

WTO Blueskying : Ideas for the New DG

Theme 2

Mega PTAs and Plurilaterals in a new geo-political world.

Help or hindrance to the multilateral trading system?

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I'd like to thank the organizers for associating me to this stimulating roundtable and for sharing the podium with such enlightened spirits and an equally impressive audience.

It is great to see so many would be doctors at the (WTO) patient's bedside, trying to make the sky blue. I cannot recall a previous incoming Director General being the object of as much solicitude.

This is without doubt heartening, as it shows that a lot of people care deeply about the many global public goods the WTO supplies the world and the need to preserve its continued ability to do so.

Yet it is also assuredly worrisome as it suggests that the patient is broadly perceived as gravely ill, a possible victim of premature obsolescence.

The French might surmise that the WTO's "*pronostic vital est engagé*" (meaning that the patient's very survival is in doubt). The upcoming Ministerial Meeting in Bali (MC9) will quite clearly be a defining moment in the WTO's young existence, a fork in the road which, to paraphrase Yogi Berra, it has little choice but to take!!! Let us hope Members take the right fork and that today's brainstorming yields practical ideas to nudge them on that path.

Pronostic vital is doubtless undue hyperbole – the world of trade is littered with Cassandras! Looked at from Bern, or anywhere outside Geneva for that matter, the WTO scores remarkably well on *almost* all its core missions. In fact, one could easily describe it as a minor miracle of successful multilateralism.

Almost, alas, is not all. And we all know that the WTO's greatest weakness concerns its core legislative (negotiating) function, which has arguably broken down and whose dysfunctions cast a pall over the institution's prospects of ever reaching adulthood. This is so however ably it dispenses all other duties.

Three words stand out in the title of the session I have been asked to lead off: "Mega", "New" and "Geo-political", and all have meaning, both substantive and symbolic, that I will attempt to shape my short narrative around.

Let me start first with the existential threat that putatively steroid-infused PTAs pose for the multilateral trading system.

PTA numbers have grown exponentially since the curtain fell on the Uruguay Round. This has occurred paradoxically precisely at the moment that the multilateral trading system morphed from the puny, provisional, GATT, to the mighty, (almost) all-encompassing WTO, performing a rule deepening and membership broadening of unprecedented scale by past standards.

But surely the problem is not PTAs. N'en déplaise à Monsieur Bhagwati and other multilateral purists, PTAs are here to stay, and the old building block-stumbling block debate has largely given way to a more realistic focus on regionalism as a logical, subsidiary, response to the changing patterns and forms of trade and investment brought about by the multiplicity of technological revolutions (in transport and IT) and by the equally marked policy evolutions that have taken durable, if still uneven, root globally in recent decades.

The policy evolutions noted above have remained largely confined to unilateral and regional/preferential undertakings. Various forces have conspired to prevent such unilateral or regional benevolence from playing out on a global, multilateral, scale. Still the paradox remains: countries keep doing at home or in the "hood" what they steadfastly refuse to do in Geneva. Why this disconnect?

Can one blame countries with optimal tariff negotiating leverage from resorting to negotiating confines seemingly best suited to securing their trade policy interests? Part of the reason for proliferating preferentialism, including of the most recent, "mega", variety, lies precisely in the absence of multilateral alternatives in which to tackle the host of frontier issues in trade governance flowing from the developments depicted above.

The sad reality is that every recent attempt at institutional evolution and adaptation in the multilateral system has been shot down,

including at times by those pursuing the very same policy objectives in preferential confines (and not only developing countries)!

The rise of value chains and of “Made in the World”, and the concomitant need for Members to embrace a new operating system – Richard Baldwin’s “WTO 2.0” (Baldwin, 2012), captures the phenomenon well. By and large, the rise of preferentialism has proven the logical (if far from complete or completely convincing) response to the fragmentation of production conducted significantly *within* distinct geographical boundaries, i.e. on a regional basis. This is especially so in goods trade, which continues to represent 80% of world trade, and where trade costs remain a factor shaping trade and investment patterns and the locational decisions of firms despite their secular downward trend and the IT-fuelled logistics revolution.

