

Introductory Remarks

Petros C. Mavroidis

The Doha round has been stalling for over 10 years now. It might not be 'dead and loving it' but definitely in moribund condition. Worse, there is no sign of reviving it, in the near future at least. The most optimistic scenario involves a re-engineering of the round after the US Presidential elections. There are so many uncertainties involved though that few, if any, would bet their money on it.

More worrisome is probably the fact that major trading partners are looking into deals that would eviscerate even further the non-discrimination principle, the cornerstone of the WTO. Preferential trade agreements are multiplying at alarming speed: Obama was celebrating in Hawaii the Pacific deal two weeks before the Doha round was pronounced dead yet again last December; the EU has concluded a deal with Korea, is about to do so with Canada and India, and is also contemplating (or, at least has not rejected the idea) a deal with its transatlantic partner. And then, the plurilaterals: conceived as a means to break a deadlock caused by the single undertaking-approach, they could become the means to transform the WTO into an integration process with variable geometry. The talk of a services plurilateral is picking up speed and caused friction already in some quarters.

With all this in mind, the High Level Policy Seminar "Trade Roundtable" (12 March 2012), organized within the Research Strand "International Trade" of the Global Governance Programme (GGP), aimed to address the possible ways, if any, to keep the Round alive. The memoranda presented during the seminar by the academics (featured in this publication) as well as the responses by the policy makers left us with little room for optimism. The WTO needs a reality check soon. And it will be painful, for it is not just the current round that is at stake, but its future relevance as well. Preferential trade agreements seem to run away with the trade agenda while the WTO is catching up its breath.

The participants in our seminar were:

Roderick Abbott, ECIPE
Jayant Dasgupta, Ambassador and Permanent Representative of India to the WTO
Per Cramér, Göteborg University
Claus-Dieter Ehlermann, Wilmer Hale
Bernard Hoekman, World Bank
Petros C. Mavroidis, EUI and Columbia University
Vital Moreira, MEP, European Parliament
Angelos Pangratis, Ambassador and Permanent Representative of the European Union to the WTO
Ernst-Ulrich Petersmann, EUI
Miguel Poiãres Maduro, Director GGP, EUI
Michael Punke, Ambassador, Deputy U.S. Trade Representative and U.S. Permanent Representative to the WTO
Raymond Steenkamp Fonseca, IMT Institute for Advanced Studies
Harsha Vardhana Singh, Deputy Director General, WTO
Lu Xiankun, Counsellor, Head of Division for Cross-cutting Issues, Permanent Mission of China to the WTO

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Beyond Doha: the WTO Must Rethink its Mandate and Performance

Petros C. Mavroidis*

1. Introduction

Concluding the Doha round at least as originally planned becomes a remote possibility with every day passing. On the other hand, the WTO has a very important mandate anyway which is independent of the success/failure of rounds: discussions in the various committees manage to produce better communication across trading nations, and resolve many disputes as well: a look into the TBT (Technical Barriers to Trade) Committee for example, suffices to persuade the observer that dozens of specific trade concerns are being resolved at this level with no need to go to dispute settlement and the ensuing administrative cost for the WTO; through its publications it disseminates information about all issues coming under its purview; dispute settlement emerges still as the only compulsory third party adjudication regime. This is a tall order already and taking care of it requires significant investment by all involved. Failure to conclude the Doha round will not in and of itself eviscerate the importance of the WTO. Failure to address some pressing issues, like the three issues mentioned here might do more harm.

2. Three Issues to Tackle

There is always a risk inherent in prioritizing one issue to tackle over another. The reason why dispute settlement has been privileged here is because this is the only genuine WTO voice; moreover, WTO dispute settlement is the only genuine compulsory third party adjudication-regime currently available in international relations: there is a lot at stake here, and failures could be costly especially because of the possible negative spillovers in other areas. Preferential trade agreements (PTAs), the second chosen item, proliferate and become more and more relevant in regulating international trade casting thus doubt on the continuing relevance of the WTO. One argument that one frequently hears in policy circles explaining the attraction of PTAs is their flexibility. One possible way for the WTO to react to the attractiveness of PTAs is by adopting itself flexible modes of integration, such as those offered by plurilateral agreements, already an institutional possibility in the WTO regime.

