

Trade Wars and the World Trade Organization: Causes, Consequences, and Change

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The rise in trade tensions and launch of a trade war by the USA is in part a result of World Trade Organization (WTO) working practices that have impeded the ability to use the organization to address the underlying sources of conflict through dialogue, analysis, and rule-making. Open plurilateral agreements between the major protagonists offer an avenue for revitalizing the ability of the WTO to resolve trade conflicts. More generally, reform of WTO working practices is needed for the organization to be more effective in providing a platform for members to cooperate on trade policy matters.

Key words: governance, plurilateral agreement, trade dispute, trade war, World Trade Organization

JEL codes: F13

Accepted: 9 July 2019

1. Introduction

One element of “America first” policies pursued by the Trump Administration starting in 2017 has been the launch of what is often characterized as a trade war. A justification for the term “war” is that US actions go beyond traditional measures such as anti-dumping, countervailing duties, and global safeguard actions by invoking national security as a justification for trade restrictions. National security concerns motivated import barriers on steel and aluminum and an investigation on imports of automobiles.¹ It was also invoked as the basis for a ban on firms from doing business with Chinese telecom hardware company Huawei, a global player. A major element of US trade activism has been Section 301 tariffs on a broad range of imports from China in response to alleged unfair trade practices.² A feature of these measures is that they affect not just China, but many other countries that trade with China. The detrimental

I am grateful to the Editors, my discussants, Yuka Fukunaga and Junji Nakagawa, and other participants at the 29th Asian Economic Policy Review conference for helpful comments and suggestions.

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implications for the world economy are still unfolding and will be determined by the extent to which the USA will further disrupt trade and the responses by affected countries. China is the primary target of US ire, but the Trump Administration has also targeted many other countries with protectionist actions and threats.

A consequence of rapid economic growth since the early 1980s in China and other developing countries has been to reduce the global trade share of high-income countries and encourage outward foreign direct investment flows from Organisation for Economic Co-operation and Development (OECD) countries. The multilateral trade regime provided a supporting framework for these trends, with China's accession to the World Trade Organization (WTO) often perceived to be a turning point in public discourse. In parallel with a resurgence in the use of aggressive unilateralism ("trade war"), the USA is seeking WTO reform. This is motivated in part by dissatisfaction with the operation of the Appellate Body, the WTO's second instance appeals court, and in part by perceptions that emerging economies' success are due to imbalances in the global rules of the game reflected in "special and differential treatment" (SDT) provisions for developing countries in the WTO. More generally, the USA – along with other high-income countries – is pushing for stronger multilateral disciplines on the activities of state-owned or controlled companies, industrial policies, and domestic regulation of cross-border trade in services and data flows.

The inability of the WTO membership to agree on new disciplines for policy instruments that affect competition on markets is an underlying cause of the trade war. A basic purpose of the WTO is to provide a platform for countries to agree on rules for trade-related policies that create adverse international effects and to support their implementation. This has not been happening. The WTO was stuck in a rut for much of the post-2008 decade, with many developing countries arguing that the Doha round negotiations – launched in 2001 – needed to be completed before new issues could be addressed. The ineffectiveness of the WTO as a forum to resolve trade tensions through negotiation of new rules of the game arguably was a factor underpinning the emergence of the trade war. An implication is that WTO reform is needed. In the present paper, I will argue that WTO reform can help the major players address the underlying sources of the trade war initiated by the USA, and is critical to sustain multilateral trade cooperation.

Deadlock in the WTO after 2008 led many countries to shift their focus to negotiation of preferential trade agreements (PTAs) with like-minded partner countries. Modern trade agreements encompass disciplines on policies affecting trade in services, protection of intellectual property rights, and dimensions of foreign investment as well as provisions on domestic regulation, reflecting concerns that trading partners adopt health, safety, labor, or environmental regulations similar to those of the home country and that align with international norms (e.g. Dür *et al.*, 2014). The initiative by the USA to negotiate the Trans-Pacific Partnership (TPP) and the parallel effort to conclude an EU-US Transatlantic Trade and Investment Partnership (TTIP) was in part driven by a desire to establish what the rules should be in areas where WTO rules are regarded to be inadequate.

In 2017, the Trump Administration made clear it eschewed this “substitute track” by withdrawing from the TPP, and halting the TTIP and Trade in Services Agreement (TiSA)³ negotiations. It also made clear it was not pleased with the WTO, epitomized by President Trump’s observation that it was “the single worst trade deal ever made.”⁴ While PTAs have supported deeper integration of the markets of participating countries, the PTA route has not been useful to address central sources of trade tensions because emerging economies have not been willing to participate in deep PTAs that include disciplines on contentious policy areas. Progress in agreeing to new rules of the game requires the participation of the major protagonists. In the present paper, I argue that open plurilateral agreements (OPAs) offer a potential path forward for the principal players to agree on rules of the game on an issue-by-issue basis. Plurilateral discussions in the WTO have already been launched on several subjects, including liberalization of trade in environmental goods, good practices to assist micro-, small-, and medium-sized enterprises, e-commerce and digital trade, investment facilitation, and domestic regulation of services. Plurilateral initiatives may lend themselves better to addressing specific policy cooperation challenges than PTAs or broader multilateral trade negotiation rounds that include all WTO members. Cooperation among major WTO members on key areas of disagreement – notably subsidies and state-owned enterprises (SOEs) – offers a potential path forward.⁵ Even if agreements can be concluded between China, the EU, Japan, and the USA, it will need to be complemented by WTO reforms that address core features of WTO working practices that have been a factor leading to the eruption of trade hostilities.