This is less inherently so in services trade as the possibility of dematerialized, remote supply, greatly reduces the importance of location, distance, time or space in services transactions. Seen this way, the demand for preferences should be significantly lower in services than in goods trade.

We are without doubt in a **new** world, shaped by a rapidly evolving geography of trade and FDI in tasks, and this begs the question of whether, where and how countries and firms wish to adapt to it.

Still, in seeking answers to the policy disconnect alluded to above, it bears recalling that not all regions of the world have yet to partake in the global value chain revolution. Far from it! Much of Sub-Saharan Africa, the Middle East, large chunks of South Asia and even a largish share of Central and Latin America have yet to see this train go by, let alone jump on board! There is little doubt that the GVC phenomenon is gaining traction in all parts of the world, even in least developed

countries. Yet, even in such instances – think Bangladesh, whose ready garments industry is the very archetype of the Made in World phenomenon, adapting to WTO 2.0 is not necessarily conducive to inclusive, sustainable, growth if the spoils of closer market integration are not shared more equally with the workers that make such integration a tangible reality.

The professed reluctance of many developing country members to embrace a new, post-Doha, trade agenda makes greater sense when one looks at the objective reality of the extent to – and manner in - which the above developments are actually unfolding (though domestic policies also play a role in facilitating or hindering insertion in GVCs, to say nothing of the tactical posturing typically directed at any potentially new agenda item at the WTO).

What aspects of the recent trend towards **mega**-regionals are most bothersome? It is their sheer scale? Or are we chiefly concerned by what the identity of those trading powers embracing them – the United States (TPP and TTIP) and the European Union (TTIP) – suggests for the future of the WTO system more broadly?

There is little doubt that the scale of both the TPP and the TTIP takes us in uncharted territory. That said, what we are witnessing today is far from entirely new - we were there not so long ago in the FTAA context for instance. And even the NAFTA before it was a big deal, cementing ties among countries enjoying at the time the most intense bilateral trade and investment relationship in the world, to which a fast growing emerging country in the midst of a major structural transformation was moored. NAFTA was big enough to exert perceptible domino effects in the Uruguay Round's closing days.

However protracted, negotiations towards an EU-Mercosur deal are also systemically non-trivial. And how else but “mega” would one characterize ongoing attempts at establishing a Tripartite regional integration compact linking the Southern African Development Community (SADC), the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA)?

Still, there is no denying that the above deals all pale in comparison to the genuinely mega agreements in the making that the TTP and TTIP constitute, involving as they do some 40 countries (a fourth of the WTO Membership) and accounting for a combined 62% of world GDP and over half of world trade (see Figure 1). We have never quite been *there* before.

Figure 1. Mega regionals in the making



Source: Dadush (2013).

What should one make of such developments? Should one worry about their magnitude? Do they portend genuinely menacing systemic omens for the WTO? As the IMD’s Carlos Primo Braga often

says, YO, a pragmatic combination of yes and no, would seem the right answer.

Yes, one can harbor genuine concerns about Mega PTAs of the TPP and TTIP variety since their advent marks:

- a) The seeming confirmation in all but words that the Doha Round is irredeemably comatose;
- b) The seeming confirmation of a historic loss of appetite for multilateralism on the part of the system's foundational members, indeed a conviction that forward movement in the WTO is simply not possible under current unanimity and Single Undertaking strictures (more on this later);
- c) A significant scaling up of effective discrimination in global commerce, particularly on behind the border measures via closed MRAs negotiated under the cover of Art. 24 GATT or Art. V GATS;
- d) A certain nostalgic yearning on the part of the trading system's post war hegemony to reassert their capacity at "norm dictation" at a time of relative - in the case of the EU, one might venture absolute - decline;
- e) A defensive impulse towards what Fareed Zakaria (2008) has aptly dubbed "the rise of the rest", and especially China, with an all too palpable "let's quickly set new global norms before others set them for us" underlying both mega-regionals;

f) A (hopefully) transitional crisis where newly powerful members have yet to assume the full scale of the geo-economic and geo-political responsibilities that come from their newly combined weight in global commerce and trade governance. The emerging nations have yet to learn to migrate from “NO to GO”, as the New York Times columnist Roger Cohen recently put it when describing the recent middle class uprisings in Brazil and Turkey (Cohen, 2013). Meanwhile, yesterday’s hegemons have yet to quite come to grips with the scale of their relative decline. And such decline is not about to abate. By 2050, six of the world’s seven largest economies will lie outside the OECD area (Dadush and Shaw, 2011).

