

Is the WTO Still Relevant?

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Ten years ago, the World Trade Organization (WTO) was making front page news. In this still fresh post Cold War period, journalists reveled at reports of modern-day wars fought over issues of beef and bananas with Roquefort cheese and cashmere sweaters as weapons. Policy-makers debated which issues to include in the upcoming Millennium round of trade negotiations. Legal scholars heralded the newly created multilateral organization as the ultimate triumph of international law over anarchy. Political scientists questioned whether the institutional mechanisms were strong enough to constrain states and argued over how to make the WTO’s new breed of governance effective. With hope and fame also came controversy. Turtle-dressed protesters marched side-by-side with labor rights activists and organic farmers to denounce the WTO as the main agent of globalization, not wanting to concede that history had ended and that no alternative was available to triumphant neo-liberal capitalism.

Today, in spite of a flurry of achievements including the cooptation of twenty more countries into the organization and especially the successful inclusion of China, the WTO has disappeared from the public radar screen. To be sure, political scientists are still debating ad infinitum what have been the true consequences of joining the institution and whether bilateral agreements weaken or strengthen the multilateral trading system. Countries continue to bring an ever growing number of cases through the dispute settlement mechanism. And lawyers have much benefited from this complex and lengthy system. Yet, as the current global financial and economic meltdown reveals, the WTO is nowhere to be seen in public discourse beyond that of the specialists –neither as a public scapegoat for what went wrong with globalization, nor as a solution to the chaos.

The current crisis, even though it is fundamentally financial in nature, poses major challenges to the WTO because it defies at its core the desirability of globalization. As financial markets collapsed, leaving an exponential number of bankruptcies and layoffs in their wake, globalization has been put on trial. Even at the World Economic Forum in Davos --that bastion of unfettered, unapologetic neo-liberal capitalism—the backlash could be heard loud and clear in 2009. Since the WTO has been presented over

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the past decade as the main agent and the main embodiment of globalization, it cannot escape the crisis unscathed.

The challenges facing the WTO today are numerous, from the drastic wealth inequalities between members to the overlap between trade and other issues, such as environment and human rights. This memo examines three challenges in particular –a challenge to the WTO rules because of the protectionist reaction to the current crisis, a challenge to the WTO institutional architecture because of the weakening of the Western-centric system, and a challenge to the WTO politics because of lack of care. The central question these challenges raise is: Is the WTO still relevant?

1. A challenge to the WTO rules by the current global financial and economic meltdown

The contemporary crisis challenges fundamentally the WTO because it provokes atavistic protectionist reflexes. When designing their responses to the crisis, many governments, the U.S. chief among them, are tempted to include protectionist provisions. The “Buy American” measures included in the House Bill on the stimulus package have provoked furor around the world, even if they have been clearly chastised by President Obama (King 2009). But the U.S. is not the only country with these protectionist temptations. Even though the European Union has been publicly denouncing the protectionist slippery slope, some of its own members, like France, are appealing to “economic patriotism” instincts too and speaking up against imports and outsourcing, even within the confines of the EU (Le Monde 2009).

Some of this protectionism may not be as blatant or even done on purpose. Bank bailouts and industrial support packages are not primarily designed as protectionist measures. They are just quick, emergency plans designed to prevent the hemorrhage of jobs and the spread of bankruptcies and foreclosures. Domestic concerns are paramount when designing these plans, not the global consequences of these decisions. Yet these measures have negative externalities and do create distortions in the competitive relationships among countries.

Economists warn us against this outbreak of protectionism, “a dangerous virus that requires a passionate response” (Bhagwati 2009). The fear is that history will repeat itself and protectionism and tit-for-tat retaliation will smother trade, just like they did after the Smoot-Hawley tariff was implemented during the Great Depression. As Bhagwati cautions, “if the Buy American legislation does get enacted, count on trade wars breaking out, so that Americans learn history, which they do not study enough at school, by seeing it repeated in their own lifetime” (Bhagwati 2009).

In Davos last month, many pleas for economic openness were made. Interestingly, these pleas came especially from the leaders of emerging economies. “Russian Prime Minister Vladimir Putin warned against reliance upon intervention and protectionism to cure economic ills, saying such policies could backfire. Chinese Premier Wen Jiabao backed Putin, saying world leaders must remain vigilant in their efforts to curb trade protectionism. Egypt’s trade minister echoed concerns about protectionism, as did India’s” (Teslik 2009).

