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WTO Reform Priorities post-COVID-19*

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Although the WTO has fulfilled several key tasks it was set up to do – providing periodic reviews of members’ trade policies, resolving disputes, supporting negotiations – with the notable exceptions of the Trade Facilitation and Information Technology agreements, WTO members have not been able to negotiate new rules on “bread and butter” trade policies. The importance of doing so was illustrated by the COVID-19 pandemic which saw widespread uncoordinated recourse to trade policy instruments. This paper highlights four reforms that would bolster the effectiveness of the WTO as a forum for trade cooperation: (1) improving collection and reporting of information on trade-related policies; (2) supporting analysis-informed deliberation to establish a common understanding of the need and scope for cooperation in specific policy areas; (3) putting in place a stronger multilateral governance framework for plurilateral cooperation between groups of WTO members; and (4) re-establishing an effective dispute settlement system.

Keywords: WTO Reform, Trade Cooperation, Transparency, Plurilateral Agreements, Dispute Settlement

JEL Classification: F02, F13, F55

I. INTRODUCTION

The global trading system is under serious stress. Data reported by the Global Trade Alert initiative document a steady rise in discriminatory trade and competition-distorting export-promoting measures, with over half of the measures put in place since 2009 comprising subsidies of some sort (Evenett, 2019). The WTO was created to support cooperation on trade policies to achieve shared economic goals – increasing

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real incomes, expanding employment, sustainable growth and development. It does so by providing a forum to help members overcome domestic political economy forces impeding adoption of welfare-improving practices and to attenuate the negative international spillovers of national policies. Although the WTO has fulfilled several key tasks it was set up to do – providing periodic reviews of members’ trade policies, resolving disputes, supporting negotiations – with the notable exceptions of the Trade Facilitation and Information Technology agreements, WTO members have not been able to negotiate new rules on “bread and butter” issues: discriminatory trade policies.

This has had serious repercussions. The WTO has not played a significant role in defusing trade conflicts between the US and other trading partners, and more broadly, trade tensions resulting from the rapid growth in exports and outward investment of Chinese companies. During the COVID-19 pandemic, the WTO was largely ‘missing in action’ – many members resorted to unilateral imposition of export restrictions for medical supplies and personal protective equipment. Such actions can – and did – create negative international spillovers and may impede supply responses to sharp increases in global demand by disrupting global production networks. Large trade powers did not play a leadership role in using the WTO as a platform to cooperate in boosting global production and distribution of medical products.

II. WTO WORKING PRACTICES AS A PROBLEM

WTO working practices, notably consensus decision-making and a “member-driven” governance model arguably have been a factor reducing the effectiveness of the WTO as a forum for cooperation (Hoekman, 2019). The consensus working practice has often led to deadlock, not only because of substantive differences between large members, but more generally because of unwillingness of many developing nations to accept that WTO members discuss emerging/new issues. Moreover, on matters that are covered by WTO agreements, many WTO members have not complied with obligations to notify trade policies. “Member-driven” governance has limited the ability of the WTO Secretariat to provide information and analysis on its own initiative, and impeded engagement with and by other actors with the knowledge, expertise, and resources to assist WTO members arrive at a common understanding of new issues.

One result has been insufficient evidence-based dialogue on sources of policy tensions, their magnitude, incidence, and potential paths to reduce the negative effects of policies that are not or only partially subject to WTO disciplines. In the past this was

standard practice—examples include a work program launched in the early 1980s comprising national studies on services trade, GATT Secretariat work on voluntary export restraints and restrictions on trade in textile products and apparel, and initiatives in which relevant analytical and empirical work was done by other agencies – e.g., the OECD and FAO to quantify agricultural support (producer support estimates).

Another result, more visible, has been the steady increase in bilateral or regional preferential trade agreements (PTAs). These are inherently discriminatory in design, with liberalization applying only to signatories. PTAs increasingly have come to be the venues in which countries negotiate disciplines on matters that are not covered by the WTO and go beyond what has been agreed in the WTO. While agreements on regulatory policies are easier to conclude among a small number of like-minded nations, PTAs cannot address key sources of trade tension such as the competitive effects of subsidies and industrial policies on third markets, investment incentives, or the use of trade policy as an element of programs to combat climate change.