The plan of the present paper is as follows: Section 2 puts the USA–China trade war in broader perspective by briefly describing the rising use of trade-distorting policies across the globe. Section 3 discusses factors why the WTO has not been able to act as a venue for countries to resolve trade tensions. Section 4 argues that OPAs offer a path forward, including for the major protagonists to agree on new rules for policy areas that are a source of trade tensions. Section 5 discusses several areas where WTO reforms could help to enhance the effectiveness of the organization as a platform for resolution of trade conflicts and sustaining an open global trading system. Section 6 concludes.

2. Rising Use of Trade-Distorting Policies

Although most attention has centered on the USA–China trade war and the various trade threats and actions by the Trump Administration against other US trading partners, from a trading system perspective it is important to recognize that the step increase in US trade activism starting in 2017 is part of a broader trend. WTO trade policy reviews and the Global Trade Alert database and associated reports document that many measures have been imposed by a cross-section of countries since 2009 that potentially distort trade and competition. The trend is striking, both in terms of the number of new measures imposed on an annual basis and the share of total imports affected (Evenett & Fritz, 2018). India, Brazil, and Russia have been among the most

prolific users of trade policy instruments in the post-2008 period, while some EU members – such as Germany – have also been an active user of policies that affect trade (Figure 1).⁶ It is important to note that not all countries have jumped on the bandwagon – some have shown significant restraint – but the trend is upwards in many countries. China is a prominent target of the countries that are the most intensive users of these policies (Figure 2).⁷

Most of the policy instruments used are nontariff measures. About half of all measures imposed by governments since 2009 take the form of subsidies of some type or support of exports (Figure 3). These measures are only partially covered by WTO disciplines. The same is true for measures such as public procurement and investment incentives. The data suggest WTO members need to engage in deliberation to address the spillover effects of both trade policy instruments that featured on the Doha round agenda – tariffs, other border barriers, and agricultural support measures – and those that were not central to the Doha round talks – notably different forms of subsidies for investment, production, and measures affecting exports.

Of increasing salience are policies affecting trade in digital products and services. Cross-border digital transactions are growing rapidly. A recent effort to assess the policy stance of countries towards digital trade by Ferracane *et al.* (2018) reveals great variation in the extent to which countries implement policies that inhibit digital trade, but documents a rising trend, with large emerging economies maintaining more restrictive policies than other nations. Many of the policies concerned are only partially covered by WTO agreements. More generally, restrictions on trade in services are often high

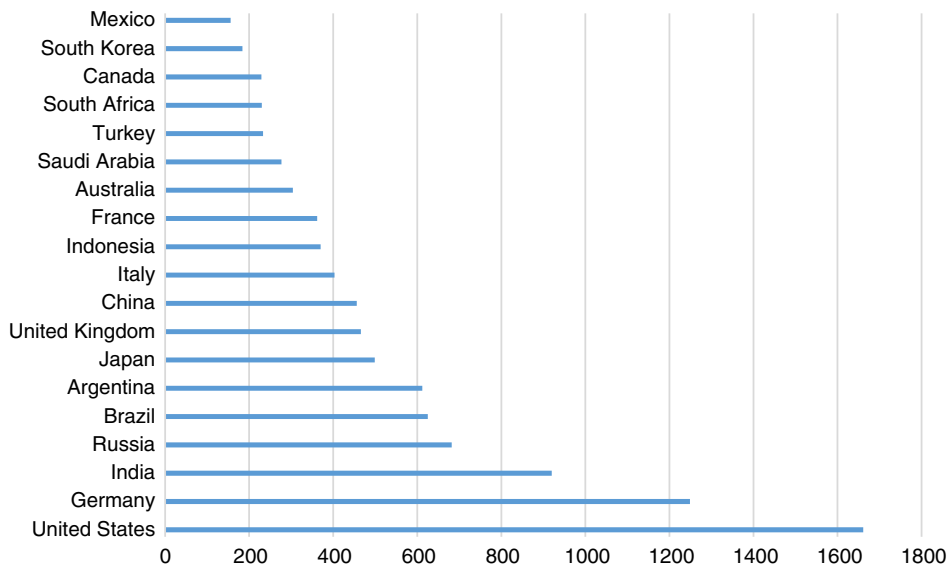


Figure 1 New harmful measures by country (total number, 2009–2018).