This protectionist tide is happening against a backdrop of falling trade and cross-border activity. For the first time since 1982, world trade has been declining (Landler 2008). What can the WTO do to stem this rising wave of protectionism and declining trade? The WTO cannot be blamed for being out of touch or for lack of trying. The organization has been very proactive since the crisis broke out in the fall. In October, the WTO's Director General, Pascal Lamy, warned that developing states were losing access to financing for imports and exports. He created a task force to follow the effects of the financial crisis on the WTO and pulled together experts to discuss problems of trade finance, in particular the shortage of liquidity to finance trade credits, and possible measures to address the problem. He has been ubiquitous, giving speeches and writing op-eds about the track record of open trade as a growth multiplier (Lamy 2009). But speeches and goodwill do not replace strong rules.

This crisis poses a particular challenge to the WTO because it reveals that its rules are not equipped to contain the current meltdown. Are the WTO rules sufficient to help resist the strong protectionist forces that are at play? What can the WTO do to perpetuate globalization in order to help the emerging economies, while giving assurances to the developed world? Are the WTO institutions strong enough to withstand the retaliation and trade wars that will ensue if some of the blatantly and less blatantly protectionist domestic procurement provisions are enacted? Is the experience of the WTO with multilateral governance enough to force international cooperation when globalization is imploding?

2. A challenge to the WTO institutional architecture by the end of the Western-centric system

A second fundamental challenge to the WTO is that the sheer number and the relative power of its members have changed dramatically in its fourteen years of existence, weakening its institutional architecture. Whereas the institutions were set up and the rules were written mainly by the United States and the European Union, emerging economies have gained a greater voice within the system. They are now able to use the rules such as the dispute settlement mechanism to their own advantage and to block the conclusion of unfavorable agreements. This rise in power within the WTO institutions parallels the so-called "rise of the rest" --whether in demographic, economic, or financial terms (Zakaria 2008, U.S. National Intelligence Council 2008). The predicted trajectory of the world economy points to a less Western-centric world in the future. This trajectory is already visible in the WTO, where negotiating dynamics have changed considerably since the Uruguay Round negotiations concluded in 1994 with the growing influence of India and Brazil notably.

In theory, this development should not represent such a challenge to the WTO. To the contrary, the fact that the existing institutions have been able to be used effectively by emerging countries should assuage critics who denounce the lack of legitimacy of WTO governance. The system is no longer dominated by "green room" procedures where a small number of states (the "Quad") drive decisions, so the legitimacy and transparency of the WTO find themselves enhanced as a result. Moreover, the original powerhouses of the WTO, the US and the EU, had agreed that the Doha Round would be a

“development” round, so it seems only natural that some of the developing countries are striving to get their say in the negotiations and resist multilateral deals which they interpret as not being in their favor.

Yet the successful incorporation of new members and the relative decline of the transatlantic axis are proving to be a test for the WTO. First, because with increased membership comes increased diversity –of preferences, of economic development, of domestic political processes. This challenges some of the rules which have been at the heart of multilateral trade governance since the early days of GATT, such as notions of equality, principle of reciprocity, and most favored nation status. The WTO has had a consensus decision-making process since its inception. With a small number of members making decisions as a “club,” this process worked to manage trade policy without much public input or oversight. But as the membership in the GATT and then WTO grew in size and diversity, this became an increasingly problematic decision-making process. The recent rise of the BRIC countries has led to a virtual standstill in WTO legislative processes. Under the current institutional architecture, inclusiveness and voice have generated deadlock.

The second challenge has been brought on by the US and the EU, who are increasingly conducting their trade diplomacy outside of the WTO, partly as a way to circumvent an institution whose control is escaping them and whose rules they can no longer write by themselves. This development started to accelerate with the U.S. Administration policy of “competitive liberalization” initiated by Robert Zoellick in the early years of the Doha Round. For a while the EU had imposed an informal moratorium on new bilateral free trade agreements, but this policy was later abandoned and replaced by an effervescence of bilateral and regional agreements. There is a lively political and scholarly debate as to whether these agreements indeed bring about more trade liberalization and whether the possibility of “forum-shopping” weakens or strengthens the multilateral system. Whatever the final answer, however, the fact is that this “de-Westernization” and subsequent “de-multilateralization” puts the WTO under stress.

