

# Some Reflections on the Multilateral Trading System in a Multipolar World

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Key Note

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Dear Students, dear Colleagues, Ladies and Gentlemen:

It is a touching moment to be back in the classroom and to see you all lively and festive, celebrating the completion of your class work with families and friends on-line. Your studies coincided with difficult times. Firstly, the current COVID-19 pandemic forced you out of classrooms, missing much of the formal and informal interaction essential to education and bonding. Much of the knowledge transfer could be maintained thanks to advanced technologies, and when I look at you it seems that building friendship did not suffer, perhaps to the contrary in times when mutual support is essential. Secondly, your studies fell in the emerging trade war between the US and China, and the deterioration of the multilateral trading system in the age of populism. You may have asked yourself: why should I invest my time and talent in an allegedly sinking boat?

Indeed, when 20 years ago at WTI and in Silva Casa the MILE Programme began, the World was different. It was an age of optimism. The Uruguay Round was successfully completed. A new framework was in place and people were highly interested to learn about its principles and rules, building upon the tradition of GATT. China was negotiating its accession or re-accession to the multilateral trading system, and joined the WTO in 2001. Many other countries followed suit, including Russia. The *zeitgeist* at the time was captured by Francis Fukujama's book *The End of History and the Last Man* (1992). With the fall and breakdown of the Soviet Union, democracy and market economy was felt to be the winning model, without any alternatives.

Yet, problems and difficulties existed from the very beginning of the WTO. There was the question of legitimacy of the new set of principle and rules. It was felt that it would perpetuate the drain of resources from the South to the North and thus of existing inequality and inequity and of patterns of poverty in the developing world. It was felt that it would impair a proper balance of trade and non-trade concerns, in particular the protection of the environment and of human rights. Today, shares of developing countries amount to some 50% percent of World trade. They lifted many families out of poverty. Of course, much is due to the growing impact of China, and the group of Least-Developing Countries have not increased their share of world trade beyond 1%. Yet, by and large, it is fair to say that the multilateral trading system worldwide improved equal conditions of competition among its today 164 Members. The challenge of legitimacy was largely met. Environmental and human rights concerns triggered the process of constitutionalising WTO law in legal theory and contributed to rebalancing trade and non-trade concerns in the jurisprudence of panels and the Appellate Body. That challenge also was largely met.

A new configuration of power emerged: while previous rounds were dominated and guided by the transatlantic alliance of the United States and the European Union, the Doha Development Agenda, hastily launched under the impression of 9/11 in 2001, operated in a multipolar World with Brazil, China, India and Russia joining the game as major players next to the EU, the US and Japan and next to many middle sized countries actively participating in the system. Membership of WTO increased from 128 members of GATT to 164 members of the WTO, with another 25 as observers and in the pipeline of accession. It is not a coincidence that in this configuration the model of trade rounds no longer could succeed and made way to the proliferation of bilateral and multilateral preferential and regional agreements. And within the WTO, it led to the amendment of single agreements (TRIPS and GPA), to more lenient and flexible agreements (Trade Facilitation Agreement TFA) and the advent of plurilateral initiatives within the WTO (Information Technology Agreement (ITA), negotiations on fisheries subsidies) or formally outside of it but still in Geneva (TISA negotiations on services, and on electronic commerce).

The financial crisis and Great Recession of 2007-2012 affected trade mainly by a short term shortage of trade finance. It is not from that shortage that the trading system suffers in the long run, but from the loss of confidence in self-serving elites and the neoliberal philosophy which equated liberalization with deregulation. It brought about not only the breakdown of the financial system. It also brought about the proliferation of political populism and a new age of protectionism. The financial crisis and Great Recession turned attention to internal inequalities within industrialised countries. Globalization, global values chains and migration were increasingly questioned and made the culprits of rust belts throughout the Western World, irrespective of automation which mainly accounted for job losses. In the United States, trade policy turned protectionist under the dogma of “America First”, leaving the leadership at the WTO behind, even obstructing the Organisation by blocking the work of the Appellate Body. The trade-war with China, engaging multiple rounds of unlawful tariff increases did not bring back jobs and is costly to US consumers. Yet, as Simon Evenett, the first economics professor at WTI, recently observed, the impact of these spectacular tariff increases is less important than the effects of the global erosion of national treatment in non-tariff measures over the last decade (Evenett 1919). Today, the trade war focuses on technology leadership between the two rivals, Is Huawei and G5 a Trojan horse? Answers are provided more on ideological grounds than on detailed risk assessment, risk management and risk communication. Without underestimating the challenge, one cannot avoid the impression that such warfare is mainly launched and communicated with a view to distract from domestic difficulties increasingly encountered in the United States in an election year.

Clearly, there is no end of history. Where should we go from here in trade policy in this plurilateral world and super-power rivalry? We have to go back to the roots.

