



**GLOBAL TRADE & INNOVATION
POLICY ALLIANCE**

Key Issues for Reforming the World Trade Organization

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Executive Summary

The members of the Global Trade & Innovation Policy Alliance (GTIPA), a network of over 40 think tanks in 26 nations, have come together to articulate a positive vision that trade, globalization, and innovation—if conducted on private enterprise-led, market-based, rules-governed terms—can maximize welfare for the world’s citizens (GTIPA, 2017). The members of the GTIPA believe the World Trade Organization (WTO) can play a critical role as a forum for the establishment of rules that enable global trade to occur in a free, fair, and market-oriented manner in accordance with the foundational principles of national treatment, nondiscrimination, transparency, and reciprocity and serves as a forum for the (ideally) impartial, rules-based, and timely adjudication of trade disputes among member nations. A well-functioning WTO is indispensable to a well-functioning international economy. Unfortunately, the WTO is an increasingly constrained organization: It has failed to deliver any new significant trade-liberalizing agreements since the original Information Technology Agreement (ITA) in 1996, progress on the Doha Round remains interminably stalled, and the Appellate Body (AB) system appears broken. Perhaps most worryingly, some nations, particularly China, have elected to embrace economic and trade strategies and policies that are fundamentally antithetical and inconsonant with their WTO commitments, with the WTO proving powerless to effectively intercede. This monograph—authored by a subset of GTIPA members—explores the leading challenges facing the WTO and offers a number of policy recommendations for how to address them.

1. Introduction: The WTO Under Pressure

The WTO was a success story at its outset in 1995 and for several years thereafter (Kolev/Matthes, 2020). However, it has been getting into an ever-deeper crisis in recent years. For several reasons, the Doha Round got stuck (Matthes, 2006), among them many countries' fears of rising competition from a fast-growing China. As a consequence, the trade liberalization function of the WTO lost its power. The WTO's monitoring function of new trade barriers today does broadly well despite some room for improvement, as was the case in and after the global financial crisis of 2008–2009 and during the COVID-19 pandemic. However, the WTO's liberalization function—probably its most important objective—has also been dealt a serious blow. The AB, the second stage of the WTO's dispute settlement system, has been out of order since December 2019, largely because the United States has continually blocked the nomination of new trade experts as members.

There are very fundamental disagreements behind the WTO crisis. Among them are globalization scepticism, rising state influence, and protectionist industrial policies. Moreover, there is a deep divide and distrust between emerging and developing countries on the one side and industrialised countries on the other side about the opening up of markets for agricultural goods (desired by the first group and resisted by the second group) and the opening up of markets for industrial goods and services (desired by the second group and resisted by the first).

However, a major concern regards China and its state capitalism. The Chinese economic model is based on a relatively successful (domestically) industrial policy that increasingly leads to competitive distortions in world markets to the benefit of Chinese firms and to the detriment of others (Matthes, 2020a; ITIF 2021). Spillovers from China's innovation-mercantilist brand of state capitalism could eventually put the WTO at stake. Therefore, China could actually become a key to saving the WTO and ending its crisis.

2. Making MC12 a Success: A Pragmatic and Results-Oriented Approach

The WTO's 12th Ministerial Conference (MC12) is scheduled to take place from November 30 to December 3, 2021, in Geneva, Switzerland. MC12 will be the WTO's first Ministerial in four years since MC11 in 2017. Together with the return of (an active and engaged) United States to the WTO and the appointment of the new Director-General, Dr. Ngozi Okonjo-Iweala, MC12 will be a litmus test for proving the WTO's relevance by supporting economic recovery and restoring confidence in the WTO at a time when skepticism abounds regarding its future, especially concerning the adverse impact of the Trump administration's generally hostile approach toward the WTO over the previous four years as well as the globally displacing COVID-19 pandemic.

In her first speech as Director-General addressing the WTO's General Council on March 1, 2021, Dr. Okonjo-Iweala enumerated a number of priorities to achieve reforms necessary to keep the WTO relevant (WTO, 2021a). Emphasizing the critical importance of delivering results by MC12, she singled out four priorities to focus on in the lead-up to the Ministerial: 1) strengthening the WTO's action on COVID-19, both for the immediate and longer term, in minimizing or removing export restrictions and ensuring access to vaccines and other

medical goods; 2) completing fisheries subsidies negotiations; 3) making progress on Joint Statement Initiatives (JSIs), such as e-commerce, domestic regulations, and investment facilitation; and 4) agreeing on the roadmap for reform of the Dispute Settlement System.