Source: Adapted from Evenett and Fritz (2018; figure 9.1). [Color figure can be viewed at wileyonlinelibrary.com]

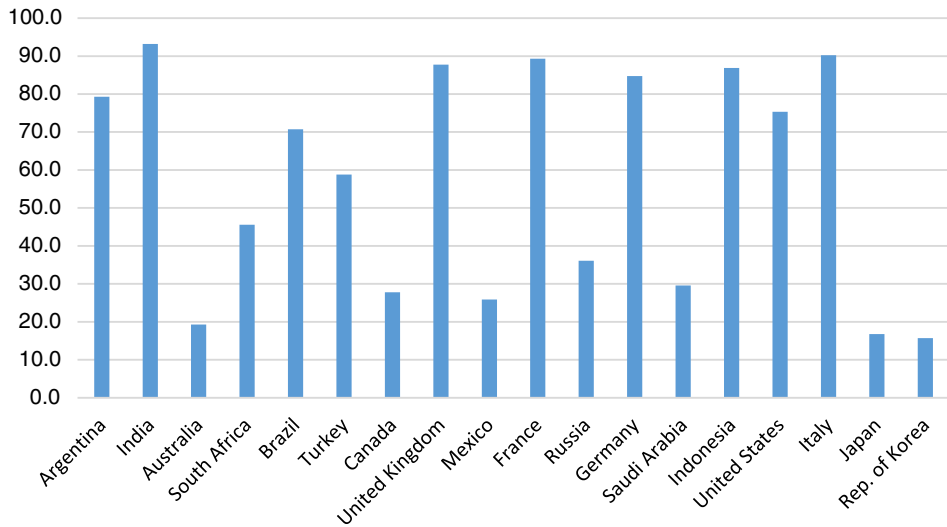


Figure 2 Share of Chinese exports subject to discriminatory trade policies (%). Source: Evenett and Fritz (2018; p. 38, table 7.1).

Note: Data on the share of trade affected by measures are adjusted by the number of days an intervention has been in force. Data encompass the 2009–2018 period. [Color figure can be viewed at wileyonlinelibrary.com]

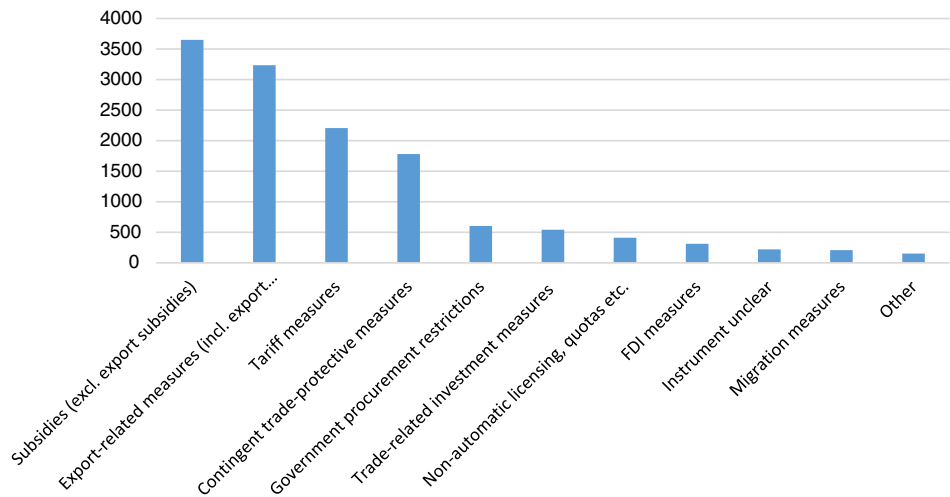


Figure 3 Use of policy instruments (total number of measures, 2009–2018).

Source: Global Trade Alert database. [Color figure can be viewed at wileyonlinelibrary.com]

(Borchert *et al.*, 2014). To date, the WTO has done little in these policy areas, reflecting the priority given in the Doha round to policies distorting trade in goods – a decision that arguably was a factor undermining the negotiations. In the case of e-commerce and internet-enabled transactions, WTO members have periodically committed not to impose customs duties on electronic transmissions, but little progress has been made on rules of the road for domestic regulation that negatively affects the efficiency of the digital economy and the ability of foreign firms to provide services. As the world economy becomes ever more interconnected through the “Internet of things”, e-commerce, and cross-border trade in services and data flows, cooperation on policies that affect the digital economy will become more important for firms and consumers.⁸

3. Why the WTO Deadlock?

The WTO is the global forum for deliberation, negotiation, monitoring, and enforcement of rules on trade policies that have been agreed to create adverse cross-border spillovers. As noted above, one factor leading to the US decision to revert to aggressive unilateralism and to launch a trade war has been the ineffectiveness of the WTO in fulfilling its core negotiation, transparency, and conflict resolution functions. WTO members failed to conclude the first round of multilateral trade negotiations launched under WTO auspices in 2001, the Doha Development Agenda, and were unwilling to discuss a new work program that spans both outstanding “Doha subjects” such as agricultural support policies and matters that are front and center in the trade tensions between the USA and other countries. Since 2017, deadlock on the negotiation front has been complemented by the refusal of the USA to accept new appointments to the WTO’s appeal court, the Appellate Body, reflecting a US view that it has overstepped its mandate.