2.1 Dispute Settlement

There is a lot of talk during the DSU (Dispute Settlement Understanding) review currently still ongoing, on either genuine issues but where nonetheless no change can realistically be expected (remedies, where root and branch reformers must have had ample evidence that their proposals do not fly with the membership), or on issues that have been resolved in practice (sequencing), or on issues of secondary importance (remand authority for the Appellate Body, AB). There is no discussion at all (or not anymore) about the agency design: the American Law Institute (ALI) has emerged as the only forum that critically scrutinizes the output by Panels and the AB since 2000, and the consensus there is that there are severe methodological failures in WTO case law. Even commonplace terms such as 'like' products have proved difficult to define.¹ The case law on other, more convoluted issues such as the causality-requirement in contingent protection instruments, is incoherent if not impenetrable altogether.

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¹ See for example, the recent Panel reports on US-Clove Cigarettes, US-COOL, and US-Tuna II (Mexico), where Panels working almost simultaneously ended irreconcilable outcomes. The absence of clear guidance by the AB is definitely a contributing factor to this mess.

The WTO judge should prepare its own demise by making the outcome in the marginal transaction predictable and this is where WTO adjudication has failed and a change is required. Some recommendations advanced call for ‘professionalization’ of dispute adjudication and systematic economics input (since the objectives sought through WTO are of quintessential economic nature) that could help not only in quantifying countermeasures, but crucially in providing a stable methodological vehicle to adjudicate disputes. The current state of affairs is unsatisfactory by any reasonable account and there is need to rethink the current structure where AB judges are part-timers, Panelists operate ad hoc and are rarely repeat players,² and economics input has no permanent seat in the deliberations.

2.2 Preferential Trade Agreements (PTAs)

There is substantial discrepancy between the WTO and the preferential agenda as a recent study by Horn et al. (2010) amply shows. It is not maybe a totally irrelevant fact that president Obama was celebrating the Pacific regional integration a few days before the Doha round was closing its doors provisionally at the very least. Should the WTO should emulate the PTA agenda and if yes, why has not it happened so far? Or is it the case that some deals can only occur between a sub-set of the WTO Membership, the like-minded groups?

The risk is of course that trading nations continue to do bilateral deals and commit policies at the bilateral level that they refuse to commit multilaterally. Danger, because in a world where customs duties have become irrelevant in large part, it is commitments on the ‘regulatory’ agenda that have impact on trade relations: if their impact is addressed outside the confines of the WTO what impact will WTO have on trade relations in the first place?

There are some recent papers (Andras and Staiger, 2012) that call for positive integration (at least in respect of competition rules) as some sort of necessity in response to the ongoing increase in offshoring and outsourcing. PTAs allow for similar possibilities and indeed, as Horn et al. (2010) show some of this is already happening. What could the WTO response be to all of this?

2.3 Integration Modes

The WTO knows of the so-called plurilateral agreements, that is agreements between a sub-set of its Membership. The advantage of plurilaterals over PTAs is that the door is open to all WTO Membership in the former, but not necessarily when it comes to the latter.

The recent services-initiative is probably an indication of more to come in this context. There are many advantages in pursuing this mode of integration and some obvious disadvantages. A lot has been written on this score but there are two areas that I think have been overlooked: the link with PTAs, in the sense that plurilaterals should be viewed by multilateralists more favourably than PTAs since the road to ‘multilateralizing’ a plurilateral agreement is open to all WTO Members. Second, the issue of the future decision making at the WTO: some plurilaterals might not be interesting to some WTO Members that will be in position to decide on their operation within a narrower memberships-setting facilitating thus deals among them.

3. Concluding Remarks

The WTO has to take care of itself first and foremost in order to continue to be relevant. It is the only genuine institution of globalization and its demise could be an avatar of even less multilateralism over the years to come in an era where global issues proliferate and it is only through cooperation that many of them could be solved in sustainable manner.

² Horn et al. (2011).

References

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