The WTO and MC12 should be pragmatic in their approach, work on an early harvest of low-hanging fruit, and be wary of getting too ambitious, especially when the (mostly virtual) negotiations are under way. With, for example, just a few deliverables and outcomes on COVID-19, fisheries, e-commerce, and the AB appointment, the WTO can effectively pave the way for restoring its relevance.

Recommended Action: Strengthen WTO Action on COVID-19

The global economic recovery largely depends on its ability to deal with the COVID-19 pandemic. Vaccine nationalism and protectionism will impede the global trade and economy coming out of the doldrums and returning to a meaningful growth trajectory. While needing to be lifted or rolled back, many of the protectionist measures imposed after the pandemic (up to 100) are still in place, according to the International Trade Center. Vaccines have become a new essential infrastructure, reinforcing the urgent need to make more vaccines available, especially in developing countries, and to support relaxing the export restrictions and prohibitions of raw materials. The WTO must play a critical role in addressing the vaccine-availability issue as quickly as possible, supporting investment in production capacity, especially in developing countries, and keeping international trade flowing.

The questions of technology transfer, know-how, and intellectual property rights (IPR), including with regard to the proposed waiver of Trade-Related Aspects of Intellectual Property Rights (TRIPS) commitments concerning COVID-19 vaccines and therapeutics should be dealt with in a thoughtful way that best facilitates both innovation and production in a pragmatic fashion, involving much time and multiple parties. The global COVID-19 discussion therefore should be focused on facilitating rapid and smooth production and distribution of vaccines in order to provide much-needed assistance to those in need, especially in developing countries, rather than on engaging in complicated and time-consuming debates about the necessity and usefulness of an IPR waiver.

The WTO and MC12 must produce concrete outcomes and deliverables with regard to action on COVID-19 to support the global economic recovery.

Recommended Action: Conclude Fisheries Subsidies Negotiations

Actual progress is much expected in fisheries subsidies negotiations, participated in by all WTO members. The negotiations under way for over 20 years have formed a consensus on eliminating harmful fisheries subsidies that contribute to overfishing and overcapacity, giving due consideration to special and differential treatment for developing countries. The Negotiating Group on Rules seeks to conclude the negotiations by MC12. Director General Okonjo-Iweala has described that it will be “critical for marine sustainability and for the WTO’s credibility as a negotiating forum—one where members are capable of jointly addressing problems of the global commons.” (WTO, 2021b).

Recommended Action: Advance Progress in E-commerce

Some areas in the Joint Statement Initiatives are making much progress toward agreement. A consolidated text on e-commerce was produced in December 2020, laying the groundwork for actual progress at MC12. Eighty-six participating members have stressed the importance of developing global digital rules and the critical role of e-commerce in the global economic recovery from COVID-19. (See Section 3 on expanding on a roadmap for e-commerce rules at the WTO.)

Participants have been streamlining the texts on six main themes: enabling e-commerce; openness and e-commerce; trust and e-commerce; cross-cutting issues; telecommunications; and market access. Participants have made some progress on topics related to enabling e-commerce such as e-signatures, e-authentication, and paperless trade. However, sharp differences between advanced and developing countries, particularly between the United States and China, still remain on customs duties, cross-border dataflows, localization of computing facilities, etc.

Against this backdrop, the participants should focus, at the very least, on harvesting low-hanging fruit in areas such as e-signatures, e-authentication, and online consumer protection. Producing a clean text by MC12 would represent substantive progress.