III. THE NASCENT SHIFT TO NONDISCRIMINATORY PLURILATERAL APPROACHES

In 2017 many WTO members decided to put aside the consensus working practice and launch four so-called ‘joint statement initiatives’ that span subsets of like-minded economies. These plurilateral discussions focus on measures to assist micro-, small, and medium-sized enterprises (MSMEs), good practices to facilitate inward investment, disciplines on domestic regulation of services, and rules of the game for e-commerce and digital trade. Plurilateral agreements offer a potential ‘third path’ for trade cooperation, complementing discriminatory PTAs and multilateral negotiations that span all WTO members. The key promise – and critical constraint – is that open plurilateral agreements (OPAs) permit like-minded WTO members to cooperate but must do so without discriminating against non-participants (Hoekman and Sabel, 2019). This implies that the scope for cooperation in policy areas where there are concerns about freeriding by non-participants will depend on whether a critical mass of WTO members can agree to cooperate.

The shift towards plurilateral engagement in the WTO is a positive development. It illustrates willingness to engage in dialogue and negotiations to identify good practices in areas of common interest. As many of the sources of international trade costs today and in the future involve domestic regulatory regimes the free-riding constraint often

will be less acute than it is for border trade policies such as tariffs. This is because agreements by their nature will have to be conditional, as obtaining the benefits of cooperation in each area will require a country to satisfy regulatory preconditions.¹ That said, the COVID-19 pandemic illustrated the challenge confronting plurilateral cooperation. Initiatives by countries in the Asia-Pacific region to support supply responses through trade facilitation and abstaining from export restrictions were not joined by the EU (or the US),² which imposed export controls on COVID-19-relevant medical products.

Many suggestions have been made by observers on actions that should be taken by WTO members to help the world economy to recover from the COVID-19 pandemic and to prepare for similar shocks that may materialize in the future. Examples include calls for cooperation on trade in vaccines (Bollyky and Bown, 2020); cooperation to support the operation of global value chains producing and distributing critical supplies (Findlay and Hoekman, 2020) and the negotiation of an agreement to govern the use of trade restrictions during a global public health crisis (Evenett and Winters, 2020). These types of suggestions are additional to the large agenda for cooperation that already confronted WTO members before the COVID-19 crisis. Pre-COVID-19, subsidies accounted for more than half of all policies implemented in the 2009-2019 period.³ Post-COVID-19 (post-2020), the extent of subsidy programs implemented by OECD countries increased significantly. Although much of the fiscal support is not firm- or industry-specific, many subsidies are specific and will affect competitive conditions as the world economy recovers from the pandemic-related recession (Evenett, 2019).

Dealing with the competitive spillovers caused by national policies and governing the desire of governments to pursue ‘strategic autonomy’ motivated industrial/ technology policies and regulate the digital economy – through taxation of digital services companies, data privacy regulation, data localization requirements, etc. – does not require all 164 WTO members to agree. It does require the large trade powers to agree as that is a necessary condition for achieving the critical mass needed to permit cooperation. Getting to yes may, however, require agreements that involve cross-issue

¹ See Hoekman and Sabel (2019) for in-depth discussion.

² An example is a New Zealand and Singapore Plurilateral Declaration on Trade in Essential Goods in which signatories agree to remove tariffs and facilitate trade in goods essential to the Covid-19 response.

³ (accessed October 21, 2020)

linkages.⁴ An example are programs to address global market failures such as climate change by using border taxes and subsidies as instruments to ‘level the playing field’ for domestic industries that compete with imports and control carbon leakage.

Rather than making a case for specific agreements or initiatives, what follows suggests four areas of WTO reform that would bolster the effectiveness of the WTO as a forum for trade cooperation: (1) improving collection and reporting of information on relevant (contested) policies; (2) supporting analysis-informed deliberation to establish a common understanding of the case for cooperation in different areas; (3) establishing a multilateral governance framework for plurilateral agreements; and (4) re-establishing an effective dispute settlement system. These four reform areas are important both to enhance the prospects of successful conclusion of the ongoing ‘joint statement initiative’ talks noted above, and to support efforts to cooperate on subsidy policies, governance of the digital economy, the interface between trade and climate change policies and other policies areas that may be perceived to give rise to cross-border trade spillovers by (groups of) WTO members.

