



The Future of Multilateralism in International Trade



Thomas Cottier

Key Note Address

BIICL, WTO Annual Conference

May 31, 2019

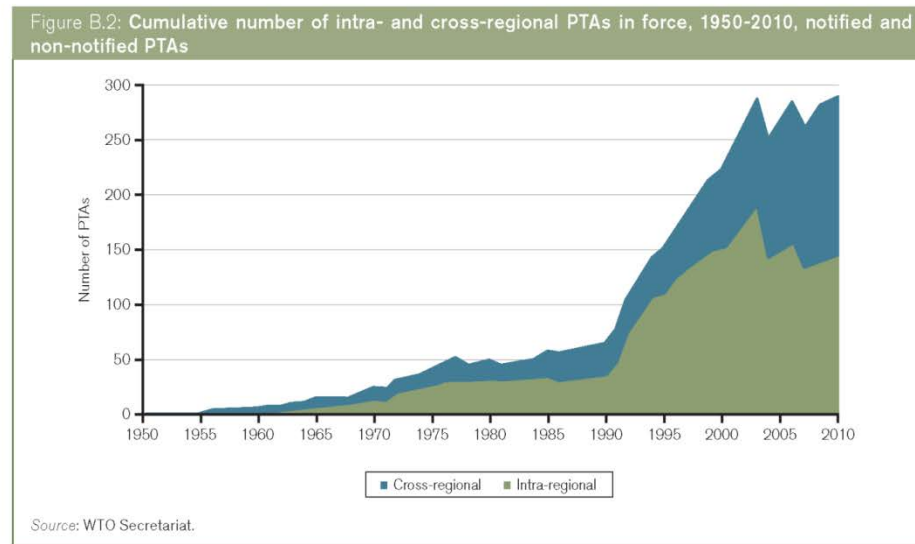


Agenda

- Taking stock
- The facts of international trade
- The changing structure of international economic law and Behind-the-Border issues (BBIs)
- The limitations of bilateralism
- Emerging topics
- The necessity of plurilateralism and multilateralism in addressing BBIs



Forum Shifting



58

The Gloomy Picture

- The failure of the Doha Development Agenda (2001-)
- The rise of nationalism post financial crisis and the Great Recession (2007-2012)
- Ideological rejection of multilateralism by the current US Administration
- US unilateralism and tariff wars US-China, US-Europe; rise of a new Cold War
- The Brexit drama and constitutional crisis in the UK
- The failure of the Iran Agreement
- The crisis of the WTO Appellate Body
- The stalling of TISA negotiations

