

15 The future of the WTO

I have but one lamp by which my feet are guided, and that is the lamp of experience.
I know no way of judging the future but by the past.

Patrick Henry
Speech in the Virginia Convention (1775)

Introduction

At the risk of sounding facetious, one might ask where the trading system will be in 2048. If there is anything to numerology, that is when it is next due to take a new turn. That would continue a progression that began in 1648, when the Treaty of Westphalia inaugurated a new era in international law, was followed by influential declarations on the pacific nature of trade in both 1748 (in Montesquieu's *De l'esprit des lois*) and 1848 (in Mill's *Principles of Political Economy*), and seemed to culminate in 1948 with GATT's entry into force. That most recent of the '48s was no end-of-history moment, however, as was apparent when the WTO replaced GATT less than half a century later.

Rather than attempt the fool's errand of guessing where the world and its trade organization will be a generation hence, this chapter instead identifies the principal questions that the members of this organization will need to answer in the years to come. While any answers to those questions will necessarily be preliminary and speculative, we can, as Patrick Henry suggested, allow history to illuminate our inquiry. These questions are divided into three areas, each of which relate to recurring themes we have seen throughout this history. They are explored below in rough order of immediacy, starting with the most pressing matters and progressing towards the longer term.

Negotiations

Before considering the problems associated with negotiations, it should be emphasized that the choice is not the classic one of free trade *versus* protection. Nearly all WTO members engage to one degree or another in backsliding, sometimes through the use of legal but restrictive measures (e.g. raising tariffs up to the bound rate or employing the trade-remedy laws) and sometimes imposing measures that are found to violate their WTO commitments. At no time during the WTO period, however, have large numbers of them engaged in widespread

restrictions of the 1930s variety. That did not happen even in the darkest hours of the Great Recession of 2008 to 2009. What is at issue is not a choice between opening or closing markets, but instead in where and how members will pursue their market-opening ambitions. Most of the progress in new negotiations since 2001 has been in bilateral, regional and plurilateral initiatives, and some fear that if present trends continue the role of the WTO could be confined to the administration, surveillance and enforcement of existing multilateral agreements rather than the drafting of new ones.

It must be stressed that this history is written at a time when the development of the Doha Round to date is known, but its final fate is not. Here the usual advantage of the historian is lost, as the gift of flawless hindsight belongs not to him but to readers in the future – perhaps a very near one – who will know which path those negotiations finally took. The discussion that follows thus summarizes the state of the debate at one point in time, but does so at the acknowledged risk of being outrun by events. It is unclear whether members will succeed in reviving those negotiations in more or less the same form in which they started (minus three of the four Singapore issues), put an end to the talks altogether, craft some sort of “Doha Light” package or fragment the negotiations into separate initiatives. At the time of writing, some combination of the last two alternatives seems more likely than either the first or the second. No matter how the round itself is resolved, members must also decide whether future multilateral negotiations will be conducted in the form of rounds or in separate initiatives, what role plurilateral agreements may play in the WTO system and how the multilateral system will adapt to the proliferation of discriminatory agreements.

Resolving the Doha Round

The first WTO round has always been in the shadow of the last GATT round. Although it did not seem so to all participants and observers at the time, the Uruguay Round came closer to an ideal outcome than had any of its predecessors. It achieved significant reductions in tariff and non-tariff barriers (especially quotas), extended the range of issues well beyond tariffs into such topics as services and intellectual property rights, saw many of the hold-out countries join the multilateral system, and made lasting reforms in the institutional structure and dispute-settlement rules of the system. By comparison, the Doha Round started with fewer new ambitions, dropped most of those within a few years, got bogged down early and remained in a stalemate for years.

The relationship between the Uruguay and Doha rounds can be conceived in three different ways. One is the “filling in the blanks” view, by which the principal purpose of the Doha Round is to build upon and finish what its predecessor left undone. That includes starting from the previous round’s innovative but incomplete agreements on services and agriculture and filling them in with true, liberalizing commitments. The task has proven to be more difficult than it had appeared when the negotiations were first launched, and gave rise to the “tough act to follow” argument. As advanced by Lord Brittan,¹ this view emphasizes not what the Uruguay Round left undone but how very much it did accomplish. Having picked not just the low-hanging fruit but some of what had been hard to reach, all that was left were the items in the

topmost branches; those branches have not bent any lower in the ensuing years. It is in that sense that, from Lord Brittan's perspective, the success of the previous round offers the principal explanation for the apparent failure of the Doha Round.