No, we can all sit back and relax because:

- a) *De facto*, MFN treatment tends to be the norm because behind the border discrimination is administratively cumbersome to implement, amounting to the maintenance of parallel regulatory regimes for insiders and outsiders;
- b) The days of neo-colonial “build it and they’ll beg to join” treaty constructs – think of the Uruguay Round’s Understanding on Commitments in Financial Services, the OECD’s stillborn Multilateral Agreement on Investment or the more recently defeated Anti-Counterfeiting Trade Agreement - are long over;
- c) There is actually a compelling economic case to be made for closer integration among parties to mega regionals as a

number of growth retarding barriers to goods and services trade can be usefully dismantled and rules in novel areas of trade governance tested by countries that have a genuine desire at asserting their rule-making and market-opening capacity;

- d) The mega configurations on offer do not correspond to a geographically rational value chain construct for most sectors (TTIP) nor do they constitute optimal regulatory convergence clubs given the sheer diversity of their membership (TPP);
- e) On the TPP front, with almost every participating nation already tied to others through a web of existing bilateral PTAs, the proposed agreement would actually yield useful economies of scale likely to reduce regional and global transaction costs and facilitate incipient multilateralization. Who could argue with that (apart from newly encircled China)?;
- f) On the TTIP front, neither side is likely to show much a propensity to compromise – hegemon hate to blink, such that the transatlantic divide in attitudes and collective preferences towards risk, uncertainty and regulatory precaution, on the value of privacy, on the boundaries between market and state, all appear difficult to reconcile in a trade negotiating setting.

Let me turn now to the issue of **plurilaterals**. Mega PTAs and plurilaterals are not one and the same, even as the mega PTAs we seem chiefly concerned with are indeed plurilateral in character. And

not all plurilaterals are alike! Some, like the recently revised Government Procurement Agreement (GPA), are WTO-anchored affairs, wholly devised and negotiated under the multilateral trade body's roof. Others, such as the ongoing talks towards a Trade in Services Agreement (TISA), are wholly disconnected, external, constructs despite the professed desire of TISA proponents to see it anchored at the WTO in future.

The debate about plurilaterals is above all about the quest for negotiating efficiency in a world of ever heightened diversity in collective preferences and development levels (and hence negotiating capacities and priorities). This debate has made clear the imperative – indeed the absolute necessity – of revisiting the WTO's constitutional DNA.

Can a WTO with 160 Members ever move forward under its unanimity rule and a Single Undertaking packaging? Does any parliament or firm operate under such rules and hope to take decisions of strategic importance?

Seen this way, the WTO seems afflicted by a surfeit, not a deficit, of democracy! So long as WTO members – or enough of them - prefer to keep their heads in the sand on governance reform, PTAs of all sorts, including mega PTAs, and plurilateral initiatives external to the WTO system, of the TISA and ACTA variety, will likely gather momentum, however half-baked or ill-conceived they may ultimately prove to be.

Still, in the recurrence of their very pursuit, external, non-WTO anchored, plurilaterals undermine the very legitimacy of the existing multilateral order every day a bit more. There is, in this regard, cause for concern.

So what, if anything, can be done?

My first recommendation should not surprise since it is formulated in this, the temple of trade, where we come to worship the holy trinity of non-discrimination, transparency and temperance. All of us should thus head to the church, mosque or temple of our choice and pray for the patient's speedy and full recovery and for the Holy Spirit of compromise to make a much needed comeback in these hallowed halls of collective governance!

As Sweden's Ambassador to the WTO recently recalled with a touch of distinctly Scandinavian sagacity: "it is high time WTO members try to make a difference, and no longer simply a point". Indeed, the role of trade diplomats is to find solutions, to listen with empathy to their trading partners' concerns and to build policy bridges sturdy enough to accommodate differences in collective preferences.

I cannot say for sure whether the WTO's *prognostic vital* is *engagé* or not, but the new Director General and his team will need to find ways and words able to impart a new dynamic, a fresh start to negotiating dynamics that have held back forward movement for too long. The new DG is uniquely placed to do so given his "insider" origins.