Recommended Action: Expand the Information Technology Agreement

The ITA—a plurilateral trade agreement that eliminates tariffs on trade in hundreds of information and communications technology (ICT) products—has been one of the WTO’s biggest successes (Ezell and Wu, 2017). Originally signed in 1996, and expanded in 2015, the 82 members of the original ITA (and over 50 countries participating in the 2015 “ITA-2,” which brought 201 more products valued at \$1.3 trillion under ITA coverage) collectively account for 97 percent of world trade in ICT products. Membership in the ITA matters, because countries not participating in the ITA saw their participation in global ICT value chains decline by more than 60 percent from 1995 to 2009 (OECD, WTO, and UNCTAD, 2013). The Information Technology and Innovation Foundation (ITIF) has written extensive analyses showing that a wide swath of developing countries—including Argentina, Brazil, Cambodia, Chile, Costa Rica, Kenya, Laos, Indonesia, Pakistan, South Africa, and Vietnam—would benefit from joining the ITA (both the original and expanded agreement) (Ezell and Wu, 2017). An “early harvest success” could be reached by or at MC12 if additional nations were to join the agreement. Beyond this, an energized set of countries are now coming together to chart the course toward an ITA-3 that would potentially bring more than 400 additional ICT products or intermediate components under ITA coverage. ITIF finds that such an ITA-3 could increase global gross domestic product (GDP) by nearly \$800 billion over the ensuing decade, with the biggest beneficiaries in relative GDP terms being Pakistan and Nigeria, which would see their GDPs increase by 3.2 percent and 2.2 percent, respectively (Ezell and Dascoli, 2021). Here, MC12 could at least serve as a platform for animating negotiations toward beginning pursuit of an ITA-3.

Recommended Action: Agree on the Reform of the Dispute Settlement Mechanism

The WTO's Dispute Settlement Body is its crown jewel with regard to enforcement power. The Trumpian legacy caused the AB, with insufficient members, to cease to function. Restoring it would represent a significant deliverable. The United States needs to take the lead and prove it's back on the world's multilateral stage. As the WTO Director-General emphasized, if members can agree on a roadmap for reform of the Dispute Settlement Body at MC12, it will make a significant step toward strengthening the WTO's rule-making role. (See Section 4).

3. WTO E-Commerce: A Vision Forward

A necessary e-commerce outcome at the 12th Ministerial should include an ambitious vision to protect the ability of data to flow freely across borders in the same way the WTO protects the ability of offline goods and services to do the same.

Substantial technological development and adaption have occurred since the WTO started the Program on Electronic Commerce in 1998 (WTO, 1998). The initiative sought recommendations for the General Council to ensure the global trading system extended to global electronic commerce. At the time, e-commerce was in its infancy, Google and Facebook did not yet exist, and only 147 million people used the Internet daily (Internet Growth Statistics).

Today, the Internet connects 4.8 billion people online who spend, on average, seven hours a day (Digital Around the World, 2021) surfing its 1.8 billion webpages (Internet Live Stats, 2021) where they exchange 2.5 quintillion bytes of data (Frost & Sullivan, 2014). In less than five years, the Internet is expected to connect 6 billion consumers (Reinsel et al., 2018), with some 60 percent of global GDP becoming digitized (Frank et al., 2018). Yet, in the intervening two decades, the WTO has only produced two clean negotiating texts on aspects of digital trade: one on spam and the other on e-signature authentication.

An ambitious and comprehensive statement would allow trade negotiators at future ministerials to reap much more low-hanging fruit in the years to come. In the absence of a united front to protect digital trade from discriminatory trade barriers, the WTO will likely suffer a loss of legitimacy.

A substantial share of the global economy is currently affected by discriminatory digital trade barriers, many of which violate existing international trade commitments, while others may already lie outside the scope of enforceable trade rules. If a joint statement and subsequent comprehensive negotiating texts avoid addressing these as barriers that should be eliminated, it will capitulate a significant portion of global trade to unfair, unregulated, and distortionary protectionism.

E-commerce is now global commerce. Every second, millions of traditional brick-and-mortar small and medium-sized enterprises are connecting online with suppliers, retailers, and customers—aided by algorithms that match preferences and solve logistical challenges. New data from the United Nations Conference on Trade and Development

(UNCTAD, 2020) finds that, in 2018, e-commerce sales reached a record \$25.6 trillion, equivalent to 30 percent of total world GDP that year. For the world's 10-largest economies, the share of business-to-business e-commerce sales represented, on average, 83 percent of all e-commerce, including sales and data transactions (UNCTAD, 2019). In fact, e-commerce is conventional commerce, with 75 percent of the economic impact of digital data flows attributable to traditional logistics, agriculture, and manufacturing industries that are able to harness innovation and productivity by being connected (Rausas, 2011).

The ability of e-commerce to eliminate distance and time restrictions consumers face in offline shopping has led to a dramatic rise in international trade and associated cross-border data flows. UNCTAD estimates 23 percent of online shoppers participate in cross-border trade. COVID-19 lockdowns and the rise of app-enabled services has only accelerated the adoption of online services by retailers, suppliers, and consumers.