Yet a third view attributes the differences between these rounds to the different "spirit of the times" in which they existed. The concept of the *zeitgeist* may appear to be the most vaporous explanation, and perhaps even tautological, and yet it also has an inherent appeal. There are times when statesmen can indeed be caught up in a cooperative spirit. By one account that is what happened with the launch of the Uruguay Round at the Punta del Este Ministerial Conference in September 1986. This "was a real 'happening'" where "[s]ome of the toughest problems were settled just like that – as if by magic – thanks to the 'spirit' of Punta del Este" (Paemen and Bensch, 1995: 43). Other ministerials in that round would be much less positive, and the Uruguay Round did suffer its share of delays and setbacks, but all in all it was a more hopeful and ambitious undertaking than the Doha Round. Developed and developing countries alike shared higher levels of confidence, the former group inspired by the end of the Cold War and hopes for a "peace dividend," the latter group by a Washington Consensus that export-led development strategies had done much better than import protection. Both of those effects had dissipated by the early years of the Doha Round.

Another perspective points to the declining utility of the negotiations model that the WTO inherited from GATT. It is often said that the definition of insanity is doing the same thing again and expecting to get a different result, but members have had just the opposite problem in the WTO: so many of the elements that seemed to contribute to the success of the Uruguay Round fail to perform the same trick in the WTO period. From the Kennedy Round through the Uruguay Round, negotiations were based on the idea that having multiple issues on the table will encourage ambition even on the most difficult issues by promoting trade-offs across subjects. The Uruguay Round took the further step of bringing all of these issues together in a single undertaking. The Doha Round was also based on the general concept of multi-issue trade-offs and the specific bargaining device of the single undertaking, but doubts have since arisen on whether the same formula that worked in the GATT period can produce similarly ambitious results in the Doha Round. In those earlier, headier days, this approach gave countries the confidence to make such trades as the elimination of textile and apparel quotas in exchange for the adoption of stricter enforcement of intellectual property rights. In the far more cautious environment of the Doha Round, when countries at all levels of economic development tend to be more focused on their defensive than on their offensive interests, the bundling of topics may actually impede progress. Some negotiators on trade in services, for example, believe that tying their topic to the round means that it can progress only as fast and as far as negotiations on the knottier problems of agriculture, and some negotiators on trade facilitation feel that their subject, too, might advance farther if it were handled on a separate track. The agricultural *demandeurs* take an entirely different view, believing that the only way they might get satisfaction is by keeping everything in the same basket.

As discussed in the next section, some proposed solutions to the round are based on the fragmentation of its issues into new configurations. Whether through early harvests or

plurilateral negotiations, these proposals would revise or replace the round as originally designed. The High Level Trade Experts Group (2011: 10) argued against these temptations, urging that the members finish what they had started in 2001. This group warned that any effort “to re-launch a WTO agenda around new negotiating objectives would be extremely unlikely to succeed.” The round is based on a “delicate balance of issues and interests,” according to this group co-chaired by former Director-General Peter Sutherland and Jagdish Bhagwati, and if picked apart –

the chance of consensual agreement retreats rather than advances. While tariff reductions and the dismantling of non-tariff barriers can of course be achieved in bilateral negotiations, the multiplier effect of a multilateral agreement is considerably higher. Agricultural subsidy reform will be agreed multilaterally or not at all (*Ibid.*).

In place of a deal that breaks up the Doha package, the group would have “the G20 level political leaders ... set themselves a deadline” to complete the talks that would be “inflexible and bind all players at the level of Heads of Government,” taking the current drafts as the foundation for final negotiations. This is a point on which the sceptics sometimes join the advocates of ambition, albeit for very different reasons. Indian Trade Minister Kamal Nath resisted calls to dismantle the Doha Round when he left the mid-2008 mini-ministerial. “The WTO is not a buffet that you pick up what you want and go,”² he declared. The single undertaking reduces negotiations to an all-or-nothing choice, a binary division that is equally attractive to ambitious optimists and to the sceptics who favour the status quo.