Devise stricter multilateral disciplines on MRAs pursued under PTAs. This agenda has arguably gone from mostly fictitious to downright surreal in the wake of the Mega PTAs under negotiation. Yet one important avenue might be worth pondering, *particularly* in light of the chief focus of the mega PTAs: in regard to MRAs, whose predominant pursuit in the closed confines of PTAs makes them potentially exclusionary tools of forced normative convergence, WTO law should mandate that such agreements only be pursued on an open basis, in the manner of GATS Article VII recognition agreements,

with docking stations for any and all parties able to comply with agreed MRA standards.

Such open regionalism would do much to move the world in the right direction in the realm of regulatory convergence, where so much of trade policy operates today on the goods, services, IP or investment fronts. Open regionalism would not only encourage incipient multilateralism but also avoid the temptation that powerful enough excluded countries might have to set their own new standards. Such regulatory fragmentation would prove inherently inimical to global prosperity.

Revisit the explicit consensus rule and the case for a single undertaking and promote the adoption of a critical mass approach to the setting of negotiating agendas and their conduct, allowing “willing” coalitions of members, with (preferably) or without explicit quantitative thresholds, to move forward where a collective desire to do so genuinely arises.

Encourage a club of club, variable geometry promoting, approach, where internal (*within* the WTO) plurilaterals can be devised and pursued on a transparent, fully participative, basis, among all WTO members, be they really good friends or mere acquaintances of the issues at play. Doing so would promote confidence-building, allow needed capacity building to be appended to any such talks and for economies of scale and learning to be reaped while also debunking the conspiracy theories that all too often take root in this city when negotiations are pursued on an exclusionary basis.

Any variable geometry construct must feature opting out clauses for those who find the negotiated cost-benefit equation ultimately inimical to national development interests or, *a contrario*, docking provisions for those open to revisiting the issues later on.

The tragedy of the proposed TISA (as it would be multilateral initiative coexisting alongside the GATS – the agreement otherwise makes eminent sense as an Article V FTA in services, indeed the biggest of its kind!) lies in its exclusionary DNA, keeping even the WTO Secretariat at bay when it is meant to become the agreement's ultimate custodian if and when its multilateralization were to become tangible reality (Sauvé, 2013).

Acknowledge that the political market for tolerating free riding is no longer what it used to be, such that conditional MFN outcomes or high enough critical mass thresholds would become necessary in new (i.e. WTO-X) areas featuring a market access component, such as investment or a multilateralized GPA.

In new areas where chiefly normative advances are being contemplated – think trade facilitation or competition policy, unconditional MFN is hardly problematic and free riding hard to conceive in practical terms.

Allow me to stop here in the hope that the above ruminations will have inspired critical comments and spawned a rich debate among the assembled experts in this room.

References

Baldwin, Richard (2012), "WTO 2.0: Thinking ahead on global trade governance", in *Vox*, (22 December), available at

<http://www.voxeu.org/article/wto-20-thinking-ahead-global-trade-governance>

Cohen, Roger, (2013), "From 'No' to 'Go'", in *The New York Times*, (24 June), available at

http://www.nytimes.com/2013/06/25/opinion/global/roger-cohen-from-no-to-go.html?_r=0

Dadush, Uri (2013), "Cold Water for Hot Trade Deals", in *The National Interest*, (1 July), available at

<http://nationalinterest.org/commentary/cold-water-hot-trade-deals-8460?page2>

Dadush, Uri and William Shaw, (2011), *Juggernaut: How Emerging Powers are Reshaping Globalization*, Washington, D.C.: Carnegie Endowment for International Peace.

Sauvé, Pierre (2013), "A Plurilateral Agenda for Services? Assessing the case for a Trade in Services Agreement (TISA)", *NCCR Trade Regulation Working Paper No 2013/29*, Bern: World Trade Institute,

available at <http://www.nccr-trade.org/publication/a-plurilateral-agenda-for-services-assessing-the-case-for-a-trade-in-services-agreement-tisa/>

Zakaria, Fareed (2008), *The Post American World and the Rise of the Rest*, London: Penguin Publishers.