In the wake of this monumental growth in the global digital sector, the world has, unfortunately, also seen a rise in digital trade restrictions. A new report from ITIF finds that data localization measures have more than doubled in the last four years, while the number of countries implementing them has increased 91 percent, from 35 to 67 (Cory and Dascoli, 2021).

Indeed, new digital trade barriers continue to proliferate. They include, for instance, content moderation rules that require certain political speech to be censored and permit regulatory agencies to throttle or shutdown social media platforms. Temporary shutdowns have become commonplace in much of the world and are estimated to have an economic impact of \$24 million per day per population of 10 million (Deloitte, 2016). Some regulations require platforms to discover, flag, and sometimes correct misinformation; such policies represent restrictive, and distortionary, trade barriers.

To protect the security of data, some countries have adopted distortionary adequacy regimes, while others have adopted cybersecurity regulations that require encryption keys to be surrendered. Further, a growing number of domestic regulations have been designed to suffocate app-enabled services that compete with offline services or monopolies. Newer regulatory trends include licensing regimes for social media influencers and content localization quotas for streaming libraries. This, of course, represents a non-exhaustive list of regulations that restrict the movement, generation, use, and security of data.

These digital trade barriers impose artificial restraints on data storage, data processing, and the use of data that ultimately impede trade in goods and services. Yet, they are increasingly common among the world's largest economies, such as those of the European Union and China.

As digital trade barriers proliferate, and member states choose other multilateral forums to negotiate, such as discriminatory digital service taxes at the Organization for Economic Cooperation and Development (OECD), the WTO risks irrelevance. Fortunately, as e-

commerce and digital data flows have become more important, digital trade chapters in free trade agreements (FTAs) have gained prominence.

The recent United States-Mexico-Canada Agreement (USMCA) has been labelled the gold standard. To guard against discriminatory content moderation, it ensures intermediary liability protections for platforms, allowing them to enforce codes of conduct without becoming tools for government censorship. It expressly prohibits data localization, and any restrictions of cross-border data flows must be tied to achieving a legitimate objective in the least-restrictive and discriminatory manner. In addition, requiring software source code and algorithms as a condition to import, sell, or distribute is prohibited. Further, it prevents duties, fees, tariffs, and other charges from being applied to digital products transmitted electronically. Still, there is room for improvement. For instance, language requiring risk-based approaches to cybersecurity and to expressly prohibit government requirements for backdoors or encryption keys could be stronger.

The two e-commerce clean texts achieved at the WTO are welcome developments. However, in the end, if the WTO is to achieve its central purpose of providing “the common institutional framework for the conduct of trade relations among its Members” (WTO, 2004), it must clearly define where regulations that restrict how data is generated, stored, taxed, applied, and moderated—and how it crosses borders—become discriminatory digital trade barriers. Providing the ability to resolve all types of digital trade disputes will bring the WTO into a new era; failing to do so would significantly undermine the WTO’s ability to achieve its mission.

4. Reforming and Reinstating the WTO Appellate Body

The Trump administration was commonly thought to be the main culprit for the demise of the WTO’s dispute settlement system (see Matthes, 2020b for this and the following chapter). Indeed, it was the Trump administration that continually blocked the nominations of new AB members—a move that was likely also motivated by the intention to avoid a final and binding verdict of the AB on the tariff measures of the United States on China and on steel/aluminium that were based on alleged national security reasons. However, the Obama administration also had serious and long-standing concerns about the practices and procedures of the AB (EP, 2019; USTR, 2020; see also Willems, 2020 and Fukunaga, 2020). Above all, the United States’ criticism is that the AB overstepped its mandate and indirectly created de facto new trade rules that diminished various rights of the United States and created new obligations. In general, the United States Trade Representative’s Office (USTR’s) position is that the AB’s “errors have favored non-market economies at the expense of market economies” (USTR 2020, p.2). This relates especially to the use of trade defense instruments (TDIs). An important example is the AB’s narrow interpretation of the WTO law relating to the term “public body,” which severely limits the scope to use WTO rules to tackle the pervasive competitive distortions created by China’s state-owned enterprises (SOEs). The United States also holds the opinion that the AB overstepped its mandate by creating binding precedent, interpreting domestic law, reviewing the panel’s fact finding, and issuing advisory opinions on issues not raised by WTO members in the relevant case. On top of this, there are several more technical issues

the United States has continuously criticized, such as appeal proceedings often taking much longer than the 90 days foreseen in WTO rules and the terms of outgoing AB members working on ongoing appeals sometimes being extended for longer periods without the clear consent of WTO member states. Importantly, many of the aspects criticized by the United States are reasonable and are thus shared by the EU and other WTO members (European Commission, 2018; Stewart, 2019).