Plurilaterals and regional trade agreements

With the multilateral option apparently on hold, members look to alternative ways to negotiate. The main options have one thing in common: each would involve some fragmentation of the talks by issue or partner. These are controversial proposals. Proponents see plurilateral or regional undertakings as complements to multilateralism that can be pursued either in a form of “variable geometry” within the WTO or, if done on the outside, can produce useful precedents for multilateral deals. Opponents see these as alternatives to a multilateral deal, in which the Plan A of multilateral liberalization is made less attainable when each country has its own Plan B, and those alternatives also make it less likely that issues requiring a multilateral approach – especially agricultural production subsidies – will be effectively addressed.

The relationship between multilateralism, plurilateralism and discriminatory agreements is more complex than may at first appear. What might seem like diametrically opposed alternatives can instead be arrayed along a spectrum that recognizes a series of distinctions, both in the legal structure and in the animating spirit of the options. The initiatives that one finds along different points in the spectrum imply differing degrees of countries' interest in the multilateralization of any deals that they might reach. From the most to the least discriminatory, the main approaches are:

- A customs union or common market that is inspired by “closed regionalism”, with the parties to the agreement maintaining a high common external tariff and resisting efforts to negotiate it down in multilateral negotiations. Example: some developing country regional trade agreements (RTAs) dating from the 1960s or 1970s fit this description.
- A free trade agreement (FTA) in which the members are similarly inclined to resist reductions in their most-favoured-nation (MFN) tariffs. Example: while the North American Free Trade Agreement (NAFTA) was generally a product of “open regionalism”, it included a few provisions of this nature.³
- An RTA, whether in the form of a customs union or FTA, that the members treat as “open regionalism”. The parties to an RTA may engage in simultaneous or sequential negotiations in the WTO to reduce their MFN tariffs, and some benefits of the RTA may also be extended on a *de facto* basis to third countries (e.g. in service sectors where regulators opt not to distinguish between providers in RTA member countries versus all others). Example: the European Union takes this approach.
- Plurilateral agreements or preferential trade arrangements reached outside the WTO for which the benefits are not extended on an MFN basis. These will normally require approval of a waiver if the agreement deals with subjects that fall within the scope of existing WTO agreements and disciplines. Example: this approach is more commonly used for preferential programmes than for RTAs, such as the programmes by which Canada, the European Union and the United States extend special preferences to developing regions such as Africa and the Caribbean Basin.
- Plurilateral agreements that are adopted in the WTO on the basis of “code reciprocity”, meaning that only the signatories receive its benefits and only they are subject to its disciplines. Example: the Government Procurement Agreement and the Agreement on Trade in Civil Aircraft.
- Sectoral agreements reached in the WTO that are negotiated among a “critical mass” under the terms of existing agreements and for which the benefits are extended on an MFN basis. Example: the Information Technology Agreement (ITA) and the sectoral protocols to the General Agreement on Trade in Services (GATS).
- Multilateral agreements concluded in a round that are made part of the single undertaking.

The prospects for creative exchanges between “pure” multilateralism and other forms of negotiations increase as one moves closer to the bottom of this list. Even those near the top can make a contribution if one adheres to the doctrine of competitive liberalization and sees a progression from bilateral to regional to multilateral negotiations. The participants in the Trans-Pacific Partnership (TPP) negotiations, for example, often speak of how these talks may set precedents for “twenty-first century agreements” in the WTO or elsewhere. Competitive liberalization is less in vogue today than it was a decade ago, with the plurilateral options now attracting more attention. Whether they are used to create precedents, leverage or a variable geometry within the WTO, plurilateral negotiations are proposed or under way in several areas.