3. A challenge to the WTO politics by lack of care

A third, central challenge to the WTO is its descent into public oblivion. No one seems to care about the WTO any more: not states, not businesses, not the public. The only times when the WTO has made it to the front pages of newspapers worldwide over the past few years have been the periodic failures to conclude the Doha Round. The lack of willingness and effort by WTO members to overcome obstacles and finally conclude the negotiations launched eight years ago has sent the message that the importance of a multilateral trade deal was no longer central. The Doha Round for sure seems irrelevant today, and the decision by Lamy not to convene another ministerial meeting in the near future and to put the negotiations on the back burner were met with neither surprise, nor disappointment –not even interest.

Gone are the days when protesters swarmed WTO meetings and demonized the organization as the source of all free-market evils. Protesters have long moved on. In a way, the WTO may be victim of its own success. As political scientist Armita Narlikar argues, “the World Trade Organization has

changed. It is a much fairer organisation than the organisation that became the target of the Seattle demonstrations in 1999, and is (at least in some important ways) a much nicer and evolved progeny of the GATT's. Is it not time that this multilateral body gets the commitment it deserves? A central critique of the WTO today is that the organisation fails to deliver on fair process. This was a valid criticism of the WTO ten years ago. It is an outdated and irresponsible critique to launch against the organisation today" (Narlikar 2008).

Of course, the lack of public interest does not make in itself the organization irrelevant. Many important institutions work quietly in the background, away from public scrutiny. But the perception of irrelevance seems to have touched policy-makers as well. The lack of international interest in filling in the position of Director General of the WTO provides further evidence that the WTO is increasingly perceived as irrelevant. Lamy's mandate is expiring in August 2009, yet nobody has run against him for the position (Deere 2009). To be sure, the lack of competition can be attributed to the perception that Lamy has been an exemplary leader with formidable stature. But it could also be that no one wants the job because the prospects for an agreement in the Doha Round are dim, because globalization and trade in particular are in for a rough time in the years ahead, and because the future of the organization is far from secure.

Neither does the WTO seem to have the support of the business community, which has devoted little resources to jumpstart the Doha negotiations. Maybe businesses got what they wanted in the Uruguay Round. Maybe businesses cannot commit to a round that takes so long to achieve results: their own product and business cycles are much shorter, and long, drawn-out WTO negotiations cannot deliver what they want in the timeframe they need. In any case, the business community is not spending much energy in order to achieve results in the WTO.

It is telling that the WTO seems so "out of the loop" in the midst of the current crisis. No one, at least publicly, is turning to the WTO's experience with regulation and global governance for solutions. No one has mustered enough political support to conclude the Doha Round in order to boost growth and confidence. It seems as if the founding rationale of the WTO—the idea that liberalizing trade contributes to global wealth— has gone astray. This irrelevance also comes from the fact that the WTO does not possess the instruments to boost commercial flows in the current context: if global trade has fallen in 2008, it is not because of new protectionist measures but because of a credit crisis which prevents buyers from borrowing, and thus goods from being traded.

Political scientists have debated at length the institutional innovations of the WTO, yet they do not seem directly relevant to help in the current context. What role can the WTO play and what is its added value? How does the WTO fit within the overall architecture of global institutions? What is the political direction in which the WTO is going?

There is no straight answer to the initial question raised in this memo. Current developments certainly point to the irrelevance of the WTO. Yet they can also provide an opportunity to showcase its relevance. In a way, the WTO may already have shown its relevance by shaming the U.S. into passing a

protectionist bill, which could have aggravated the crisis even further. But to be relevant in the future, the WTO must recapture the interest of states and interest groups by proving that it can be part of the solution and that it can tackle the complex issues of development, environment, and democratic legitimacy. This workshop will explore whether a refocusing of the WTO's mission and nature towards global ethics can provide in part a response to these challenges to the multilateral trading system on its way to irrelevance.

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