In a broader context, after the foundation of the WTO the AB acted in the liberal sense of the time when trade openness was still the prevalent mantra. However, China challenges this view with its state capitalism. In fact, the combination of China's technological catch-up (fostered by unlawful forced intellectual property and technology transfer), the competitive distortions of its industrial policies, and China's enormous and growing size pose the danger of welfare losses for industrialised countries (Matthes, 2020c). TDIs are limited tools to counter this trend (Matthes, 2020d). However, the AB restricted their use, even though the United States has always seen TDIs as tools that are mainly within the national realm of WTO members. Therefore, there is some reason for the United States to see its faith betrayed when it agreed at the time of the WTO foundation to TDI rules that still allowed for a wide scope for national determination and at the same time to a binding dispute settlement system. In this view, the AB has changed the rules of the game, which has become ever more relevant due to the increasing spillovers wrought by China's state capitalism.

However, there have been serious reform efforts in the WTO to resolve the AB crisis (Stewart, 2019). In 2018, the EU presented a concept paper on WTO reform that, among other issues, deals with many of the concerns of the United States regarding the AB (European Commission, 2018). This initiative also formed the basis for the "Walker Process," named after David Walker, New Zealand's ambassador to the WTO, who informally consulted members in search of issues of convergence and eventually produced a draft General Council decision on the functioning of the AB (WTO, 2019) that tackles many of the issues raised by the United States. It stipulates (p. 6) that "the Appellate body ... cannot add to or diminish the rights and obligations provided in the covered agreements," and, "Precedent is not created through WTO dispute settlement proceedings." Moreover, domestic law (meaning of municipal law) is to be "treated as a matter of fact" and the AB must not engage in new fact finding. Relating to the more technical issues, it is reiterated that the AB is to issue its report within 90 days, except for special circumstances. Concerning outgoing members, it is stated that only WTO members can decide upon AB members and that outgoing members may be allowed to continue an appeal process only with this clear consent, to be given more than 60 days before a term ends.

The Trump administration continually blocked this initiative, criticizing that the wording of the draft General Council decision did not go far enough to ensure a sufficient change of the AB's behavior and stating its distrust toward other WTO members that did not share the view of the AB's shortcomings (Stewart, 2019).

So how are the prospects of moving forward on the basis of the Walker Process under the Biden administration? Some further work on the draft General Council decision might be

needed. Many experts have made suggestions with this aim in mind (e.g., Willems, 2020; Stewart, 2020). In fact, the EU has signalled its willingness to move beyond the Walker Process in its recent Trade Policy Review (European Commission, 2021). Therefore, the Biden administration sooner or later has to take a position on this issue and state what aspects of the Walker Process, from its viewpoint, need to be amended.

A certain incentive for the United States to engage in this respect lies in the temporary dispute settlement solution that some countries have set up as an interim alternative to the AB: the MPIA (Multiparty Interim Appeal Arbitration Arrangement). The MPIA was initiated by the EU and Canada and went into force at the end of April 2020 (WTO, 2020). It is an open agreement for all WTO members. Around 20 countries have joined, among them Australia, China, Brazil, Mexico, and Switzerland—but not the United States.

The EU and other countries have prepared for the event that, in a bilateral trade dispute, the United States appeals itself into the legal void after a panel finding against its interests. In such a case, the EU would be able to apply counteractions on U.S. exports based on the panel's findings (i.e., the first stage of the dispute settlement mechanism). This was never possible before. Thus, the EU has had to newly introduce this enforcement mechanism, which it did only recently. It allows for counteractions in the form of higher goods tariffs, limitations of access to European public procurement, and the withdrawal of service liberalizations or of IPR. This step allows the EU more discretion, compared with WTO rules based on an AB finding, so potential countermeasures against the United States could be more severe. The Biden administration could potentially use this argument to justify an engagement to reform the AB.

5. Reforming WTO Industrial Subsidies Rules and Getting China to Agree

In addition to the above-mentioned efforts to ensure the use of existing TDIs as foreseen in WTO law, it is important to expand the remit of TDIs. Particularly regarding the WTO's Agreement on Subsidies and Countervailing Measures (ASCM), there are large regulatory gaps that have prevented the levelling of the playing field with regard to various forms of trade-distorting subsidies (Matthes, 2020a).