WTO rules show an ambivalent view towards plurilateral agreements. They are recognized by Article II.3 of the Agreement Establishing the World Trade Organization (WTO Agreement),

which provides that plurilateral agreements are part of the overall WTO agreement “for those Members that have accepted them, and are binding on those Members,” but the article specifies that these agreements “do not create obligations or rights for Members that have not accepted them.” Adopting plurilaterals into the body of WTO agreements can be difficult. Article X:9 provides that members may adopt them upon the request of the parties, but this decision may be made “exclusively by consensus.” Some proponents of plurilaterals suggest that alternative routes to approval should be allowed, such as adoption by the granting of waivers under Article IX:3 (Hufbauer and Schott, 2012)⁴ or making them subject to the same two-thirds rule that applies to accessions (Hoekman and Mavroidis, 2012).

One question concerns the scope of issues that might be handled in a plurilateral. “When existing disciplines are at stake,” according to Rodriguez (2012: 29), “the entire WTO membership should be involved from the beginning to the end” because the “rules of the system cannot be modified without the acquiescence of the whole membership.” For new subjects, however, he advocated “plurilateral plus” agreements in which “the benefits of the agreements would be extended to all WTO members, while their obligations would bound only the initial members of the agreements and others as they join it.” He would thus build on the model of the ITA. Any decision to allow group negotiations of this sort “should be taken by a consensus decision of all WTO Members, independently of which Members subsequently join in the negotiations,” but proceed plurilaterally thereafter (*ibid.*: 30).

The sequence of plurilaterals is another important question, as it determines whether they are viewed as WTO-plus complements or as substitutes for a round. The Global Agenda Council on Trade of the World Economic Forum recommended that the WTO become a “club of clubs”, but proposed that this be done only after the round itself is completed:

After the successful completion of the Doha Development Agenda negotiations, a majority of the Members of the Global Agenda Council on Trade believe that more new clubs, if properly structured under the aegis of the WTO, could enable the organization to better meet the challenges of the 21st century. What they advocate is a future agenda that would supplement the core WTO commitments to which all members subscribe – as embodied both in the Uruguay Round Agreement and the Doha Development Round Agreement (once concluded) – with additional agreements to which only some members would subscribe if meaningful groups are willing to do so (2010: 3; emphasis in the original).

Hufbauer and Schott (2012: 3) proposed instead a more complex approach whereby the plurilaterals would be part of a grand bargain to resolve the round. That bargain would start with an early harvest of what they deem the “five easy pieces”, namely trade facilitation, phase-out of agricultural export subsidies, a commitment not to impose export controls on food, reforms to the dispute settlement system, and duty-free, quota-free treatment for least-developed countries (LDCs). Their plan would also give a green light for members to negotiate for three years on plurilateral agreements on an enumerated list of subjects, and further

provide that any “dissatisfied countries [would] be permitted to ‘snap back’ their NAMA and agricultural concessions in the event that the concluded plurilateral is not granted a waiver by three-fourths of the WTO members.”⁵ The strategy would thus open with a cooperative approach to the least difficult topics in the round but fall back on leverage at a later stage.

The plurilateral option is, at the time of writing, most advanced for the proposed International Services Agreement. The manoeuvring over this pact was still in the transition from planning to actual negotiations in early 2013, but the precise relationship between these negotiations, the WTO and the Doha Round had yet to be determined. While the 20 members engaged in the negotiations⁶ hope to bring any results to the WTO, the initiative faces opposition from other members.

Plurilateral agreements might thus be pursued either inside or outside of the WTO, but RTAs are by definition a wholly separate undertaking. Their only connection with the WTO is through the precedents that they might set for new multilateral agreements. Whether or not the WTO membership picks up on the precedents, these alternative negotiations show no sign of abating. This is not to say that RTAs are immune from the difficulties that have plagued the Doha Round. The Free Trade Area of the Americas and the Asia-Pacific Economic Cooperation negotiations were both launched in 1994 with the aim of establishing free trade across wide geographic expanses, but each of these mega-regional negotiations failed. They then fragmented into smaller initiatives, with many of the partners in the Americas and the Pacific Basin negotiating separate agreements with one another; some of those talks then coalesced into the TPP. Despite some setbacks, RTA negotiations have grown both in number and in magnitude over the course of the WTO period. Reconciling these negotiations with multilateralism is arguably the greatest challenge for the WTO membership, and the future of the trading system depends to a great degree on how they handle that challenge.

