

Reviving the negotiation function of the WTO What must China contribute?

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The WTO is not dead ... yet (but reform is needed)

1. Monitoring and surveillance still work (but not well enough)
 2. Disputes still being handled (but appeals are problematic)
 3. Many negotiations under way (but few outcomes)
- The three pillars support each other, but I'll focus on the third

Caveat: revival not merely about institutional design

- Nothing will happen in WTO unless China, EU and U.S. want it to
 - Biggest markets: each needed to reach critical mass on most things
- Serious domestic political constraints
 - “worker centricity” in U.S.
 - conditioning trade on values in EU
 - resistance to external “pressure” in China
- Are new trade agreements feasible even if spillovers are significant?

Story has six parts

1. How do we know revival is needed?
2. Single undertaking is [essential] [an obstacle]
3. Plurilateral alternatives
4. Legal basis for plurilateral negotiations
5. Stakes are high
6. What next?

Part 1: How do we know revival is needed?

- Doha as a round is dead
 - Though issues identified in 2001 have not gone away
- Many culprits in the collapse*
 - Nobody thought about implications of China joining at same time
 - 20 years later we would not make that mistake: China is central
- WTO decision rule gets a lot of blame
 - Consensus and Single Undertaking

*Wolfe, Robert, (2015) 'First Diagnose, Then Treat: What Ails the Doha Round?,'
World Trade Review 14:01 (January 2015), 7-28.

The challenge for revival

- End de facto veto on change
 - Consensus problem
 - Some Members reluctant to engage in negotiations on new rules
- Limit special and differential treatment (SDT) for large economies
 - Implication for China: break link between what a country calls itself and what access to SDT should be granted by partners
- Maintain integrity of WTO *as a whole* and its benefits for all Members

Part 2: The single undertaking is dead

- Shorthand: Nothing is agreed until everything [on agenda?] is agreed
 - Legal: “WTO Agreement shall be open for acceptance as a whole”
 - Doha: ‘conduct, conclusion and entry into force of the outcome ... shall be treated as parts of a single undertaking”
- Each of those three parts died with Doha

Or is it? Most negotiations need a package

- Domestic: Any deal can stir up a hornet's nest of opposition
 - Need balancing groups with something at stake
- Multilateral: Need elements for key constituencies in N and S
- Risks: packages create multiple entry points for veto players domestically and in Geneva

Part 3: Plurilateral alternatives

- Means simply talks inside WTO among a subset of Members
 - eventual outcome incorporated, somehow, in WTO
 - Deals that need institutional scaffolding of WTO, including notifications, committees and dispute settlement
- Offers a mechanism for large trade powers to cooperate
 - No need for consensus of all WTO members
 - Helps with problem of an unwieldy membership
 - Special and differential treatment negotiable
 - Maintains coherence of the trading system

Under what circumstances...?

Limit benefits to participants, or not?

- a) Restrict benefits of the deal to participants
 - De jure discriminatory
 - Limits risk of free riding by non-participants
- b) Critical mass agreements (CMA)
 - Usually means ~90% of trade in a good or service
 - And then can be MFN, with no free rider concern
 - Not appropriate if universal commitment needed

Annexes to the WTO Agreement [Also TRIPS, DSB, TPRM]

ANNEX 1A: Multilateral Agreements on Trade in Goods

General Agreement on Tariffs and Trade 1994

GATT *Schedules* of some Members include **Information Technology Agreement**
Agreement on Agriculture, and 10 other Uruguay Round agreements
Trade Facilitation Agreement

ANNEX 1B: General Agreement on Trade in Services

GATS *Schedules* of some Members include additional commitments on Trade in
Basic Telecommunications Services or **Domestic regulation in services**

ANNEX 4: Plurilateral Trade Agreements

Agreement on Trade in Civil Aircraft

Agreement on Government Procurement

International Dairy Agreement

International Bovine Meat Agreement

Potential legal outcomes

1. Add to GATT or GATS Schedules (consensus mostly **not** needed)
 - Critical mass, MFN, binding only on participants
2. Add new plurilateral to Annex 4 (requires consensus)
 - Restrict benefits to participants, on whom it will be binding
3. Outside WTO
 - If consensus blocked