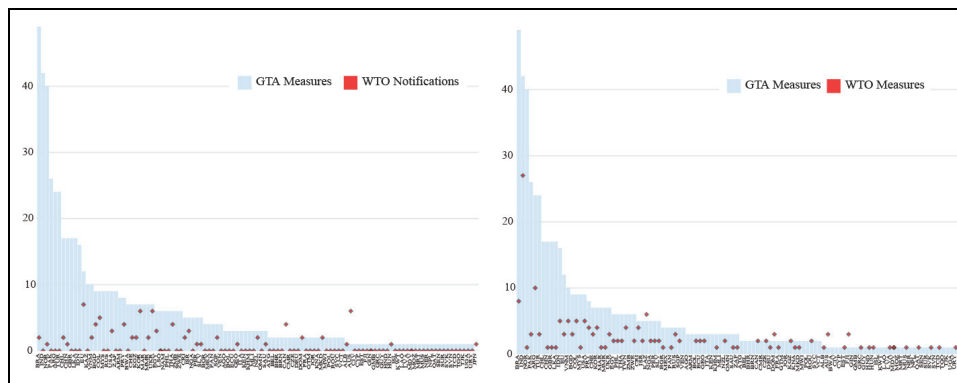
1. Address the Transparency Gap

As argued at greater length in work on WTO reform (Hoekman, 2019; Wolfe, 2018), improving transparency is necessary to support substantive deliberation in WTO committees and Councils. A first order of business must be to complement notification obligations by mandating the WTO Secretariat to compile information and undertake analysis of the cross-border effects of national policies. The need for this is illustrated by the EUI – Global Trade Alert – World Bank database on COVID-19 trade measures (Evenett et al., 2020). Before COVID-19, many WTO members were not living up to their notification obligations. This continued to be the case during COVID-19. Many trade measures implemented by countries in response to COVID-19 were not notified. This is illustrated in the first panel of Figure 1 which plots notifications and information reported by the Global Trade Alert. The second panel of Figure 1 compares data on export and import-related measures compiled by the WTO Secretariat from

⁴ The scope for cooperation when there are free-riding concerns or differences in social preferences across countries will depend in part on the feasibility of cross-issue linkages – see Maggi (2016).

official sources and that members have verified.⁵ This shows more overlap with the data compiled by the GTA but continues to reveal a significant discrepancy.

Figure 1. COVID-19 trade measures: GTA vs WTO



Note: Figure includes only WTO members imposing at least one COVID-19 trade measure in the GTA dataset.

Source: Evenett et al. (2020).

COVID-19 related trade measures are just an example. Rather than continue to insist that WTO members abide by notification requirements, reforms are needed to mandate the WTO Secretariat to collect and compile relevant information, including on policies that affect trade and global competition that are not or only partially covered by WTO agreements. This includes subsidy measures, investment incentives, and policies that restrict trade in services and cross-border data flows. The WTO cannot outsource this core function but would benefit from cooperating with other organizations in this effort. The IMF, World Bank, UNCTAD, ITC and OECD all collect information on relevant policy variables. A concerted effort by these organizations, including cooperation with independent initiatives such as the Global Trade Alert would make a big difference in bolstering the evidence base needed to inform and sustain multilateral cooperation on trade. A focal point for such collaboration could be the G20 Trade and Investment Working Group, in which all the relevant organizations are represented.

⁵ (accessed October 21, 2020)

2. Support for Deliberation to Inform Cooperation

A second priority for reform is to create more space for the Secretariat to analyze the global economic effects of policies affecting competitive conditions on markets—including in areas where WTO rules are weak or missing altogether. Analysis of the cross-border effects national policies, including sector specific regulation, is needed to determine where policies cause spillovers that are systemic in nature and that should be priority areas for cooperation. At present the WTO Secretariat does not undertake such analysis as part of its regular activities. Doing so can involve collaboration with other international organizations that have greater analytical capacity and expertise.

