

The development of the multilateral trade regime

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Valorization Addendum

In the following, three arguments are provided that point towards the societal relevance of this dissertation.

The first and most significant of these arguments relates to the importance of stable institutions that are required for the governance of multilateral trade.

It is generally accepted that liberal trade, governed by a clear set of rules that ensure stability and predictability, provides economic benefits and enhances societal well-being. On an international level, free trade fosters growth and development, facilitates cooperation amongst countries and contributes to peaceful relations amongst them.

Despite these benefits, it is crucial to keep in mind that maintaining free trade multilaterally should not be taken for granted. Stable institutional structures are required that help countries to resist the temptation to resort to unilateral, mercantilist policies. Although free trade entails the high aggregate gains, restricting trade can provide benefits for individual countries at the costs of all others. If too many countries resort to such “beggar they neighbor” policies, multilateral trade cooperation can break down, leaving every country worse off. The clearest and most severe example of this scenario occurred in the 1930s, when the great depression induced countries to resort to such policies, which worsened the already dire economic situation even further and contributed to the outbreak of the Second World War. To avoid such disasters, it is generally accepted that multilateral trade cooperation is facilitated when taking place under the tutelage of an international organization, such as the WTO. Such an organization serves as a forum for negotiations, assembles and disseminates information, monitors the behavior of its members, facilitates the resolution of disputes by acting as an honest broker and conciliator amongst conflicting parties, and ensures compliance to rules by adjudication and authorization of sanctions. All of these functions decrease the likelihood of cooperation to break down, and ensure that multilateral trade takes place according to a previously established set of rules, which induce stability and predictability.

The absence of a properly performing organization to fulfill such functions would certainly be harmful, not only to states but also to their citizens. This was clearly pointed out by the WTO’s Director General, Roberto Azevêdo at the Paris Peace Forum in November 2018:

“Think about the world without the WTO. It would be the law of the jungle. It would be a return to unilateralism, with no global cooperation on trade issues. Our economists have been looking at the effects of such a scenario and the question is not whether people are going to lose – the question is how much. In fact, everyone would lose out.

Two-thirds of products traded are produced in at least two countries, so if you disrupt trade it affects everyone in some manner. Trade is like oxygen – you only notice it when it's gone.”¹

Given this counterfactual of a world without the WTO, it is concerning that the organization currently finds itself in a time of institutional crisis, triggered by the growing dissatisfaction of its membership with shortcomings in its institutional setup. This setup has been subject to severe criticism. Amongst several critics the US is presently the most vocal and influential one. In its 2018 Trade Policy Agenda the US government expresses its dissatisfaction with the WTO, stating that “[i]nstead of serving as a negotiation forum where countries can develop new and better rules, it has sometimes been dominated by a dispute settlement system where activist “judges” try to impose their own policy preference on Member States.”²

This statement serves as a condense overview to exemplify the main problems that beset the institutional setup of the WTO. First, it highlights the shortcomings of the WTO’s decision-making structures and its inability to legislate. The reoccurring failures of the Doha Round to live up to its ambitions and to produce significant new multilateral trade agreements are exemplary for this problem and already led to various proposals for WTO reform in the past. Related to this is the observation that the WTO as an actor in itself is not very well setup to help overcome problems regarding its legislative and administrative functions. Generally seen as a ‘member driven organization’, the WTO possesses limited actorness, and the role of its Secretariat in influencing and facilitating the production of the WTO’s policy output is severely confined. Second, the statement shows that even the dispute settlement system, which used to be the organization’s most complimented feature, is increasingly getting under pressure. The US is just the most relentless amongst several critics that are suspicious of an increasingly legalized system and who accuse the WTO’s main adjudicative organ – the Appellate Body – of judicial activism, regularly overstepping the boundaries of its mandate.³ These first two problems give rise to a third one, which is also implied in the US statement: The organization’s weak legislative branch in contrast to its strong judicial branch lead to an institutional imbalance. Judicial decisions that displease the WTO’s membership cannot be offset by legislative action due to the cumbersome decision-making practices of the organization and its limited actorness. This puts the entire multilateral system at risk, since influential members feel increasingly alienated by judicial decisions, while the legislative system is stalled. The US is very vocal about this, claiming in the 2018 trade policy agenda that it is subject to “outdated and underperforming trade deals” and international bureaucracies that undermine its interests.⁴ While the US position is certainly an

¹ Comment during the public discussion at the Paris Peace Forum on 11 November, 2018. Retrieved from https://www.wto.org/english/news_e/news18_e/dgra_12nov18_e.htm.

² USTR. (2018). *2018 Trade Policy Agenda and 2017 Annual Report of the President of the United States on the Trade Agreements Program*. Washington, D.C.: Office of the United States Trade Representative, (p.2). Retrieved from <https://ustr.gov/sites/default/files/files/Press/Reports/2018/AR/2018%20Annual%20Report%20FINAL.PDF>.

³ For an overview of US accusations against the Appellate Body, see the government’s 2018 trade policy agenda as referred to above, pp. 24-28.

⁴ *Ibid.* (p.1).

extreme one, the listed problems indicate that the trading system is beset with fundamental flaws regarding those institutional structures that are supposed to govern international cooperation.