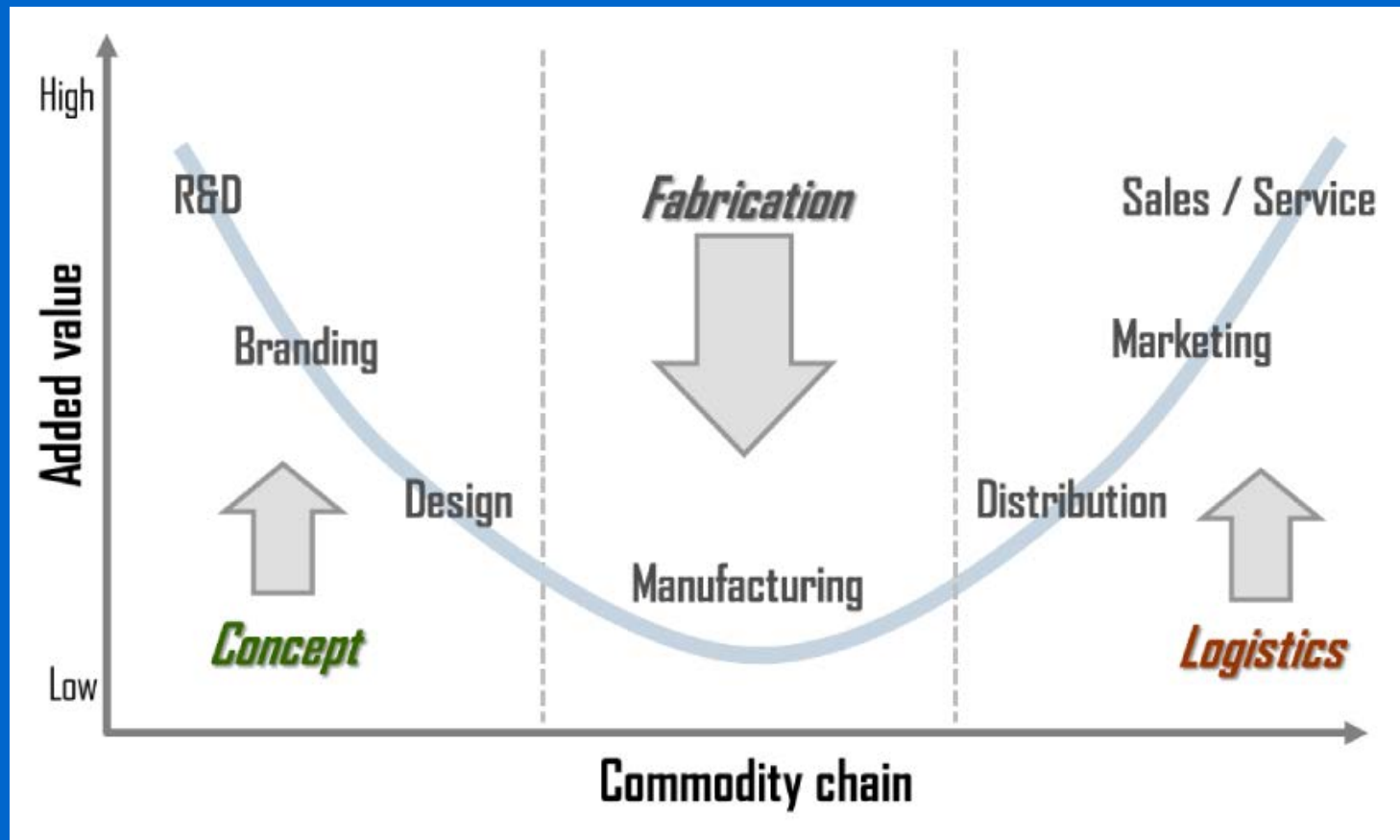
The Bright Side

- The WTO Rule Book works every day and shapes millions of transactions
- Monitoring of agreements and TPRM
- WTO forms basis of all Free Trade Agreements (*common law* of international trade)
- WTO dispute settlement much alive May 2109: 21 cases under consultation, 34 panels pending, US complainant in 10 of these (29.4%)
- The removal of tariffs in IT hardware
- The elimination of export subsidies in agriculture (2020)
- The new GPA and green procurement
- The amendment of the TRIPS Agreement (access to essential drugs)
- The Trade Facilitation Agreement
- Negotiations on fisheries subsidies, electronic commerce, investment facilitation, regulation of services

The Facts of International Trade

- Contemporary international trade is characterised by trade in components. More than 60 % of goods cross borders at least twice before reaching final consumers
- Companies operate in global and regional value chains, and operations are increasingly mixing goods and services in the age of information technology. We speak of “servicification” of production and products
- 2/3 of job losses due to automatization and digital environment

Global Value Chains



How much Division of Labour?

- Populist trade policy seeks to reduce international division of labour and global value chains affecting domestic job allocations (creation and destruction)
- Will consumers accept higher prices, lower offers, lesser quality due to reduced competition?
- Will share holders accept destruction of international value chains?
- Will voters accept increasing transfers of powers to the executive branch and the international realm?

UK industry wakes up: Airbus

- 129'000 employees, 14'000 in UK. 4000 suppliers located in the UK
- Components cross channel several times prior to assembly of aircraft in integrated value chains
- China seeks enhanced orders of Airbus in response to US policies
- Regulatory integration remains essential. At least Customs Union and integrated services' framework required
- Hard or merely WTO-law based Brexit threatens thousands of jobs in the UK. Deemed “catastrophic” by Airbus (NZZ June 23, 2018 p. 11).

