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WTO 2030?

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Attacked by the United States, bypassed by China, torn by the conflicting interests of emerging and developing countries, blocked in its role as arbitrator, overtaken by ongoing trade wars, held hostage by the United States–China trade war, bogged down by the cycle of negotiations opened in Doha, the World Trade Organization's (WTO) credibility and future are dogged by uncertainty.

Yet it is the WTO, and the WTO alone that can engender universal trade rules needed not only to regulate trade but also to ensure that trade becomes part and parcel of the issues that are fundamental to sustainable development, regulated competition, social progress and the environment.

Lessons learned from the failure of the 11th Ministerial Conference

The last WTO Ministerial Conference, held in Buenos Aires from 10 to 13 December 2017, ended in a triple failure.

Failure in agriculture: there was no agreement either on the reform of State subsidies that distort competition or on a public stockholding programme to ensure food security in developing countries. The United States and Europe have always taken different approaches—the US calculates subsidies by producers or farmers—whereas Europe calculates them as a whole. As for India, it sometimes plays its own game, including, in the context of food stockpiling, to the detriment of the least developed countries, by capitalizing on the global dumping trend.

Failure on the new economy: there was no headway on proposals to have the WTO set up an agenda on e-commerce, investments and small and medium-sized enterprises, in particular due to the India's blockage as it seeks to catch up with China.

And lastly, failure on sustainable development: it was not possible to adopt an agreement on the elimination of subsidies on illegal fishing or on overfishing disciplines. Also, several important members consider it wrong to introduce an environmental dimension, in accordance with the 2105 Paris Agreement on climate change, in trade agreements.

Underlying this conclusion is an even deeper reality—how the role of multilateral trade rules has divided States. On this issue, three large groups are pitted against each other.

First, there are those who believe that multilateral rules are not good because they hamper their development strategies: India and South Africa are at the forefront of this battle. They reject practically all discussions on new areas. They are followed by the group of developing countries—the G90—in particular the African and “Bolivarian” countries, who insist on very broad exceptions under the special and differential treatment provisions.

Next come those who believe that multilateral rules are good, but for others primarily: such is the case of the United States and China. The US wants to avoid those rules when they could be detrimental to them such as, for example, in matters of delocalization. China, while claiming to be committed to the letter of the rules, does not respect them in spirit. When it joined the WTO in 2001, China initially respected the letter of the rules and then gradually dispensed with them. It uses its classification as a

developing country, which allows for special and differential treatment, to buy time—time which amounts to decades. While calling for a more democratic WTO, China does not issue notifications about its State aids, which are assessed based on Internet searches.

Finally, there are those members who believe that the rules in themselves are good and that more are needed; either because, according to them, rules are a good thing—which is the case of the European Union—or because they would provide a binding framework for the policies of the major industrialized countries, in keeping with the aspirations of the Cairns Group and the Latin American countries.

Reasons to be optimistic after the failure of Buenos Aires

The failure of the 11th Ministerial Conference does not sound the death knell for the WTO. This failure did not result from any intention to destroy or abandon the multilateral system. On the contrary, Buenos Aires laid the foundations of political consensus on the need to keep the institution alive.

The United States itself reaffirmed the importance it attributes to the Organization, while clearly stating the need for reform without giving any specifics. The US Administration and its representatives in Geneva at the WTO are resilient and less protectionist than President Donald Trump's tweets would suggest. The rest of the world has unanimously asserted its commitment to the system as the generator of a public good thanks to the stability created by its rules and its dispute settlement body.

It has to be acknowledged that, aside from its threatening stance, some of the questions the United States has raised about the WTO are valid, such as: the absence of effective implementation of transparency disciplines such as subsidy notifications; reassessing the differential approach to development, the closing of the Doha agenda or simplifying the working of negotiating bodies. The same goes for the appellate body of the dispute settlement body which—it has to be said—often takes the liberty of over interpreting texts in its decisions. US criticism of these issues should not be taken lightly: Dispute Settlement Body judges often overstep the mission they have been tasked with, thus dragging out disputes, which the United States finds annoying. The US solution, which challenges the appellate body, is to block the renewal of judges whose four-year terms can be renewed once. Out of the seven judges there will only be three left at the end of 2019. No decisions can be taken below this quorum, meaning the WTO could be paralyzed.

Could we be moving towards plurilateralism in the absence of unanimity in the WTO?

The WTO brings together 164 Members and its decisions are taken by consensus. Yet there is almost never unanimity as far as the ongoing negotiations are concerned. The Americans are opening the door to reform proposals without actually making any themselves. Only the Europeans and Canadians are putting forward proposals to break the deadlock.