The weak performance of the WTO is due in part to its working practices, notably (i) consensus-based decision-making and (ii) SDT of developing countries (Bertelsmann Stiftung, 2018). Consensus has impeded the launch of discussions to consider new rules for policy areas such as trade in services and digital products and revising the coverage or substance of existing rules for subsidies and industrial policies. Consensus permitted WTO members to veto initiatives and block efforts that went beyond the work program agreed by Ministers in 2001 encapsulated in the Doha Development Agenda. Consensus has also impeded efforts to agree to changes in the *modus operandi* of the Appellate Body.

Consensus is primarily a practice and not a formal rule. Voting is possible in principle but does not occur, reflecting a widely held view this would undermine the legitimacy of WTO decisions.⁹ Countries large and small rely on the consensus practice as a guarantee that the results of negotiations are acceptable to them, ensuring the “ownership” of the WTO by members and their polities. This positive aspect of consensus decision-making is offset by its use to block activities that have nothing to do with negotiations, such as setting the agenda of committee meetings or proposals to discuss

trade policy-related matters not covered by a WTO agreement or not part of the Doha Development Agenda. This matters because several policy areas that are central to current trade tensions – such as the effects of industrial subsidies in third markets, tax competition, and the behavior of SOE – were not part of the Doha round.

A factor underlying the difficulties experienced in using the WTO as a platform for negotiations to update the rulebook is insistence on SDT by developing countries. SDT means that advanced emerging economies can offer less than full reciprocity in trade negotiations and claim greater freedom to use certain trade policies than high-income countries. Conceived in the 1960s, SDT is no longer acceptable to many higher-income countries, not only the USA. A central feature of SDT is that it applies to all developing countries and that WTO members can self-determine their status in this regard. The WTO does not define what constitutes a developing country. Outside the group of 47 (UN-defined) least developed countries, the only distinct group of developing countries formally identified in the WTO, there are no criteria that allow differentiation between developing countries. Long a bone of contention, this has become a serious source of disagreement. Suggestions or efforts to consider adoption of formal criteria to differentiate between countries and determine when graduation should occur have been proposed for decades and always been rejected.

Neither consensus nor SDT are necessarily binding constraints. Consensus is not required if trade policy tensions can be resolved through agreement between the major trading powers that are concerned by an issue. In practice WTO members have been able to put in place approaches that address economic development disparities. In practice differentiation can be and has been negotiated on an issue-specific basis. An example is Article 27 of the Agreement on Subsidies and Countervailing Measures, which uses a per capita gross domestic product and export competitiveness criterion to determine when export subsidy disciplines apply. A more recent example is the flexible approach taken in the Trade Facilitation Agreement (TFA) toward scheduling of commitments by developing countries and the opportunity it offers for countries to link implementation to technical assistance. The TFA experience suggests an issue-by-issue approach aimed at building a common understanding on what types of policies make sense (constitute good practice) is in principle feasible (Hoekman, 2016). Differentiation can be achieved in specific agreements, with large emerging economies taking on more obligations and offering greater reciprocity than low-income countries.

4. OPAs: One Part of the Solution

Progress on rule-making and conflict resolution requires agreement between the major proponents: China, the EU, Japan, and the USA. All four entities have engaged in bilateral discussions, and the EU, Japan, and the USA have launched a trilateral process to identify ways to strengthen disciplines of subsidies, SOE, and technology transfer policies.¹⁰ A necessary condition for meaningful outcomes is that engagement becomes at least quadrilateral. There is no magic bullet: the key players need to

negotiate with each other, with whatever is agreed applied on a most-favored-nation basis. This can be in the form of a plurilateral agreement (PA).

Two types of issue-specific PAs are permitted in the WTO: First, so-called critical mass agreements (CMAs), where a group of countries agrees to policy commitments that are applied to all WTO members; and second, a PA that applies to signatories only and where benefits are limited to members. Because of their discriminatory nature, PAs require explicit consensus by all WTO members to be annexed to the WTO (in Annex 4 of the WTO; see Article X:9 WTO).¹¹

CMAs and PAs are alternatives to PTAs. PTAs have four salient characteristics. First, they liberalize access to markets through a process of reciprocal exchange of trade policy concessions. Second, they rely on the national treatment principle to prevent “concession erosion” through substitution of domestic policies for trade policies. Third, and related, provisions on nontariff measures reflect a desire to facilitate trade (reduce trade costs) and not aimed at improving the efficacy or efficiency of national regulation. Fourth, they are self-enforcing: The threat of withdrawal of market access commitments is the mechanism to sustain cooperation, whether what is at issue are trade policies or domestic regulation-related commitments.