Also in this respect, there is a foundation to build upon. In fact, out of a Trilateral Meeting of the EU, the United States, and Japan came proposed reforms to broaden the definition of prohibited and actionable industrial subsidies, including stricter disciplines on SOEs (Joint Statement, 2020). For example, the following subsidies should be unconditionally prohibited in the future:

- unlimited guarantees,
- certain direct forgiveness of debt,
- subsidies to an insolvent or ailing enterprise in the absence of a credible restructuring plan.

Further, the Trilateral countries should work together to update the WTO's rules to impose much stiffer conditions on, and penalties for, aggressive industrial subsidization. This should start with clarifying the definition of a “public body,” and extending it to include state-influenced activities of entities such as SOEs and private firms (USTR, 2018). Rules should obligate the subsidizing country to prove that a given subsidy does not inflict harm

on others. Like-minded nations should focus on achieving a significant increase in global subsidies transparency, including insisting upon timely and complete notification of subsidies and establishing a presumption of prejudice toward subsidies not timely notified. The countries should also designate an annual meeting between WTO members and the WTO AB to discuss patterns and challenges pertaining to the excessive use of subsidies (Ezell, 2021a).

These types of proposals should be officially tabled in the WTO and the three countries should seek broad support for their initiative among like-minded WTO members. A plurilateral subsidies agreement in the WTO framework might be the aim of this initiative—with the participation of all important global exporters, including China. Thus, the key question is how to get Beijing on board. Despite numerous attempts to strengthen the disciplines on subsidies in the WTO, China continues to refuse to participate in negotiations regarding ASCM reform. Due to the WTO's consensus principle, the resistance of China (and also of some other nations) has in the past rendered a meaningful reform elusive. And there are hardly any indications that the required cooperation might materialize in the near future.

Nevertheless, Beijing needs to acknowledge that the spillovers from its economic system undermine competitive conditions on the world market and that its trading partners need to have instruments to neutralize these distortions in order to ensure a level playing field. Otherwise, the WTO and the world trading system will be in grave danger in the future if the spillovers of China's state capitalism increase further, as might be expected. In fact, the danger arises that more countries follow the U.S. approach and use TDIs and other tariffs against Chinese imports in a fashion that goes beyond WTO limits. In this case, it is foreseeable that WTO disputes increase significantly and such defensive trade measures would be found to be breaking WTO rules. However, it might come to the situation that the countries using these measures do not comply with WTO dispute settlement findings, as it would lead to considerable domestic job losses. Such a constellation would lead to deepening trade wars and a further serious erosion of the WTO. This is why China's state capitalism, goosed with a heavy dollop of innovation mercantilism, might eventually put the WTO at stake.

In other words, the following danger appears imminent in the near future: As an unchanged state capitalism of a country as large as China does not fit into a largely market-based multilateral trading system, either China changes, the system changes, or the whole system could break down. Thus, more pressure on China to agree to WTO reforms—and to come into full and immediate compliance with its already promised WTO commitments—is required (Ezell, 2021b).

Based on these considerations, Kolev and Matthes (2021) have put forward an ultimatum-proposal for cooperation between the EU, the United States, and other likeminded market-based economies in order to raise the pressure on China to engage seriously. It boils down to opening the option to put the WTO at stake in order to save it. This strategy assumes—not implausibly—that only when its benefits can no longer be taken for granted, that Beijing might move sufficiently on WTO reform. Kolev and Matthes suggest a Pluri-regional Trade Partnership of Like-minded-Countries (PTPL) spearheaded by the EU and

the United States, but also comprising Japan, the United Kingdom, Canada, Australia, Chile, Mexico, and many other industrialized and emerging economies. The enormous size of the agreement would act as a gravitational force that encourages further accessions. The agreement would build on and extend WTO rules so that new trade liberalization among like-minded countries becomes feasible. In particular, strong level-playing-field rules for SOEs and industrial subsidies would have to be found. These rules would have to allow for a certain level of government financial support, as is common in most countries. However, they would forbid excessive subsidization, as is common in China (Think!Desk, 2015, 2019) and as the OECD has found in China in case studies on differing sectors such as aluminium and semiconductors (OECD, 2019a, b).

