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What reform agenda is needed for the future direction of the World Trade Organization?

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In November, the World Trade Organization (WTO) will decide whether Ngozi Okonjo-Iweala (Nigeria) or Yoo Myung-hee (South Korea) will replace Brazil's Roberto Azevêdo as the Director-General of the institution. Twenty-five years after its creation (as a successor to the GATT [General Agreement on Tariffs and Trade], 1947-1995), and following many years of paralysis, the stakes for reform are high. This is particularly evident during the post Covid-19 recovery period, as the pandemic exposes the structural vulnerabilities of globalised economies.

Existential crisis

The WTO is undergoing a deep and entrenched crisis. The round of trade rule reforms launched at Doha in 2001 is proving impossible to complete, despite twenty years of negotiations. The only agreement signed since 1994 is a facilitation agreement (2017), which is more technical than substantial. A number of negotiations have been attempted to try and overcome the failure of this programme, but so far they have had little success.

Roberto Azevêdo has been unable to rekindle the appetite for negotiations among countries that have since committed themselves to bilateral agreements that are better able to protect their specific interests. However, such deals are also becoming increasingly difficult to conclude and then ratify due to increasing scrutiny from the public on texts that are deemed too sensitive to pressures from interest groups. “The world has changed, the WTO has not”, stated the European Commission.^{[1](#)} Indeed, the future WTO Director-General must address at least three areas of organisational reform.

Regaining full strength as an arbitrator

Three functions can be attributed to the WTO. It is a forum for negotiating agreements to increase trade—the WTO is indeed the direct descendant of the GATT. Secondly, it is a review and transparency mechanism—all policies that have an impact on trade must be declared. And finally it serves as an adjudicator. The WTO has more power than the GATT: all members are bound by the decisions of its Dispute Settlement Body (DSB), unless members unanimously object to its decision, which has never happened. A decision can only be reversed if it is overturned through an appeal. This is a common recourse: two out of three disputes go to appeal.^{[2](#)}

The power of justice or tribunal conferred on the WTO, which was originally employed by industrialised nations to resolve disputes amongst themselves, has gradually been extended to include disputes between rich and emerging countries, to an extent that often provokes the ire of the United States. The Obama administration had already blocked—for a time—the Appellate Body in 2011 by refusing to agree on the appointment of a new judge. While the Trump administration has gone further and continued to block the renewal of appellate judges. The terms of two of the last three members expired on 10 December 2019. Since then, the body has been unable to hear new appeals and has 34 disputes still pending.

Grievances mainly relate to the widespread failure to meet the 90-day deadline for issuing opinions. The United States also accuses the Appellate Body of focusing on facts, rather than limiting its scope to legal issues.

In January 2020, 17 WTO Member States, including the EU and China, agreed to establish a temporary system to bypass the paralysis of the Appellate Body. These states account for just 40% of cases initiated by the EU at the WTO. The WTO itself anticipated the paralysis of the system and circulated a proposal, prior to the critical December 2019 deadline, to reform the Appellate Body’s functioning—the confidential “Walker” principles, on which the US has not even commented.

However, technical solutions to the problems raised by the United States do exist, some of which are included in the “Walker” principles. Encouraging the United States to unblock the Appellate Body requires not only political will (which has been absent during the election period for the Trump administration), but also that the solution has an impact on other items on the reform agenda, particularly the rules governing state-owned enterprises and the subsidy regime.

Reforming the subsidy regime

Underlying the failure of the Doha Round and the blockage of the Appellate Body is a tug of war between the countries that have been the historical supporters and primary beneficiaries of the GATT and the WTO (United States, Europe, Canada) and China, which is being accused by the former of abusing trade rules that were essentially designed for non-centrally-planned and free market economies. Chinese capitalism, which is primarily based on state-owned businesses that are both productive forces and investment banking powers, and that exist on (cheap) credit and where bankruptcy does not exist, is not the capitalism of the war-time allies, who drafted the Havana Charter from which the GATT was to be extracted. In this context, the Appellate Body in a 2015 ruling rejected the United States' request to give Chinese state-owned businesses the status of government authorities, which would have meant they were subject to the rules of the general agreement on subsidies.

This agreement on subsidies is not free of flaws, as highlighted by the United States, Europe and Japan. Since the creation of the WTO in 1995, 556 disputes over abusive subsidies have been initiated, and more than half of cases have resulted in the implementation of countervailing measures (correcting the effect of the subsidy).³ In 2018 alone, 55 dispute cases were launched, compared to 9 in 2010. Industrial subsidisation is common practice, particularly in sectors such as aluminium and semiconductors. But here again, Western countries regularly accuse China of violating the regulations.

The United States, Europe and Japan are therefore proposing a review of the scope of authorised subsidies. At present, winning a case against unfair subsidies entails proving that they cause “serious prejudice”. The definition of this criterion is one possible reform. However, climate and environmental protection, which could provide grounds for specific public support and may be less likely to attract criticism for excessive and damaging subsidies, are not mentioned in the reform proposals. This could be a sizeable and tactical misstep. Sizeable because it is common knowledge that industrial production and the spread of low-carbon technologies cannot materialise without major public support, including in the Triad economies; and also tactical, because China could have taken advantage of these exemptions, given its activities in producing technological decarbonisation solutions. An agreement on green subsidies could therefore provide China with an acceptable way out of the situation. Closing this door without suggesting alternatives means that the proposal is sure to be vetoed.

No revision of the DSB without the US, and no reform of the subsidies agreement without China.

Not limiting “sustainable development” to the WTO Preamble

When the WTO was created it enshrined “sustainable development” in its Preamble, as an additional objective to those of the GATT. However, sustainable development is hardly mentioned in other parts of the texts. Perhaps the legal corpus is sufficient to address environmental issues, with its arsenal of special safeguards in particular, without explicit reference to “climate change”, for example, in some provisions. Nevertheless, we are now seeing the problems caused by disregarding production processes and methods in the differentiation of products, and realising the need to distinguish between carbon-intensive processes and alternatives, and deforestation-intensive processes and others. While the idea of stranded brown assets and the classification of financial assets is becoming consensual, trade is still viewed solely through the lens of the monetary value of transactions, magnifying the flows and detecting obstacles, without ever seriously comparing this value to that of produced or avoided emissions, or of biodiversity protection or loss. Transactions can no longer be the only purpose of trade, and liberalisation cannot be the only rationale, as in reality current commerce faces very few constraints: while average industrial customs duties exceeded 40% in 1947, this figure is more than ten times lower today and, generally speaking, goods and services circulate without heavy taxation. There are exceptions—Mercosur has an average applied customs duty of 13%; and

European customs duties on agricultural products range from 0% to 32%—but the situation is still far removed from that of the GATT era.

By keeping too far away from today's heated debates on the greening of economies, the WTO runs the risk of appearing outdated and irrelevant. It must act urgently to broaden its reform agenda to bring it closer to that suggested in its Preamble, and to address the question of its effective contribution to the Rio conventions (climate, biodiversity, desertification). This response may only be programmatic, but it is necessary to at least define the perspective. The alternative is either having an institution that makes sense for everyone, which is not the case today, or an institution that is paralysed.

¹ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1908>

² <https://www.cigionline.org/articles/challenge-re-establishing-functioning-wto-dispute-settlement-system#footnote9>

³ <https://english.bdi.eu/publication/news/reform-of-the-wto-agreement-on-subsidies-and-countervailing-measures/>

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