These flaws are not new, and calls for reform have been frequent throughout the history of the WTO. However, in the current political climate such flaws become increasingly relevant and more dangerous to the multilateral trading system than ever before. As a result of the WTO's institutional shortcomings, more and more countries focus on regional and bilateral agreements to manage their trade relations, reducing the relevance of the multilateral system. More than that, as one of its most important members the US is responding to the institutional shortcomings and is currently acting in a way that is likely to significantly harm the system. Its current administration already showed in other contexts that it is less concerned about long standing patterns of international cooperation than its predecessors, and that it does not hesitate damaging multilateral structures to achieve short term national interests. It already made clear that the multilateral trading system poses no exception to this, stating that the US "will not allow the WTO – or any other multilateral organization – to prevent us from taking actions that are essential to the economic well-being of the American people" and that "our trade policy will aggressively defend U.S. national sovereignty."⁵ The administration already put these words into practice by focusing increasingly on protectionist policies, bilateral deal making, and by blocking the appointment of new members to fill vacant positions in the Appellate Body – risking to leave the Appellate body hamstrung by 2019.

These actions – particularly blocking the appointment of Appellate Body members – are undermining the multilateral system and put the WTO in a serious institutional crisis. As one of the WTO's Deputy Director Generals, Alan Wolff said at the UK Trade Forum on 19 November 2018:

"Members may disagree on the degree of danger to world trade inherent in the loss of the WTO's Appellate function. We do not know whether trade rules would lose their force gradually or quickly were there no effective WTO dispute settlement. Doing nothing would constitute taking an unnecessary increase in level of risk. Without the rule of law, in domestic society or international relations, the end result can easily be chaos."⁶

Clearly, the need to address the longstanding governance problems of the WTO seems more pressing than ever before and the debate about institutional reform of the organization is currently on top of the political agenda. As Director General Azevêdo stated: "Whatever the precise arguments, there's no question that this focus on WTO 'reform' or 'modernization' is growing rapidly. A serious and substantive debate is beginning to emerge, driven by leaders

⁵ Ibid. (pp.2-3).

⁶ Retrieved from https://www.wto.org/english/news_e/news18_e/ddgra_20nov18_e.htm.

around the world.”⁷ The three institutional problems mentioned above are all part of this debate. Engaging in this debate can be an opportunity to update the World Trade Organization according to the needs of the 21st century.

Given the momentum for institutional change and the severity of the current situation, this dissertation is both, topical and relevant. This dissertation explores the dynamics of institutional change throughout the history of the multilateral trade regime. Assuming that a good understanding of the past can inform current debates, the dissertation helps to explain the current shortcomings of the organization and to assess the likelihood of successful future institutional change. It traces the historical roots of the institutional structures that characterize the present setup of the trade regime. This contributes to a better understanding why these structures look the way they do and thereby helps to identify the underlying causes of the institutional problems that are currently witnessed. Furthermore, the dissertation’s investigation of the dynamics of institutional change is helpful in analyzing different proposals for institutional reform and their likelihood to succeed. The fact that this dissertation embeds its historical investigation of institutional change in the trade regime in a theoretical framework facilitates the identification of general patterns of change and helps to apply past insights to analyze the present situation. This sets the research apart from existing historical accounts of the trade regime’s development, which constitute valuable and factually rich narratives but hardly ingrain their findings in a wider theoretical context.

Taking historical experience as a guideline, it becomes clear that a thorough institutional reform would be unlikely to succeed in the current situation. Instead, the focus should lie on using the WTO’s existing institutional structures differently than it is currently done. This observation strengthens those voices that call for using the existing WTO rules more flexibly. Efforts to advance multilateral trade legislation by allowing the WTO’s membership to move forward at different speeds and to allow a subset of the membership to enter into agreements that are embedded in the institutional structure of the WTO (such as the Information Technology Agreement or the Government Procurement Agreement) should be strengthened.

With its potential to inform the current debate on institutional change, this dissertation is particularly relevant to all those that actively participate in this debate: WTO members and policy makers, public officials and WTO Secretariat members, representatives of civil society, academics, and all other interested commentators. It is hoped that the contribution this dissertation can make will eventually facilitate a positive outcome of the debate, which would ensure that multilateral trade stays open and predictable under a guiding set of rules, administered by a well-functioning international organization. This would enhance welfare and be beneficial to society at large.

The second argument concerning the societal relevance of this dissertation is a broader one that is not confined to the current situation of the multilateral trade regime, but relates to

⁷ Speech by Director General at a conference in Paris on 16 November 2018, retrieved from https://www.wto.org/english/news_e/spra_e/spra246_e.htm.

enhance the understanding of governance structures of international organizations in general. The question how these governance structures change has received limited attention by researchers so far. The dissertation aims to provide an impetus to strengthen research on changing governance structures of international cooperation and organization. This might eventually lead to a better theoretical understanding of such change. Reoccurring debates about the reform of the UN, the IMF, the World Bank and other international organizations indicate the relevance of such a theory. In a world where nationalistic sentiments are on the rise, it is of vital importance to gather a better understanding how international organizations can adapt to changing circumstances, in order to keep international cooperation fruitful.

The third argument is much more specific than the previous two. The work conducted for this dissertation will enhance my academic teaching activities. Based on the dissertation a tutorial/lecture session has already been developed to introduce students of University College Maastricht to the history of the trade regime and to enhance their understanding of the political dynamics that inform the governance structures of the regime. The experience gathered throughout the research process will also be useful to develop future undergraduate courses on global governance and international organizations, and in International Political Economy.

Next to the teaching activities, the insights gained in the course of this research will be disseminated via the publication of a series of academic articles and/or in form of a monograph that will be based on this dissertation. Furthermore, presentations at academic conferences and workshops will be given, just as it has been done in the past already during several seminars at the Institute for Globalization and International Regulation (IGIR) of Maastricht University, the *Ius Commune* Conferences in 2013 and 2016, and a PhD Research Colloquium in Antwerp in 2016.