CMAs focus on a specific policy. Disciplines apply only to those WTO members that sign on to them, with the benefits extended on a most-favored-nation basis to all WTO members. Because CMAs are implemented on a nondiscriminatory basis they do not require consensus to be incorporated into the WTO – those members that decide to join a CMA can simply inscribe its provisions into their General Agreement on Tariffs and Trade (GATT) and/or General Agreement on Trade in Services (GATS) schedules of commitments, as appropriate (Hoekman & Mavroidis, 2017). The main example of a CMA is the Information Technology Agreement. This abolishes tariffs on information technology products.¹² CMAs have also been concluded for services sectors – an example is an agreement on basic telecommunications that was appended as a protocol to the GATS in 1997, which includes a so-called Reference Paper that establishes specific regulatory disciplines that signatories commit to apply to all WTO members.¹³ Negotiations on a possible Environmental Goods Agreement spanning the EU and 17 other WTO members are an example of an ongoing critical mass negotiation.¹⁴

PAs are similar to CMAs in that they apply only to WTO members that sign them and in principle are open to all WTO members. They differ from CMAs in that the benefits can be restricted to signatories. The main example of a PA is the Government Procurement Agreement. As noted, the bar for incorporation of PA into Annex 4 of the WTO is very high, as all WTO members must agree to let a subset of the WTO membership to do so. This implies that in practice new issue-specific agreements must take the form of a CMA (Hoekman & Mavroidis, 2015).

The potential for free riding and whether cross-issue linkages are needed for cooperation are key factors determining what type of agreement will be feasible. If free riding constraints bind, cooperation will need to be either a closed club – a PTA or a PA – or span a large enough number of countries to make a CMA possible. If cooperation on an issue does not satisfy the Pareto criterion (no country is made worse off) or

there are interdependencies across policy instruments, issue linkage (package deals) may be necessary for cooperation to occur.¹⁵

Both PTAs and PAs prevent free riding by nonmembers. In both cases, WTO rules impose constraints that limit opportunistic behavior and outcomes that harm non-signatories. In the case of PTAs, the constraint is that substantially all trade between parties must be liberalized – that is, countries are not permitted to cherry pick specific sectors for discriminatory liberalization. In the case of PAs, which by design are issue-specific and discriminatory, the constraint is that all WTO members must agree to the formation of the PA. Given the need for consensus for groups to negotiate PAs, if free riding is a concern, a PTA is the only feasible option. But PTAs are package deals, with preferential market access liberalization a core feature. They are not likely to be feasible options to address the factors giving rise to the trade war because they would entail far-reaching liberalizing of trade and investment – which may not be possible (desirable) for the USA or China. In the longer-term, accession to a deep PTA like the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) may be possible for the three major protagonists (China, EU, and USA), but in the interim it may be more effective to make incremental progress by focusing on specific policy areas. OPAs offer a vehicle for this. Although generally argued to be most applicable when countries desire to pursue regulatory cooperation (Hoekman & Mavroidis, 2015; Hoekman & Sabel, 2019), OPAs can also be used to agree on rules of the game for policies that create significant spillovers – including subsidies and SOE.

The trilateral discussions mentioned above between the EU, Japan, and the USA that were launched in 2017 constitute a plurilateral initiative in itself. Bringing in China is a necessary condition for agreement on potential new rules of the road for industrial subsidies and SOE. Any agreement that applies to all four of these large players in the trading system would constitute a solid basis for a potential CMA in the WTO. Creating an OPA that spans these four players would be superior to a set of bilateral or trilateral agreements with China. While any OPA on subsidies would entail free riding by other countries, in most cases the practices of other countries are unlikely to generate significant spillovers. In those instances where this is not the case this quad will have the incentive to engage with the relevant countries to encourage participation and more generally support gradual multilateralization. WTO reforms can help to support the prospects of such a dynamic occurring.

5. WTO Reforms to Support Trade Cooperation

The situation confronting the trading system today has parallels with the 1980s, which saw extensive unilateral recourse to trade-distorting measures in OECD countries in response to a rapid rise in exports from East Asian economies. This motivated a preparatory process that led to the launch of the Uruguay Round in 1986. A similar effort is needed today, aimed at resolving the trade conflicts that are of greatest relevance from a systemic perspective. Three areas are particularly important: (i) deepening cooperation to address international spillovers from national industrial policies; (ii) resolving

the impasse on the functioning of the WTO dispute settlement system; and (iii) addressing disparities in capacity and economic development in a more meaningful way.¹⁶

A key ingredient for progress on the first front is a deal among the large players – the quad noted above – that distinguishes between policies that are of systemic importance and distort competition in a major way and those that do not. This requires both information on applied policies (transparency) and analysis of their effects. Reform of WTO processes is needed to generate more and better information and to encourage learning from experience through monitoring, evaluation, and peer review. Attenuating the “consensus constraint” through OPAs can only be part of the solution. As important is to improve the operation of the organization to reduce the prospects of continued deadlock and ineffectiveness and a consequent long-term breakdown in multilateral trade cooperation. Bolstering the ability of the WTO Secretariat to take initiatives in support of the trading system arguably is one area where reform can make a positive difference.