Depending on China's willingness to accept subsidy-related reforms, the plurilateral agreement could be used as a blueprint for a WTO reform or a plurilateral agreement in the WTO with which China goes along. However, if China were not prepared for this, the agreement could be developed into an alternative plurilateral arrangement to the WTO that could eventually substitute for the existing multilateral trading system.

Kolev and Matthes are aware of the grave implications of such a step, particularly for the EU, as it is a staunch supporter of multilateralism and rules-based trade. However, they see the danger that the WTO could break down anyway if China does not agree to WTO reform. Even if this outcome might not appear highly probable, preparing for such a scenario is essential. As the spillovers of China's state capitalism are increasing and as setting up such a plurilateral agreement would take time, it should be agreed upon sooner rather than later. One option could be an enlargement and adaptation of the Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP), the pros and cons of which are discussed by Matthes and Kolev (2020).

It goes without saying that such a plurilateral agreement would be no panacea. For example, the United States and the EU follow different approaches on many kinds of rules and standards in their bilateral FTAs, so potentially difficult compromises would have to be found. However, the geostrategic value of increasing pressure on China and having an alternative ready if the WTO were to break down should be a more important consideration. In addition, a plurilateral agreement would reduce the transaction costs of the multitude of intersecting bilateral trade agreements globally and clean up the so-called "spaghetti bowl" of overlapping trade agreements among nations.

Hopefully the last-resort strategy to put the WTO at stake will not be needed because either the spillovers of China's state capitalism remain sufficiently limited or China soon recognizes the necessity of a WTO reform along the lines laid out here.

6. More Cooperation on Trade-Environment Issues and Carbon-Border Adjustment Mechanisms (CBAM)

While the Marrakesh Agreement, which officially heralded the launch of the WTO, emphasizes sustainable development and environmental protection as fundamental objectives of the WTO, no specific mandate on the issue currently exists (WTO, 2020). Rather, Article XX (b) and (g) of the General Agreement on Tariffs and Trade (GATT) states that member nations may adopt policies inconsistent with standard GATT rules in order to

protect the health of human, plant, or animal life, or to conserve exhaustible natural resources, so long as the measures are not applied in a discriminatory manner (WTO, 1947). However, a debate persists regarding the effectiveness of Article XX's broad applicability. While detractors argue that the exceptions are prone to narrow interpretation, subjective analysis, and ambiguity, defenders attribute responsibility to the state for applying the Article with "clean hands" (Doyle, 2014; Khan, 2011; Amos, 2015).

Beyond the GATT, further developments in environmental trade have stalled, as the priorities of member states have diverged, thereby impeding the development of consensus on common definitions and objectives (Griffin et al., 2019). Additionally, the effectiveness of the WTO's Committee on Trade and the Environment (CTE) has been stifled as international climate policy actors, which tend to operate in silos, fail to coordinate and instead offer heterogeneous classifications of environmental goods (Griffin et al., 2019). Given the principle of nondiscrimination, the compatibility of Multilateral Environmental Agreements (MEAs) with WTO rules has also been questioned. Disputes may arise when MEAs target the underlying process and production of goods rather than considering the sustainability of the finished product (Falkner and Jaspers, 2012). Another WTO violation can occur when the participation of a WTO member in an MEA results in sanctions against another WTO member (Falkner and Jaspers, 2012).

Despite these issues, the WTO has a role to play in environmental protection. By identifying and liberalizing specific goods and services that support sustainable supply chains, the WTO can encourage investments in clean technologies and promote a circular economy (European Commission, 2020). To do this, previously stalled negotiations on an Environmental Goods Agreement (EGA) should be picked back up on both a bilateral and regional level in order to reach a consensus on a definition of "environmental goods" and determine for which sustainable products tariffs should be eliminated (Mullan, 2019).

The organization could also address the dangerous overexploitation of fish stocks as well as the continued public financing of fossil fuels by negotiating new rules that nullify harmful subsidies and encourage redirection toward sustainable investments (Tipping & Irschlenger, 2020; van Asselt & Irschlenger, 2020). Clarifying the scope and application of Article XX may reduce charges of incoherence and subjective comprehensions. The Article can be afforded additional potency by specifying that the exceptions may be applied beyond just the protection of living beings and exhaustible goods to include sustainably relevant services and the mitigation of climate change (IISD, 2016).