An example would be to launch a work program documenting and assessing the extent and incidence of subsidy programs in systemically important economies, bringing together national Finance and Economy ministries, national competition authorities and relevant international organizations such as the IMF and the World Bank that have operational mandates to engage in policy dialogue and analysis (Hoekman and Nelson, 2020). Countries need to have a solid information base and understand the incidence of subsidies to assess the size of potential trade distortions, a necessary input into any negotiation on new rules of the game.

The various WTO committees and bodies charged with oversight of the implementation of WTO agreements are a natural forum for deliberation in the WTO. Greater use of ‘thematic sessions’ of WTO bodies – in which external actors are invited to participate and the agenda includes dialogue on policies that are not (yet) subject to multilateral rules – and overcoming silo problems by establishing dedicated working parties spanning all WTO bodies that deal with different dimensions of a policy area are pragmatic ways of fostering deliberation (Hoekman, 2019; Wolfe, 2020b).

A call to undertake analysis-informed deliberation may be criticized as kicking the can down the road. It is not. WTO members simply do not have enough of a common understanding of the magnitude of international spillovers caused by contested policies and need to invest time in considering alternative approaches to attenuating them. It is not sufficient to point to recent PTAs that include new disciplines as providing the basis for agreements in the WTO, whether plurilateral or multilateral. The trilateral talks between the EU, Japan and the US to agree on new rules for subsidies, state-owned enterprises and technology transfer-related policies are illustrative – they were not informed by independent analysis and did not include the country that is the primary target of the suggested disciplines – China.

3. A multilateral governance framework for plurilateral agreements

Plurilateral initiatives offer a way around the consensus constraint, but as mentioned, free riding concerns can block cooperation. The obvious solution to this problem is to restrict the benefits of cooperation to participants. Doing this in the WTO is virtually impossible, as the incorporation of new plurilateral agreements that are discriminatory in their application require all WTO members to agree to the inclusion of such agreements into the WTO. But this is less of an issue than it appears to be. Even if discriminatory plurilateral agreements were feasible, key policy areas that are giving rise to systemic trade tensions – notably subsidies – do not lend themselves to discriminatory solutions.

Open plurilateral agreements (OPAs), even if open, raise potential concerns for nonmembers. First, if free riding considerations induce signatories to exclude non-participants from benefitting from whatever they have agreed to do. Second, even if agreements do not discriminate – which is the presumption – countries that decide not to participate will not have obligations but nonetheless may have an interest in what is agreed to constitute good practice by a plurilateral group. In part this is because they may want to participate later, and in part because their firms may have to comply with whatever policies are adopted by a club of WTO members.

Ensuring that agreements are truly open to any country wishing to join, are fully transparent, and encourage participation by international and sectoral organizations with relevant expertise could help address potential concerns of nonmembers. Particularly important are to put in place mechanisms to assist countries not able to participate despite being interested in doing so because of weaknesses in institutional capacity and capabilities. Addressing these types of concerns is important. One way to do so is through establishment of a binding – and thus enforceable – code of conduct that signatories of plurilateral agreements commit to apply.

Such a code of conduct can take the form of a Reference Paper on OPAs. It could include the following elements:

1. Membership of an OPA is voluntary; WTO members that decide not to participate will not be pressured to join at a later date;
2. An OPA must be implemented on a nondiscriminatory basis, with benefits extending to nonsignatories.

3. Openness to subsequent membership by WTO Members that did not join when an OPA was first agreed, and inclusion of a section laying out the requirements and procedures to be followed for accession by aspiring members;⁶
4. Language stating that accession to an OPA cannot be on terms that are more stringent than those that applied to the incumbent parties, adjusted for any changes in substantive disciplines adopted by signatories over time;⁷
5. An obligation to provide reasons to accession-seeking countries for decisions to reject membership applications;
6. A provision committing signatories to aid WTO members that are not in a position to satisfy the preconditions for membership in terms of applying the substantive provisions of the agreement but desire to do so;⁸
7. Where feasible and in instances where capacities must be built for a country to meet OPA requirements, consideration be given to establish a stepwise schedule of compliance;
8. Provisions ensuring that nonparticipants have full information on the implementation and operation of the agreement. These should include:
 - a. Compliance with WTO requirements pertaining to publication of information on measures covered by the OPA (along lines of Art. X GATT);
 - b. Simple, robust notification requirements for OPA members regarding the implementation of the agreement, which could draw on recent proposals to develop augmented procedural guidelines for the operation of WTO bodies;⁹
 - c. Creation of a body to oversee implementation of the OPA that is open to observation by nonsignatories, including mechanisms to engage stakeholders in an ongoing conversation about how the agreement is working and future needs;¹⁰