The Example of Intellectual Property Protection

- The allegation of “theft” as a key US, EU and Japanese complaint vis-à-vis China
- How much due to
 - corporate structures (joint ventures)?
 - criminal energy ?
 - lack of legal disciplines in TRIPS plus obligations?
- What is the proper role of product imitation in social and economic development?
- All issues pertaining to international division of labour

Interlude of US tariff policy

- US Steel tariff 25% and US Alu tariff 15%: 23'000 petitions for exemption filed in US
- US car tariffs 25%: increase of car prices by 5800 \$ (average price 23'000 \$) with average US incomes of 59'000 \$)
- US tariff policy vis-à-vis China mainly to leverage BBI negotiations on subsidies and IP disciplines

The Changing Structure of International Economic Law

- Four generations of trade rules:
 1. Border measures (tariffs, QRs, Quotas)
 2. Anti-dumping and countervailing duties, safeguards
 3. Technical barrier to trade (TBT, SPS)
 4. Domestic regulation: intellectual property, agricultural support, services, government procurement, investment, competition, environmental and labour standards

From Trade Liberalization to Trade Regulation

- Reducing and removing tariffs
- Removing QRs and other border measures
- Deregulation
- Trade diversion of exclusive preferential trade (negative spill-over effects) for third parties
- Addressing differences in product regulation to achieve trade facilitation
- Regulatory convergence, equivalence, harmonization,
- Re-regulation, open to high levels of non-discriminatory protection of non-trade concerns
- Co-ordination, co-operation
- Positive and negative spill-over effects of bilateral or mini-lateral rules on third parties

Behind the Border Issues (BBIs)

- Behind-the-border issues (BBIs) address regulatory barriers inside of jurisdictions. Politically, they are highly sensitive to concerns of sovereignty and self-determination. Modern standards also entail problems of extraterritorial effects to the extent that they address production and process methods (PPMs)
- At the same time, removing such barriers is essential for cross border trade, in particular for SMEs which do not operate in vertically integrated value chains and private standards

BBIs and PTAs

- PTAs normally rely upon WTO non-tariff rules, plus MRA (e.g. CETA): the *common law* of international trade
- Or, PTAs rely upon non-tariff rules applicable to the larger trading partner (EU, US, China)
- Regulatory convergence largely absent except for TTIP drafts
- Requires multilateral or plurilateral framework englobing large markets

BBIs and Multilateral Negotiations

- The successful model of the 1995 TRIPS Agreement (positive integration of minimal standards)
- Electronic commerce
- Regulation of services
- Future negotiations mainly on BBIs:

Future Topics

- Climate Change Mitigation and Adaption as a Common Concern of Humankind
 - Reduction of fossil fuel subsidies
 - BTAs and Carbon Tariffs
 - Interfacing renewable electricity systems
 - Risk policies in agricultural trade and food security
 - PPMs and Transfer of Technology
- What contribution to biodiversity?
- What contribution to migration policies?
- What contribution to SDGs?
- Integrating investment protection and competition policy in the process of *servicification* of international trade and investment (cyberlaw, big data)

Interfacing Political Systems

- International trade law is rule based but in principle colour blind
- Different degrees of mixed economies in East and West, North and South
- Development of case-by-case, sector-by-sector approach and assessment in trade remedies and other rules
- Protection of *ordre public* (human rights, labour standards) and ecological protection by means of PPMs enforcing moral values
- Increasing role of national security in cyberspace and the need for enhanced legal disciplines

WTO: The Genius Loci

- BBIs can be imposed unilaterally or bilaterally by major powers and markets (unilateral adjustment, for example to TTIP)
- BBIs cannot be settled bilaterally without multilateral foundations as they affect legislation applied to all partners alike
- BBIs are best addressed for most countries multilaterally or plurilaterally within the WTO framework, either up front or in a process of multilateralization



Conclusions

- The facts of international trade and the changing structure of international economic law inevitably lead to the WTO in harnessing globalization
- The legitimacy of the WTO will depend upon its ability to adapt existing rules and take up new challenges in the field of climate change, biodiversity, migration and cyber space as common concerns of humankind





- Thomas Cottier, *Trade Policy in the Age of Populism: Why the New Bilateralism will not Work*, CIGI/BIICL, Brexit: The International Legal Implications, Paper # 12 (January 2018)
- Thomas Cottier, *The Changing Structure of International Trade Law*, 21 Zeitschrift für Europarechtliche Studien 421-336 (2018)
- Thomas Cottier, *The Common Law of International Trade and the Future of the World Trade Organization*, 18 JIEL 3-20 (2015)
- Thomas Cottier, *International Economic Law in Transition from Trade Liberalization to Trade Regulation*, 17 JIEL 671-677 (2014)
 - thomas.cottier@wti.org