



Background Memo

Trade and Trade Governance

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The multilateral trading system was designed to have the World Trade Organization (WTO) at its core, complemented by more than 250 preferential trade agreements. The basic multilateral rules on goods, services, and intellectual property were negotiated and consolidated over seventy years. However, many of the issues people are concerned with today, such as sustainability, investment, competition, e-commerce, gender equality, and currency, are codified in preferential agreements (PTAs) separate from the WTO, resulting in the fragmentation of global trade. The gap between the WTO and PTAs is increasing. PTAs, which are mainly based on the U.S. or European Union (EU) models, are already replacing the WTO as rule makers, and the WTO is becoming old and outdated. It remains unclear whether the WTO should be reformed and renovated or rebuilt from scratch.

Those long connected with the WTO will struggle with this decision, but concerns inevitably emerge after watching the decline of the WTO since 2008's unsuccessful attempt to close the Doha Development Round, a WTO trade negotiation agenda. An impressive number of proposals for structural reforms, priority renegotiations, and new issues are now on the table.

What follows is a mixed policy proposal given current global challenges. The strategy, modeled after the WTO's origin story in which old rules were adapted to create a new institution, would retain previous components and innovate for new challenges.

First, consider the basics, such as why parties to the General Agreement on Tariffs and Trade (GATT) created the WTO. The WTO emerged from an agreement on tariffs and trade and transformed into an international organization to negotiate rules and liberalize trade. The Uruguay Round negotiations, conducted among one hundred countries, culminated in the Marrakesh Agreement, the international treaty that produced a WTO with a strong dispute body to settle (not solve) trade disputes. At that time, strong rules and predictability were primary among members. All involved parties accepted a liberal capitalist economic order under the leadership of the United States and the EU. They followed the mantra that liberalizing trade would lead to development.

These underlying hypotheses are no longer widely accepted. Today, the future of global trade faces myriad challenges and uncertainties, including the following:

1. Countries are challenging whether the liberal order is the right mechanism to achieve development and want to try other economic policies. Global trade has increased significantly and is interlinking almost all countries, but recalcitrant countries remain reluctant to participate. The problem is that modern trade has no borders, and trade could struggle to survive without universally applicable rules.
2. The WTO was established as an international treaty negotiated by consensus that balanced gains and costs among almost one hundred countries, a great achievement. Such a model of single undertaking could be difficult with almost two hundred countries today.
3. Some agreements need reform to meet modern economic realities, such as subsidies and state-owned enterprises. Green subsidies could be brought back to the table to be reviewed—not banished from the rule-book and left undiscussed since the Seattle WTO Ministerial Conference. Environmental rules and retraining are new imperatives, but potential for the reform of old agreements exists. However, if state-owned enterprises cannot be abolished, it would be difficult to establish limits and restrictions to their activities.
4. Mandates from the original 1990s issues need to be negotiated, and today's negotiation issues are waiting for trade rules. The original new issues are well known: environment, investment, competition, and transparency on government procurement. Today's new issues are e-commerce, digital services, sustainability, pollution, circular economy, labor standards, private sector standards (made by nongovernmental organizations but supported by governments), and the effects of exchange rates on tariffs, among others. These sensitive issues are at the core of modern trade.
5. Plurilateral agreements—such as the Information Technology Agreement and Trade Facilitation Agreement—are already included in the WTO. The WTO knows how to create them, and yet no more plurilaterals have been negotiated. The difficulty of reaching consensus and including plurilaterals under the WTO umbrella should be considered.

To address these issues, one should reflect on their causes.

International treaties used to form the backbone of the WTO. But those treaties, with all the pomp and circumstance and inherent rigidities of the law of treaties, are not necessary for the WTO. Certainly, they are the dream of all lawyers, but they are also the nightmare of negotiators. On numerous occasions, negotiators blocked discussions because they were afraid to accept any proposal the WTO Appellate Body's interpretation could challenge. Soft laws instead of hard laws could be a new path for the WTO.

A two-step approach could be used to negotiate today's pressing new issues and the original issues. First, guidelines—or soft laws—can be negotiated, which practitioners of good governance value. Guidelines will be easier to negotiate because they will be rules of guidance supervised by the interested members. Second, when the issue is tested and matured, it can be transposed into new agreements—hard laws. Yet this path would require a big change in the existing trade mindset.

To introduce this guideline model to the WTO, some structural reforms will be needed.

To be enforceable, guidelines must have teeth to go after rule breakers, though not overly sharp—like those found in the old WTO Dispute Settlement Body. The real teeth will be the indicators of compliance applied to

trade measures, following the activities of the interested parties. Many of these indicators are already available in other international organizations and are reviewed periodically by expert committees. This supervision would occur in the WTO committees, based on the WTO secretariat's peer review reports.

This proposal would create a new role for an enlarged and stronger secretariat, including not only lawyers but economists, engineers, and experts in areas of related trade fields. The enlarged secretariat's analysis would help create the aforementioned guidelines. They would be based on a bottom-up approach: collecting data; discussing among groups of interested members; and going through working groups, WTO committees, and the WTO councils. An international organization with a weak secretariat is doomed to become a club of two hundred parties stuck in endless discussions. A good secretariat should be a real guardian of rules, whether guidelines or treaties.

This guideline-based process assumes another substantial change to the old set of untouchable clauses: the WTO as a member-driven organization. Yet this is a failed assumption introduced after the WTO was created. The reality is that the WTO was established as an organization, created as a forum for ongoing negotiations of topics, not endless rounds.

The present proposal considers the WTO as a two-building structure: a traditional building to discuss traditional WTO issues such as goods, agriculture, fishing, services, and intellectual property and a new building—created to discuss the new issues—such as environmental sustainability, e-commerce, digital services, currency, and gender equality, among others.

This transformed WTO, incorporating many advanced subjects already in practice by preferential agreements, would be more apt to face the challenges of today's world and to answer the voices persistently asking for change.

In reality, remaining in old ways will lead the WTO nowhere. The organization needs to stay alive and function to shed light on good trade practices and add order to a fragmented world trade system. In a nutshell: give power back to negotiators