whom it presented a joint declaration on January 14<sup>th</sup> 2020, proposing a thorough review of the SCM with an eye, particularly, on curbing the large industrial subsidies given by the Chinese authorities.

The United States has also been signalling the need for other far-reaching reforms, such as those suggested in the 2020 Trade Policy Agenda. The argument is made, for example, that each member's consolidated tariff schedules are now anachronistic and should be "reset". Certain rules on special and differential treatment for developing countries are also considered to no longer make sense on many occasions.

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In many substantive respects, China's proposals are diametrically opposed to the stated approaches of the advanced economies (doc. WT/GC/W/773, May 13<sup>th</sup> 2019). China's economic model is officially classified as "*socialist market economy*", and it is reluctant to impose further limitations on industrial subsidies. On the contrary, it advocates multilateral rules that reinstate and expand the list of non-actionable subsidies, more effectively prevent the abusive recourse to trade defence instruments and protect publicly owned companies from potential discrimination. Nor does it seem willing to talk about social or ecological dumping or to question the current provisions on differential and more favourable treatment for developing countries.

The proposals and current attitudes of WTO members show marked disagreements between advanced and emerging economies about the values that should inspire the multilateral trading system. For example, some emerging countries often criticise EU proposals to establish a carbon border tax and other penalties on product imports based on their carbon footprints, which the EU considers necessary to promote sustainable development. Indeed, Indonesia has filed a claim against the EU for penalising biodiesel extracted from palm oil, plantations of which have spread across the Asian country (and other tropical countries) at the cost of deforesting primary forests that were important carbon sinks and biodiversity reserves (doc. WT/DS593/1, December 16<sup>th</sup> 2019).

## 8. Conclusions

The necessary reform of the WTO currently looks like mission impossible. Or at least it looks very difficult, given the persistent divisions between advanced and emerging economies over its regulatory model. It is worth recalling that the environment in which the WTO was forged was a unipolar international order in which the United States (and the larger triad) clearly set the international agenda. Today's world of fierce multipolar tensions and rivalries provides a very different context.

Once Joe Biden enters the White House positive changes are expected in the forms and substance of US foreign policy (Nye, 2020). But the multiple underlying conflicts with China will not disappear. Many Democrats also make a range of criticisms of China (emphasising, for example, environmental or human rights issues) and many share the interest in containing the Asian giant's strength and further decoupling the two economies. Joe Biden wants to improve relations with the EU and other like-minded countries in order to regain the leadership of the international agenda, but it will not be easy to convince China and other large emerging economies to embark on the kind of WTO reform aspired to by the advanced economies.

And as long as the WTO remains unreformed, its future looks very bleak. Formally, it may survive in Geneva, but with diminishing practical relevance, overshadowed by multiplying preferential trade agreements and surpassed, on other occasions, by unilateral measures or solutions agreed outside of its principles.

The process of economic globalisation, so intense for decades, will not be completely reversed either, due to the numerous interdependencies.

But it is possible that the trend towards a degree of deglobalisation or more regionalised or fragmented international economic relations will be accentuated, particularly in the great powers' respective areas of influence. In this case, less global and more regional value chains could gain prominence.

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