In the absence of agreement on major international accords, multilateralism is giving way to bilateral or plurilateral agreements, some of which are innovative and can serve as an inspiration for the WTO. To cite two examples, the environmental provisions of the CETA; the provision in the new North American Free Trade Agreement (NAFTA) allowing taxation of merely 40 per cent of the value of a vehicle coming from production centres where employees are paid at least \$16 an hour. In the same vein, it is high time the WTO started incorporating the standards on social policy set by the International Labour Organization (ILO).

This situation is leading to a subtle renewal of plurilateralism, with the formation of coalitions of developed, developing and emerging countries. This could well signal the beginning of an organization that shape shifts according to the circumstances, patterned after the European model of strengthened cooperation. This is one option for reforming the WTO: resort to plurilateralism for specific topics, such as e-commerce, while leaving the agreement open to other topics.

Can sustainable development become a topic of consensus? The WTO's current efforts to take on board environmental considerations are in some ways an attempt to go back to the basics. In actual fact, sustainable development appears in the agreement establishing the WTO as a central objective while free trade does not. This is also a matter of legitimacy vis-à-vis public opinion and an important future negotiation agenda, as is the French-sponsored initiative on the elimination of fossil fuels.

Immediate challenges needed for WTO reform

Among the issues to be resolved immediately with a view to reforming the WTO is first and foremost the dispute settlement body, which the US is effectively attacking and stifling by not renewing the members of the appellate body.

The second challenge will be to normalize the Chinese economy. This process is already underway, with the United States and Europe singing from the same hymn sheet. This process of normalization will be three-pronged. Regarding the conflict resolution aspect, a dispute was submitted in 2017 by China against the European Union about the new method of calculating the “normal value” for applying antidumping duties. The work of the European Commission and the French MEP Franck Proust, both working towards finding a balance that is acceptable to all, must be commended.

Next comes the political aspect: the alliance between Japan, the United States and the European Union to compel China to honour its subsidy notification obligations, although a notification was eventually given in 2018, and to discuss industrial overcapacity, must be translated into action at the WTO. On this matter, the Americans are right to condemn the lack of subsidy notifications by the Chinese and the technical solution they propose is a good one.

And finally, the regulation component : the United States and the European Union have proposed that the WTO establish incentives or sanction mechanisms in order to compel members to fulfil their transparency obligations as they relate to State subsidies.

The debate should also include the status of developing countries and the stakes involved at the WTO in view of their status, which tends to be outdated. The United States is making this distinction among developing countries a priority, and rightly so. However, the difficulty lies in the fact that some of the countries that joined the WTO with this status 15 or more years ago have become powerful, even dominant trading countries.

Lastly, the environment should be a central area of discussion for the WTO. Fishing subsidies are a pilot project to demonstrate the Organization’s ability to help achieve the objectives of the global community. The possible reactivation of the environmental goods agreement could feed into this in the future. The commitment made in Buenos Aires in December 2017 to give consideration to fossil fuel subsidies is a positive sign.

Conclusion

A closer look reveals that the most serious problems facing the WTO today are linked to the trade war between China and the United States. The latter’s main focus is complete reform of the appellate body, which the US still refuses to consider as a tribunal. The European Union must act tactfully, both vis-à-vis the United States and the developing countries, the majority of whom do not wish to make any substantial changes to the WTO as it exists today. The proposals made by the European Commission on 18 September are thus constructive.

Multilateralism through the WTO is the only possible avenue for avoiding a widespread trade war that would undermine values and destroy jobs. It is nevertheless crucial for the WTO to emerge from the state of paralysis that has overcome it once a decision is taken by consensus. Conversely, any decision to reform or update the rules of the WTO must apply to all the trade rules in force.

Calls for WTO reform or transformation have been made, notably by French President Emmanuel Macron at the annual OECD meeting held in May 2018 and by the European Commissioner Cecilia Malmström last November in Paris (followed by innovative supporting proposals on 18 September 2018). This issue is on the agenda of the G20 Summit in Buenos Aires. The fierce criticisms of the United States should be understood as a call to change.

If the status quo remains unchanged, the major blocs – the United States, China and the European Union – will set their own international trade rules. Even the European Union has jumped on the bandwagon by initiating 70 bilateral free trade agreements out of the hundred or so it intends to conclude. The European Union is hoping that these new-generation agreements will include standards that can subsequently be adopted globally.