Another suggestion is to strengthen the monitoring power of the CTE (European Commission, 2020). By adopting measures that encourage increased transparency, domestic policies should reflect better adherence to agreed-upon environmental and trade measures. Revamping the CTE to promote greater coherence and productive discussions between environmental policy actors could lead to increased accountability among individual member states, greater consistency of regulatory interpretations and shared objectives, and fair and proper responses to infringements. This could be achieved on a structural, procedural, and operational level.

Some have put forward implementing a WTO-compliant carbon border adjustment mechanism that would tax imports of nonaccountable foreign products to match the

monetary impact of domestic environmental mechanisms (Mullan, 2019). It has been suggested that such measures could be compatible with WTO rules if they treat all domestic production with a similar tax and ensure that the language, objective, and approach to implementation are origin neutral (Mullan, 2019).

At the same time, others have pointed out the potential challenges of implementing such measures. In practical terms, there is no internationally agreed-upon carbon measuring system. While the cost and scale of aggregating firm-level emissions data may not be administratively feasible, using common or country-specific emissions data could violate the WTO's Most Favored Nation principle, and a cap-and-trade scheme could result in domestic and foreign producers paying different carbon prices depending on when and where the CBAM is applied (Lehne and Sartor, 2020). Even if a CBAM is successfully negotiated, further problems may arise as regulatory barriers to entry could reduce overall trade, and an additional tax might weaken the economies of low-income countries whose exports will encounter a rise in costs (OECD, 2021). Should afflicted countries seek to challenge CBAMs in court, it should be noted that the WTO's dispute settlement bodies have ruled largely against countries seeking to defend their Article XX (b) and (g) exceptions (WTO, 2021c). Therefore, those hoping to protect their CBAM in court may find themselves in an uphill battle. For these reasons, ITIF believes that while CBAMs are attractive on paper, they present debilitating implementation challenges such as accounting for carbon, tracing global value chains, and ensuring compatibility with WTO and global environmental agreements. CBAMs may exacerbate global trade tensions by incentivizing circumvention, which would create clean and dirty industrial blocs, disrupt supply chains, and undermine incentives for climate innovation. ITIF believes a better approach would be to create a climate innovation club that gives flexible open-trade benefits to nations with ambitious, transparent, and enforceable climate targets (Koester, Hart, and Sly, 2021).

Nevertheless, in February 2021, the European Union announced its intent to introduce a CBAM tax on imports from “less climate-ambitious countries” in order to “raise global climate ambition and prevent carbon leakage” (EP, 2021). According to the recently released draft proposal, a CBAM has been introduced as part of the EU's larger Fit for 55 strategy, which aims to reduce carbon emissions by 55 percent below 1990 levels by 2030 (European Commission, 2021b). In this version, a CBAM would be applied transitionally at an EU-wide level to an initial list of specified goods chosen based on potential for carbon leakage (European Commission, 2021b). Embedded carbon emissions shall be determined by a customs duty declarant, based on actual carbon emitted through a good's production and certified by the national authority (European Commission, 2021b). However, this plan has already faced resistance from several countries, especially developing BRICS (Brazil, Russia, India, China and South Africa) nations (Bacchus, 2021; Bleinkinsop, 2021). As this is the first adoption of such a carbon tax, fallout from discussions about this plan may determine the future of such proposals.

7. Reforming Processes in Geneva

The WTO is a member-driven organization. It does not have a strong executive as other international organizations such as the International Monetary Fund do. Thus, if WTO

members no longer trust each other, the WTO machine is blocked. In WTO committees, members increasingly tend to speak past each other, state old and often-heard arguments, and oftentimes do not engage constructively on substance. What's more, when certain members bring initiatives, other members tend to exploit it as an opportunity to extract other concessions from the initiating member. This is a clear disincentive against progress in Geneva.

Therefore, the new DG should exert the leadership needed to attempt to change this problematic behaviour. Stronger encouragement of members concerned about a specific topic to respond to other members' statements and arguments would be very useful in order to foster more engagement on substance. Moreover, the DG should work closely with the WTO Secretariat and provide it with a stronger role within its limited mandate. The WTO Secretariat should be enabled to table initiatives so that this task would no longer fall on certain WTO members.

Conclusion

The WTO has a critical and indispensable role to play in facilitating market-based, rules-governed global trade to the benefit of the world's citizens. The members of the Global Trade & Innovation Policy Alliance call for all nations to collaborate in order to advance a well-functioning WTO in the interest of maximizing human welfare.

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