5.1 Liberating the WTO secretariat

The WTO is a member-driven organization. WTO practice has been to interpret the “member-driven” motto as limiting the ability of the Secretariat to take initiatives and to support the work of WTO bodies. This has been detrimental to the functioning of the system. Member-driven means members are responsible for conducting the WTO (i.e. taking decisions) but it need not translate into a monopoly on the right to express voice and supply relevant information to WTO members. The Secretariat has a role to play in providing information and analysis of trade policies, regardless of whether they fall under current WTO obligations. Current practice prevents the Secretariat from undertaking positive analysis of the effects of trade policies, let alone expressing more normative views.

Analytical support is vital for informed policy dialogue and deliberation. Restricting the scope for the Secretariat to provide information to members implies a significant opportunity cost from a systemic perspective. Granting the Secretariat greater discretion to develop and table information and analysis, while leaving to members to decide whether and how to use this, would be a step forward. Developing guidelines or a code of conduct for the exercise of greater discretion to ensure neutrality and independence of the Secretariat could help address potential concerns of WTO members about giving the Secretariat greater scope to support the work of the organization.

Of particular importance is to go beyond provision of more comprehensive up-to-date information on applied policies and do more to assess the effects and effectiveness of policies in attaining their objectives. The Secretariat flagship reports – notably the Trade Policy Review reports – should engage in more normative analysis of the impacts and incidence of policies. As important is to provide information on good practices and the distillation of knowledge regarding the lessons of experience with/-results of implementing trade-related policies.

A key concern for many citizens is the distributional effect of trade integration. While improving equity of domestic outcomes and assisting workers and firms manage adjustment costs are matters for national policy, the extent to which distributional effects of globalization are due to trade policy commitments is not something on which the WTO has much to say. More generally, what is needed is compelling analysis of the value of a rules-based trading system. The WTO World Trade Report is invaluable in providing an informative “big read” on specific trade topics, but should be complemented by more regular analysis of the effects of implementation of WTO agreements.

Enabling the Secretariat to provide more information can make it more useful to the constituencies that have a stake in the performance of the organization. Greater engagement with stakeholders will require resources and the skill-mix to permit substantive engagement with national counterparts. On the resource side, there is scope to reallocate technical assistance funds to provide services to members on request and to work with government agencies and trade constituencies.¹⁷ There is of course only so much the Secretariat can and should do. Care is needed not to duplicate what other organizations do. More cooperation with other international organizations dealing with different aspects of trade policy and related regulation, as well as increasing engagement with international business organizations, sectoral regulatory communities and representative nongovernmental organizations (NGO) would complement Secretariat capabilities to provide information and analysis that is relevant to WTO bodies and constituencies.

5.2 Dispute settlement

Unless the USA accepts new appointments to the Appellate Body before December 2019 it will cease to function on 11 December 2019 when two of the remaining three sitting members reach the end of their mandate. In the absence of a resolution to the standoff, other WTO Members may agree to pursue an arbitration procedure in case one of the parties in a dispute wants to appeal a panel ruling. At the time of writing – June 2019 – this appears to be the main element of “Plan B” that is being considered, led by the EU. Such a stop gap will be very much second best, however, as it will not include the USA, and essentially implies rejecting the substance of the US concerns.¹⁸

The blocking of new appointments to the Appellate Body by the USA that commenced in 2017 illustrates the need to do more to assess its performance and establish mechanisms to consider the validity of the concerns that motivate the US action. What has been lacking is a willingness by WTO members to engage in a constructive discussion on the performance of the system and to consider reforms to improve the system. After more than 20 years there are lessons to be learned from the track record to date. Instituting a process for periodic deliberation by the WTO members to assess rulings of panels and the Appellate Body and permit them to clarify their intent could be an important mechanism to course correct on matters where all members agree this is necessary.¹⁹

Resolving the Appellate Body conflict should be placed in the context of the broader challenge of improving conflict resolution procedures. Formal dispute settlement (litigation) is not the only way to resolve conflicts. Reducing the weight put on litigation by bolstering transparency and using other WTO bodies to discuss contested policies may be another part of the solution (McDougall, 2018). WTO bodies offer a venue for governments to discuss concerns and find solutions without recourse to formal dispute settlement procedures – as has been done to good effect in WTO committees dealing with product regulation (Wolfe, 2018).

5.3 Measures to address the “consensus constraint” and the development dimension

As mentioned previously the practice of interpreting consensus as an unlimited capacity to exercise veto power has been a factor impeding the effectiveness of the operation of the WTO. There is no easy solution given the consensus that exists on consensus. What is needed are initiatives to reduce the scope for WTO members to engage in hostage-taking by increasing the costs of such behavior, or, equivalently, reducing the return that can be achieved. The latter can be done through subsets of WTO members pursuing a matter through open plurilateral initiatives where these are feasible. The former can be pursued by doing more to engage with constituencies at the national level that have a strong interest or stake in making progress in each policy area. Greater dialogue and informal discussion of good practice in an area can help to identify specific economic development-related concerns and ways and means to address these.