Four “Joint statement initiatives” (JSIs) now underway

- Domestic regulation of services
 - Concluded on basis of a Reference Paper in Schedules
- Investment facilitation, e-commerce, MSMEs
 - Likely only progress reports at MC12, whenever held
- Broad cross-section of the WTO membership
 - More than 149 of 164 Members (91%) involved in at least one
 - China in all four groups

Other proposed statements

- Agreement by a sub-set of Members seen as acceptable, if second-best
 - COVID-19 and Beyond: Trade and Health*
 - Role of trade in women's economic empowerment
 - Trade and Environmental Sustainability Structured Discussions*
 - Fossil fuel subsidies ministerial statement
 - Informal Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade*

*China a co-sponsor

Part 4: Plurilaterals are now mainstream: are they “legal”?

- India and South Africa paper WT/GC/W/819
 - Implicit **political** argument that Members ought not to conduct plurilateral negotiations
 - Linked to claims about special and differential treatment
 - Explicit **legal** arguments flimsy
 - Real issue?
 - JSIs divert attention from their own priorities
 - Takes away their leverage over agenda and outcome

For more see Tu and Wolfe, 'Reviving the Negotiation Function of the WTO: Why the Onus Falls on the Three Major Powers,' in Hoekman, et al., eds, Rebooting Multilateral Trade Cooperation: Perspectives from China and Europe (London: CEPR Press, 2021), 29-43.

Governance framework for new plurilaterals?

- Ensure consistent with multilateralism
 - Recognise concerns of Members that choose not to participate
 - Protect rights of non-participants while avoiding free riding
- Openness to participation and future accession by any WTO member
- Facilitation of participation of developing countries
- Transparency of the negotiating process

For more, see Hoekman and Sabel, (2021) 'Plurilateral Cooperation as an Alternative to Trade Agreements: Innovating One Domain at a Time,' Global Policy 12:S3 49-60.

Part 5 The stakes are high

- EU paper on WTO reform contains an implicit warning:
 - **If** no effective formula is found to integrate plurilateral agreements in the WTO
 - **Then** no other option than developing such rules outside the WTO framework
 - **Which** could fragment the system.
- What they mean
 - Some possible agreements not suitable for inclusion in Schedules (not intended to be MFN)
 - Members have to debate conditions under which consensus will not be blocked for Annex 4 option

Outside options are real

- CPTPP, RCEP and other PTAs are effectively plurilateral
- New examples
 - Digital Economy Partnership Agreement (DEPA)
 - Agreement on Climate Change, Trade and Sustainability (ACCTS)
 - U.S. deals with EU on steel, trilateral process with EU and Japan
- Members who think that new issues should be discussed at WTO have to be sure to make the inside option possible, and attractive.

Part 6: What next?

- New “round” improbable
- What would a revival of the WTO negotiation function look like?
 - End stalemates on old issues, notably industrial subsidies
 - Real negotiation on new issues
- Agreement on how to conclude plurilaterals
- Prospects?

MC12 part of the answer

- MC12 (if/when held) will not be a single undertaking
 - ...unless Members hold one aspect hostage for others
 - What will be said about COVID-19? (TRIPS going nowhere)
 - Fisheries subsidies an existential necessity (wide gaps)
 - Agriculture a priority for many developing countries (no convergence)
 - Progress on JSIs essential for the future (only work programs)
- For more see Ungphakorn and Wolfe:
 - [The WTO is regularly in crisis, but this time could be different](#) (last update November 26)
 - [Good news and bad news from the scrapped WTO Ministerial Conference](#) (December 6)

Three takeaways

1. Single undertaking dead but package deals a reality
 - Will a MC12 package emerge, and be seen as enough?
2. Consensus is changed not removed
 - Who has to agree, on what? (beside China, EU and US)
3. Will plurilaterals find a home in the WTO?
 - Services domestic regulation a conventional deal
 - Real indicator: if other JSIs inserted in WTO, or fail

Thank you!

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