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Keynote Address
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The Parlous State of Trade Multilateralism

The Rules-Based Global Trading System

Over the 7 decades following WWII, the rules-based Multilateral Trading System presided over by the GATT/WTO, has overseen a sustained and largely orderly increase in global trade flows. During this period, exports of goods have increased by 6% every year on average and exceeded global GDP growth by a factor of 1.5. In 2016, total exports were 250 times the level of 1948.

From 1948, the GATT conducted successive rounds of tariff negotiations, establishing new rules, refining old ones, and steadily expanding its remit. The Uruguay Round of negotiations which concluded in 1994, was the most momentous, as it introduced rules in new areas, such as Agriculture, Textiles and Clothing, Services and Intellectual Property, and established the World Trade Organization and its binding dispute settlement system.

The impact of the GATT/WTO rules can be gauged from the fact that today, despite the proliferation of FTAs around the world, around 80% of world merchandise trade continues to be conducted based on such rules, with about 50% of this trade being conducted on 0% MFN tariffs. This

highlights the abiding importance of the principle of non-discrimination which has served as the bedrock of the multilateral trading system.

The dispute resolution system of the WTO continues to be regarded with envy by other international systems. The unique features of the system – compulsory and exclusive jurisdiction and binding outcomes, following a two-tier process of adjudication widely regarded as independent, impartial and competent - have contributed to this view. Between 1995 and 2018, WTO members have referred more than 570 disputes to the Dispute Settlement Body (DSB). In all, more than 400 panel reports, Appellate Body reports, and arbitral awards and decisions were circulated to resolve such disputes. The high figures of compliance to DSB decisions provide corroboration regarding the effectiveness of dispute resolution in the WTO. At the end of 2018 an arbitration, to determine a permissible level of retaliation, had been initiated in only 15 disputes, which represents less than 3% of the total number of disputes referred to the DSB.

Based on its consistent performance over the last quarter century, the Dispute Settlement Mechanism (DSM) of the WTO can safely be said to have played a crucial role in imparting predictability and stability to the global trading system.

It is therefore not a little ironical that the DSM in general, and the Appellate Body (AB) in particular, finds itself in the eye of the storm which has enveloped the WTO over the last two years. Since August 2017, the United States has continued to block the launch of a selection process for filling up vacancies in the Appellate Body. Out of the seven positions in the AB, four are presently vacant, with two more due to fall vacant in December this year. Unless something dramatic happens in the meanwhile, the AB will then find itself unable to discharge its mandate,

which will have consequential effects on the panel process as well as on the WTO itself.

The Roots of the Crisis

These are serious developments with obvious implications for the future of trade multilateralism. But, to understand the roots of this crisis we will need to look beyond the dispute settlement mechanism of the WTO. As a result of the near paralysis of the legislative function, critically important issues that should be clarified through negotiations have been left to the DSM. It is to the largely dysfunctional rule making or legislative function we must turn, to get to the roots of the problem.

The failure of the Doha Development Round continues to cast a deep shadow over the role of the WTO as the centre of rule-making for global trade. In successive Ministerial Conferences, Ministers have found it difficult to agree on substantial changes to trading rules, or on new multilateral initiatives. It is this negotiating gridlock in the WTO which has prevented it from responding meaningfully to the rapid changes in the global economy and constitutes the core of the crisis of trade multilateralism.

Since the United States announced its decision to block the selection process for filling up vacancies in the AB, there have been protracted discussions and debates on reform measures in the DSB, General Council and other forums. There is a general understanding among Members that the WTO requires reforms to stay relevant. To date, twelve proposals for reform have been submitted. While these proposals have touched upon several areas, it is the issues related to the AB which have commanded the maximum attention. Interestingly, the United States has said on more than one occasion that what it seeks are broader reforms in the WTO, and

that the AB blockage is useful for them as leverage for securing those reform outcomes.

However, there is as yet, little indication from the ongoing debates that the underlying problems of political economy, which are responsible for the negotiating gridlock, are being frontally addressed.

Understanding the Crisis

A good way of understanding the WTO crisis is by asking two related questions:

How was it possible to successfully conclude the Uruguay Round which ended with so much rule-making, and why did the Doha Round end in failure?

The answer to these questions lies in the changed political economy of global trade. During the GATT period, the United States, the European Union and their allies enjoyed a virtual rule-making hegemony, and others played a marginal role. I would like to illustrate this with some examples of how the dynamics of agenda-setting and outcome-determination worked at that time:

- Up to the Uruguay Round, Agriculture had been kept out, *de facto*, of the GATT. This was primarily because the United States and the European Union did not wish to expose their heavy agricultural subsidies to multilateral scrutiny. However, as US-EU disputes became more frequent, they decided it would be more expedient to subject the agricultural sector to specific disciplines. While there was pressure from agricultural exporters for this, it was the US-EU decision which paved the way for bringing in Agriculture into the Uruguay Round.