A common factor underpinning pro-active and constructive engagement between WTO members in some WTO committees – notably those dealing with product regulation – is that they connect a specific constituency, officials responsible for achieving regulatory objectives, with trade officials who are interested in reducing trade costs (Bertelsmann Stiftung, 2018). The joint engagement results in greater “ownership” of the work of these Committees. Necessary conditions for such ownership are that work programs are relevant to what officials are responsible for, and that the activities of the Committee can be justified to parliaments, businesses, and citizens as delivering useful results. Determining if and how the various WTO Committees and related bodies connect to specific groups in and outside national government – and how to do so more effectively – may both improve the usefulness of their work and the political support by economic operators and national interest groups for WTO engagement.

Changes in the modus operandi of WTO bodies may help increase the perceived salience of their activities. One possibility in this regard is to provide more support for Chairpersons of Committees by creating a steering group of three or four WTO member representatives who are appointed for several years. In existing practice, the chairpersons, except for those of Special sessions, stay only for 1 year, which causes problems of continuity. An ancillary benefit of broadening the leadership of Committees is that it can reduce the use of consensus to prevent a majority from moving

forward in engaging in a specific activity. If the steering group is representative and unified on a proposed course of action, the reputational costs for a member to block initiatives may increase, while the incentive to engage in veto playing may fall. Other practical steps that can be considered to facilitate policy dialogue at the level of WTO bodies is to hold more frequent informal or thematic sessions alongside regular meetings, with sponsors of an issue put forward for informal dialogue providing additional funding, where needed. Informal sessions offer the opportunity to bring in outside expertise and to solicit inputs from stakeholders such as business representatives.

6. Concluding Remarks

The success of the multilateral trade regime in the post-Second World War period was attributable in large part to US leadership and the fact that the organization was dominated by broadly like-minded countries. Today, the US continues to participate actively in the normal WTO committee work, but it is casting itself in a different role than it has in the past, calling for WTO reform and contesting the operation of the Appellate Body. It laid out its view of key elements of a reform agenda at the 11th WTO Ministerial Conference in Buenos Aires in 2017, stressing better compliance with WTO obligations, greater differentiation among developing countries, and action to ensure that litigation is not used as an alternative to negotiation.

The European Commission and the USA have tabled specific ideas to modernize the WTO, some of which have been developed in cooperation with like-minded WTO members. Canada is leading a group of countries interested in supporting WTO reform, including strengthening of the normal work of the organization (the committees). The EU, Japan, and the USA have launched a trilateral effort to identify ways of bolstering multilateral rules on subsidies and technology-related policies. These are positive developments. For them to make a difference the four largest players – China, EU, Japan, and the USA – will need to agree on key policy areas that have become the source of serious trade tensions. This need not involve all WTO members and arguably should not, as this will inevitably give rise to issue linkage attempts and veto playing. A decision to pursue OPAs on core policies that have given rise to the trade war would ensure that any eventual resolution of the disputes between the USA and its trading partners are anchored in the WTO.

Any process to agree on an agenda to revise and extend the WTO rulebook is conditional on actions to improve the operation of the organization. This applies as much to the potential for new OPAs as it does to existing WTO agreements. If reforms cannot be achieved, the likelihood rises that the trading system will fragment into a set of PTA-based arrangements among countries that see value in accepting common rules on policies affecting competition on markets (notably the EU and the CPTPP member countries) and those that do not. A corollary of this scenario is an increasing prospect of discrimination in world trade and investment policies, undermining the open, rules-based global trade regime. Bringing the joint initiatives launched at MC11 in Buenos Aires and the plurilateral e-commerce negotiations that commenced in early 2019 to a

successful conclusion will provide a critical signal that the WTO remains relevant. This is not enough, however. The membership as a whole should consider reforms to reduce the prospects for the type of situations arising that have led to the US decision to block new appointments to the Appellate Body and impose restrictive trade policy measures unilaterally. Putting in place processes to review the operation of WTO bodies, including the Appellate Body and the conflict resolution function of the WTO more generally is critical to ensure legitimacy, accountability and continued “ownership” of the institution (Bertelsmann Stiftung, 2018).

Contrary to arguments that plurilateral initiatives are second best in a world where consensus is not obtainable, OPAs can be a first-best response. Much depends here on the type of issue and whether free riding is a concern. OPAs are most likely to be applicable to instances (issues) where the problem is related to regulatory heterogeneity (Hoekman & Sabel, 2019). Cooperation on regulatory matters does not necessarily require large-N participation, cross-issue linkage or the type of first difference reciprocity (Bhagwati, 1988) that is a basic feature of market access negotiations. This is not to deny the close link that may exist between market access and regulation, or that in some instances this link must be explicit in international cooperation between countries. But, insofar as reducing trade costs motivates international regulatory cooperation, this need not call for the type of cross-issue linkage that is a core element of trade agreements. More controversially, OPAs may also be a path forward in addressing some of the core drivers of the trade war – notably the use of subsidies and industrial policies that are perceived to tilt the competitive landscape away from firms that do not have access to government support.