⁶ Open access in the sense that once negotiated any OPA must permit accession by any WTO Member is not explicitly required in Art. X(9) WTO.

⁷ This leaves open the possibility that parties to an OPA can offer accession on less demanding terms for developing countries if they agree to do so, but for reasons discussed below does not make this obligatory.

⁸ Such provisions can draw on the approach embodied in the WTO Trade Facilitation Agreement.

⁹ See Wolfe (2018) for an extended discussion on improving notification processes and performance.

¹⁰ Wolfe (2020b) suggests options for WTO bodies to organize periodic sessions that focus on learning and engagement with stakeholders.

- d. Annual reporting to the WTO General Council by the OPA on its activities;
 - e. A mandate for the WTO Secretariat to assess the effects of implementing OPAs on the functioning of the trading system as part of the Director-General's annual monitoring report of developments in the trading system.
9. Inclusion of consultation and conflict resolution procedures for non-signatories of OPAs in cases where they perceive that incumbents do not live up to the foregoing principles;
 10. Specifying whether the OPA envisages recourse to WTO dispute settlement mechanisms to enforce the agreement, and if so, making explicit the standard of review and the criteria for selection of arbitrators.

4. Resolving the Dispute Settlement Crisis

A final critical area for reform concerns a central dimension of the 'value proposition' offered by the WTO: independent, third-party adjudication of trade disputes reflected in the principle of de-politicized conflict resolution embodied in the negative consensus rule for adoption of dispute settlement findings (Hoekman and Mavroidis, 2020). An effective conflict resolution mechanism is critical for existing WTO agreements to be meaningful, and for the negotiation of new (plurilateral) agreements with binding policy commitments. Absent effective enforcement, the incentives (feasibility) of concluding new agreements are likely to be reduced. Concerted action to address the institutional design weaknesses of the Dispute Settlement Understanding (DSU) is therefore a priority area of WTO reform.

The Trump Administration's dissatisfaction with dispute settlement focused primarily on the operation of the Appellate Body. As a result, the focus of WTO members has centered almost exclusively on the Appellate Body. Both the multi-year review of the DSU and extensive legal scholarship makes clear that there is significant scope to improve the quality of the work of panels and to reduce the recourse to appeals (Hoekman and Mavroidis, 2021). A first order of business for the next WTO Director-General should be to launch a process aimed at restoring an effective dispute settlement system. This should include (i) a focus on the first stage panel process; (ii) the design – and need for – an appeals system; and (iii) the role of other WTO bodies and the Secretariat in helping to defuse and resolve disputes.

The need to consider the panel process as well as the role of the Appellate Body reflects the fact that many appeals address matters that are not strictly legal but center

on facts that the Appellate Body does not have a mandate to consider and the heterogeneity in professional background and expertise of panelists resulting from the ad hoc nature of panel appointments. Moving to a standing body of professional panelists would improve the quality of panel findings and reduce the need for appeal. In some areas the problem confronting adjudicators has been that WTO agreements do not address a contested policy matter clearly – or not do so at all. Using WTO bodies to consider the existence of gaps and options to address them and utilizing WTO committees to table and discuss ‘specific trade concerns’ thereby defusing potential disputes are complementary areas of reform that can improve conflict resolution (Wolfe, 2020a). Resolving the dispute settlement crisis is not possible without revitalizing the transparency, deliberation, and negotiation functions of the WTO (Hoekman and Mavroidis, 2021): the four areas for reform are interdependent.

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