- Once the negotiations began, rule-making for Agriculture predictably proved difficult primarily due to differences between the US and EU. In November 1992, the US and the EU settled their differences through the Blair House Accord. The agreement was further negotiated in the Quad (US, EU, Canada and Japan) in July 1993. The outcome of these discussions largely provided the structure and substance for the Agreement on Agriculture in the Uruguay Round.
- Trade in Textiles and Clothing was also kept out of multilateral rules until the Uruguay Round. The US and the EU were more comfortable in dealing with the issue through quotas imposed under the Multi Fibre Arrangement. The introduction of multilateral rules on Textiles and Clothing in the UR was part of a trade-off with mostly developing country exporters, by securing their acquiescence for instance, to the TRIPS and GATS agreements. However, unlike for the other Agreements, the integration of T&C trade was staggered over 10 years.

A Changing World

The dominance of the EU and US in agenda-setting and rule-making became much more difficult after the Uruguay Round, due to significant changes in the global economy and global trade:

- Globalisation has produced new centres of competitiveness and demand, notably in Asia. This has shifted economic power away from the West while at the same time increasing global interdependence. The nature, composition and direction of GVCs reflects these changes. These changes have accentuated fault lines between winners and losers, both, between countries and within countries. In several parts of the developed world, loss of manufacturing jobs,

stagnating incomes and rising inequalities have corroded support for multilateralism and promoted economic nationalism. The fact that this corrosion in support for multilateralism is less evident in countries with strong social security systems, reflects the role that domestic policies can play in promoting global interdependence.

- When China acceded to the WTO in 2001, it was generally presumed that despite its different economic system, it would, over time, integrate itself into the rules-based trading system. However, in the eyes of many Members, China's brand of state capitalism and its trade practices, remain at odds with the spirit, if not the letter, of the multilateral system. Given the size of China's presence in global trade, ripples of this concern can be felt around the world. The accession of other countries like the Russian Federation with different economic systems has added to the challenges of rule-making in the WTO.
- New technological capabilities in the non-West, primarily in Asia, have challenged Western supremacy in areas like AI, robotics, renewable energy, mass storage batteries, 5G, 3D manufacturing and so on. The strategic and security aspects of some of these technologies have deepened fault lines and fanned distrust between major trading countries. Equally importantly, these developments have blurred distinctions between goods and services trade thereby exposing the antiquity of WTO rules. The negotiating gridlock in the WTO has prevented WTO Members from debating the impact of these developments on the global trading system and crafting new, more relevant rules.
- Within the WTO, the increased participation and assertiveness of developing countries has meant that their diverse interests must be

addressed in negotiating outcomes. This has posed new challenges to the old ways of decision making in the WTO.

These factors highlight the increased complexities of decision making in the WTO over the last 25 years. Old ways of agenda setting and determining outcomes have been rendered unviable. Incumbents are reluctant to cede power. At the same time, they are often unable to play a leadership role due to domestic compulsions arising primarily from the uneven impact of globalisation on incomes and livelihoods of their citizens. Challengers are more assertive but appear to be equally hesitant to voice coherent alternative visions. A new *modus vivendi* of burden sharing is yet to be arrived at. WTO debates often resemble dialogues of the deaf.

These developments require reflection on the nature and role of multilateralism in the future. The trilemma reflected in Dani Rodrik's "Impossibility Theorem" is one way of looking at the situation of trade multilateralism today: that democracy, national sovereignty and global economic integration are mutually incompatible; and that we can combine any two of the three, but never have all three, simultaneously and in full.

Multilateralism is based on the premise of global interdependence and on the understanding that human welfare gains are best achieved by pooling sovereignty to tackle global problems. Multilateral rules required to bring order to global interdependence must be enforced through multilateral institutions. This requires some ceding of national autonomy in decision making. Economic nationalism on the other hand, puts national interests first and questions the need for pooled sovereignty.

The escalating disputes between China and the United States have captured headlines over the last several months. However, from the debates in the WTO so far, it remains unclear whether such disputes reflect a repudiation of multilateral principles or whether they involve an

intense questioning of whether the transfer of national autonomy has been used wisely and fairly by the WTO and its DSM. Either way, it would be futile to argue that multilateralism as it exists will emerge unscathed from such disputes. The old, U.S-led multilateral trade order is becoming a thing of the past, not the least because the United States appears to be weary of its leadership burden.