Where the trade wars will take the trading system is very much an open question. Despite threats to leave the WTO, the USA is not likely to do so. It is important to recognize that the USA has argued it wants to see the WTO do what it was mandated to do when it was created, not go back to the GATT system when there was no binding dispute settlement. Clearly a US decision to leave the WTO would be a major blow, greatly diminishing the relevance of the organization. The incentives to do so arguably are weak however – as the USA has demonstrated it has a great deal of discretion to impose protectionist measures. At the end of the day, the trading system is inter-governmental and self-enforcing. The more important question is whether the WTO membership can agree on reforms to make the organization more effective and revitalize the negotiation function to address the underlying drivers of the trade war.

Notes

- 1 Under Section 232 of the Trade Expansion Act of 1962 – see Fefer and Jones (2018).
- 2 See Vangrasstek (2019) for an in-depth discussion of US trade policy trends. Bown and Zhang (2019) provide a synthesis of US trade measures imposed by the Trump Administration during 2017–2018 and countermeasures by affected countries.

- 3 TiSA negotiations were launched by a group of countries in 2013 outside the WTO. Talks made substantial progress in developing a WTO⁺ set of rules for services policies but were put on hold in 2017 by the Trump administration.
- 4 Available from URL: <https://www.bloomberg.com/news/articles/2018-08-30/trump-says-he-will-pull-u-s-out-of-wto-if-they-don-t-shape-up>. Accessed 9 July 2019.
- 5 The feasibility of countries forming groups to cooperate and accept free riding by non-participants has long been a subject of analysis in international relations. See, for example, Schelling (1978) and Snidal (1985).
- 6 In the case of Germany, the high reported number of measures reflect loan guarantees and export credit related activities of its Export Credit Agencies. The variation in number of measures for EU member states is due to the intensity with which these countries make use of export promotion instruments and export credit.
- 7 In recent years China-related cases have also accounted for most of the disputes brought to the WTO by the four largest trading powers against each other (Wu, 2016).
- 8 As discussed below, this situation changed in 2017–2018 with the decision to proceed with plurilateral talks on e-commerce and domestic regulation of services.
- 9 Some WTO provisions specify consensus as the decision-making rule, for example, Article X:9 on amendments to include new Annex 4 Plurilateral Agreements. Art. IX WTO specifies that if voting occurs, unanimity is required for amendments relating to general principles such as non-discrimination; a three-quarters majority for Interpretations of provisions of the WTO agreements and decisions on waivers; and a two-thirds majority for amendments relating to issues other than general principles. Where not otherwise specified and consensus cannot be reached, a simple majority vote suffices. Article X provides that a member cannot be bound by a vote on an amendment that alters its rights or obligations and that it opposes. In such instances, the Ministerial Conference may decide to request that the member concerned withdraw from the WTO or to grant it a waiver.
- 10 See, for example, Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union, 9 January 2018. Accessed 9 July 2019. Available from URL: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/january/joint-statement-trilateral-meeting>
- 11 The term plurilateral is sometimes used to describe both possibilities, giving rise to potential confusion. In this paper the term Plurilateral Agreement (capitalized) is restricted to agreements that are listed in Annex 4 of the WTO.
- 12 The Information Technology Agreement (ITA) has 82 participants, including the 28 EU member states, and has increased global trade substantially in electronic products See Gnutzmann-Mkrtchyan and Henn (2018) for estimates of the global trade impact of the ITA.
- 13 See https://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_e.htm. Accessed 9 July 2019. Available from URL
- 14 Negotiations commenced in July 2014. Accessed 9 July 2019. Available from URL: https://www.wto.org/english/tratop_e/envir_e/ega_e.htm
- 15 For example, complementary relationships may arise if the net welfare effects of trade liberalization depend in part on the quality of national regulation and governance. See for example, Freund and Bolaky (2008) and Beverelli *et al.* (2017).

- 16 See Bertelsmann (2018) and Hoekman (2019) for further discussion of WTO working practices and potential reforms.
- 17 The funds contributed by donors to a Global Trust Fund have been declining over time, from an average of CHF 17 million during 2009–2011 to some CHF7–8 million during 2015–2017.
- 18 Absent a resolution of the dispute on the operation of the Appellate Body, conflict resolution will revert to the pre-WTO situation in which panel reports are adopted only if the losing party agrees with the panel's findings. See Hillman (2018), McDougall (2018), and Sacerdoti (2017) for discussion of both the dispute on the Appellate Body and suggestions that have been made to respond to/resolve the conflict regarding the operation of the Appellate Body. The most 'obvious' solution – a decision by WTO members to hold a vote on filling the vacant seats – is unlikely to be pursued given the strong antibodies to voting by WTO members.
- 19 An example where such a correction arguably would have been appropriate is the WTO case law on global safeguards. The Uruguay Round Safeguards Agreement was designed to make safeguard actions easier to use as a quid pro quo for stronger disciplines on less transparent and more distortive voluntary export restraints and similar measures. Appellate Body rulings made global safeguards more difficult to use than was envisaged by the negotiators of the Agreement on Safeguards (Sykes, 2006).

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