Ever since Aristotle and Plato discussed statehood, the debate has been about the quest for the best form of government: Monarchy, aristocracy, democracy and its mixed forms with a view to prevent and avoid tyranny, oligarchy, and populism, all of which throughout history turned against human happiness. Democracy for Centuries was met with suspicion. It only emerged some 300 hundred years ago with the Reformation and the Enlightenment in Europe, and was first realised and implemented in New England. Switzerland, with its Constitution of September 12, 1848 adopted the American system of federalism and two Chambers. The country was the first democracy midst of European constitutional monarchies. The end of World War II firmly established democracy in the West and provided the intellectual model in the process for decolonization.

For many reasons, this ideal has not been achieved. Democratic movements in many countries failed and were suppressed. The World today sees a minority of democracies, and oligarchies, even tyranny, loom large. The discourses of Aristotle and Plato have not lost their importance. International law, even under the umbrella of the United Nations, is not limited to democracy. It secures coexistence and communication among a wide variety of different forms of governments with varying commitments, if at all, to human rights and the rule of law. And different forms of government produce different types of markets. The WTO faces the challenge of what Andrew Lang recently called heterodox markets (Lang 1919). The juxtaposition of market and non-market economies no longer works. This is true even within countries. For example, while Switzerland is a market economy in industry and services, it is not so in the prime sector of agriculture. It overall amounts to a mixed economy.

The point is that markets are not natural phenomena, but constituted by law and regulations. It is not only contracts, torts and the judicial system enforcing these rules. It is equally constituted and influenced by governmental policies. What I learned from dealing with trade in electricity chairing the panel *Canada – Renewable Energy* is that these markets exist due to law and in accordance with underlying policies seeking decarbonisation. These markets, accordingly, vary even within countries. The more so this is true in international trade the rules of which serve the purpose of *interfacing* different markets (John H. Jackson), very much like interfacing different computer systems. Since all these markets vary and show different levels of government intervention, trade remedies need to adopt an approach based on the diversity of sectors, even case-by-case. They no longer can take make recourse to overly broad distinctions of market and non-market economies.

The logic of this is that each country will seek to adopt those trade remedies which best bring about level playing fields in particular sectors to the advantage of the domestic industry affected. The risk of protecting rents is real in terms of political economy. Trade remedies as applied by domestic authorities run the risk of returning to the traditions of *Jus Gentium* in Roman law. This was the part of domestic law as applied to foreigners. International law as we know it since the 16<sup>th</sup> Century did not exist at the time. International law disciplines and enforcement therefore are of profound importance. The agreements on trade remedies (SCM, AD and Safeguards) serve the purpose to limit these powers and must be applied accordingly, taking into account the particularities of each case.

You may object that the prospects of doing so are dim in a multipolar world of very varied systems of government, a multitude of different markets and a prevailing nationalist *zeitgeist*. At this point, we need to look at common interests. They exist and offer the prospects of hope and the basis for international cooperation beyond coexistence.

As a matter of principle, most people do not wish to see international trade and open borders disappear. They depend upon good products sold under competitive conditions. The current pandemic shows that shortages can in the future be met by enhanced stockpiling, rather than autarky which comes at high costs and less competition. Most people around the World are interested to decarbonise economies efficiently, and know that this cannot be achieved in autarky. People learn that that combating a pandemic requires international cooperation in bringing about, and securing equitable distribution of, vaccines. It cannot be left to individual States. What is true for the right to health is

also true for other rights and goals today enshrined by Sustainable Development Goals (SDGs).

The argument for and against international trade, of course, is complex and goes way beyond what can be said in short key note. But the existing system of the WTO allows to properly calibrating diverging interests and importantly, is able to bring about a proper interface even between diverging governmental systems and markets. It is on this basis that reform and further law-making will be informed, combining co-existence and cooperation in areas where common interests exist. For example, it is on this basis that the doctrine of Production and Process Methods (PPMs) in addressing climate change mitigation and transfer of technology and labour standards will find its way into the rule book of international trade.

As you may have noted, I did not mention freedom of expression, freedom of the press, freedom of speech, even freedom of information. These rights are inherently part of the process of decision-making in democracy. They do not pertain to the common interest of all States in a multipolar world, albeit the case for freedom of information as an essential prerequisite for workable markets can be made. It will be up to democracies to defend and promote their way of life and interests unilaterally within the multilateral trading system. Other than with social rights, we cannot hope here for common ground upon which to build international cooperation.

Needless to say that all this amounts to a major challenge for your generation. But let me recall at this point that trade negotiations always have been very difficult. I recall a cartoon of the 1990s, when agricultural negotiators complained about their work in comparison to arms reduction talks – perhaps the most difficult undertaking in the 1980s next to the negotiations on the law of the sea at the time. Yet, these difficulties and challenges render the subject of international trade regulation so interesting and demanding. So many different states and systems, so many markets, and so many interests and cultures are at stake. You are well prepared to take up these difficulties and challenges with a sense of realism and idealism at the same time. You will derive strength and endurance from the fact that international trade and cooperation remains a central pillar in keeping peaceful relations among nations so divergent. And you will derive strength from the fact that people around the world all have comparable existential needs.

Your time and admirable effort at WTI has been well invested.

Thank you for your attention.

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