Nevertheless, in my view, the ongoing debate in the WTO indicates that it would be unrealistic, or at least premature, to write obituaries of trade multilateralism. The phenomenon of global interdependence compels recourse to multilateral rules and their enforcement. The law of the jungle is a poor substitute and can only result in chaos. It is equally clear that if multilateralism is to survive, it must re-invent itself. That would require new recognitions and understandings in several areas. For example:

- The concerns that underlie the tide of economic nationalism in several parts of the world, including the need for redistribution of the gains of globalisation to address inequalities
- The changes in the dynamics of global exchange brought about by technological developments and the social impacts of these changes
- The fact that trade is only one element of global interdependence and must operate in harmony with other global concerns and endeavours
- The necessity of broad participation in rule-making in a multi-polar world to ensue sustainable outcomes

Untangling the Knots

It is of course easier to talk about re-inventing multilateralism in the abstract than to provide concrete ideas for the purpose. Nevertheless,

some broad principles can be suggested. I would like to list out 6 such considerations:

- WTO agendas must recognise the increased sensitivities around the world regarding global governance. The days of broad ranging integration initiatives with binding international commitments are over, and a new balance must be found between global collective action and national sovereignty, based, for instance, on a distinction between regulation of global commons and other issues with minimal across-the-border interface. In any case, those who are interested in regulatory convergence in specific areas will continue to pursue their goals through regional initiatives. As an aside, I would like to point out that the issue of "policy space" has been a constant refrain for developing countries in the WTO for decades. It is interesting that this refrain finds strong echoes in Western capitals now.
- In order to be sustainable, negotiating agendas must address the interests of all members rather than the grievances of a few. This necessarily implies broad agendas across sectors which permit trade-offs. Plurilaterals may be necessary and convenient for those who wish to move faster, as indeed has been the experience in the past with, for example, the Tokyo Codes. But systemically and over the longer term, they are sub-optimal solutions if pursued in isolation, as they do not allow for trade-offs between interests of some Members and the concerns of others. WTO Members would be well advised to not be in a hurry to bury the Single Undertaking.
- Perhaps the biggest area of contentiousness among WTO Members is Subsidies. After a quarter century of WTO disputes related to Subsidies, they remain a hard nut to crack. The Large Commercial Aircraft disputes have been litigated for 15 years now in the WTO and are yet to achieve closure. Several issues related to subsidies require

negotiated outcomes – such as distinctions between good and bad subsidies, between subsidies and state aid, the treatment of state enterprises, the consequences of market imperfections or market failures and so on. A related issue is that of currency and exchange rates. At a time when industrial policy is becoming fashionable even in developed countries, it is critically important that such issues are clarified through negotiations rather than interpretations by adjudicators. Members cannot avoid biting this bullet if they are to find a way of revitalising the WTO.

- Trade negotiations must no longer pretend that trade exists in a social vacuum or that trade must be privileged over other human aspirations. Trade rules must be aligned with other global concerns like climate change mitigation, universal health care, food security etc. At the same time, it has to be ensured that invocation of such global concerns is not a pretext for negating legitimate comparative advantage.
- The issue of reciprocity is equally complex and politically sensitive. The origins of S&DT are related to the Cold War politics of the early years of GATT and the need to calibrate contributions based on differential levels of development. Presently, the issue appears to be more a matter of perception than substance, as, often, S&D provisions are hortatory or transitional. In order to find acceptable outcomes, it would be useful to look at reciprocity through actual trade effects rather than rhetoric. This issue needs to be addressed within a larger framework of negotiations that promotes trust as well as gains for all sides.
- The issue of policy space must also allow for flexibility to WTO Members to design policies to address the differential social and economic impact of their commitments within the country. Such

flexibilities are essential to build complementarity between multilateral commitments and domestic policies.

Conclusion

As I have suggested earlier, it is quite striking that having come to the realization that the WTO needs reform, WTO Members appear to be concentrating their reform efforts at the present on the part of the WTO that is functioning fairly well, rather than on the part that has underperformed over the last 25 years. This of course, is due to the time-bound nature of the AB crisis. But not enough attention appears to have been given in the ongoing debates, to the connection between the perceived shortcomings of the DSM and the failure to update relevant rules.

This selective focus has implications. The consequences of the dysfunctionality of the legislative function need to be fully understood. A patchwork solution based on the symptoms cannot be expected to address the roots of the problem itself. A possible resolution of the AB crisis without commensurate action on the underlying rules which create contentiousness would raise concerns about its sustainability over the medium term.

Secondly, such an approach risks the possibility of compromises on fundamental principles like the independence and impartiality of the AB which are critical to its legitimacy. A good outcome is greatly preferable to a hurried outcome.

The next few weeks and months are critical for determining the future of trade multilateralism. A continuing deadlock on the AB will have obvious repercussions on the DSM of the WTO. But it will also call into question the more fundamental issue of the possibility of WTO reform. In order to

find lasting solutions, WTO Members will need to engage comprehensively in a debate which looks at all dimensions of the challenges – political, technological and participative.