New issues

There is no stable definition of what constitutes “trade policy”. The scope of issues that are defined to fall within the scope of the trading system is wider in the WTO era than it was in most of the GATT period, but the expansion is not steady, irreversible or finished. Some issues that negotiators included in the scope of the Havana Charter for an International Trade Organization were left out of GATT but then reappeared in later decades; other issues covered by that charter remain outside the jurisdiction of the WTO. Nor did that dynamism end with the establishment of this organization, as demonstrated by the on-and-off treatment of the Singapore issues in the Doha Round. As in the past, so in the future: the shape of the trading system will continue to be determined by the shifting definition of what trade means. This point was demonstrated in 2013 when the Panel on Defining the Future of Trade – as discussed later in this chapter – issued its report. The report is notable not just for the multiplicity of issues that the panellists identify as relevant to trade policy, but also for their evident disagreements over how and even whether individual topics might be taken up in the WTO.⁷ These include competition policy, international investment, currencies and international

trade, trade finance, labour, climate change and trade, corruption and integrity, aid for trade, and the coherence of international economic rules.

More is at stake here than the economic magnitude of the issues that *demandeurs* bring to the table. Whenever the trading system incorporates new subject matter, it also brings along new actors, including institutions of government and related interest groups that might previously have abstained from debates over trade policy. Sometimes that means attracting new participants to the pro-trade coalition in a country, as was the case for the new issues of the Uruguay Round. Redefining trade to cover services, investment and intellectual property rights gave capital- and knowledge-intensive industries a reason to support trade negotiations and to weigh in against the protectionist initiatives that were so common in the early and mid-1980s. New issues can also complicate the task of liberalization by raising new concerns and attracting new opponents. The expanding issue base can provoke worries in developing countries over constrictions on their “policy space”, raise objections from government ministries and regulatory bodies who might see this as the trade ministry’s invasion of their “turf”, and lead to a backlash from a host of civil society groups that see trade rules as a threat to social, environmental or other policies that might run afoul of the expanded trade rules. New issues can also raise questions over the division of labour between levels of government, whether that means the powers of the EU member states relative to the European Commission or the authorities of sub-national units of government relative to central or federal governments in administratively complex countries such as Australia, Brazil, Canada, China, India, Switzerland and the United States. In short, any expansion in the scope of issues that are under negotiation or subject to dispute settlement will widen the range of actors inside and outside of government that have a stake in the outcome, and that are in a position either to promote or oppose new negotiations.

Members may choose not to negotiate multilateral agreements on new issues such as labour or competition policy, but ignoring these topics will not make them go away. They can instead crop up in any or all of three other ways: members may take them up in other negotiations outside the WTO, especially in their RTAs; the issues may be handled in domestic laws or arise in any domestic debates over approval of trade agreements (multilateral or otherwise); and they may come up in dispute settlement cases. That last option can be the fall-back option for defining the relationship between new issues and WTO law, as the initiative does not lie exclusively in the hands of negotiators; any blanks that they leave in their agreements might be filled in by the litigators.

Some of the more prominent expansions in the scope of the trading system came by way of decisions in the Dispute Settlement Body and its GATT predecessors, especially in politically sensitive areas such as the environment, public health and even morals. The exceptions clauses of GATT Article XX and GATS Article XIV, as modified by the *chapeau* language to those articles and as interpreted by panellists and the Appellate Body, can define the relationship between trade rules and other fields of public policy. This is one area where the trading system runs a risk of not keeping up with the times, for the wording of the GATT exceptions has not changed since 1947 and some of its provisions reflect even older laws and

principles. GATT Article XX(e), which offers a general exception for countries' laws that exclude imports of the products of prison labour, dates back to a US law that had been on the books since 1890. The only provision of WTO law affecting labour rights thus came by way of one law in one party that was already over a century old when the WTO entered into effect. Other exceptions clauses in the WTO reflect the views that negotiators held in the mid-1940s, or inherited from lawmakers in prior decades, on such topics as culture, conservation and human health. It is doubtful that, had the negotiators in the Uruguay Round started from a blank page, they would have devised the same general exceptions that their predecessors had at mid-century. When the system interprets the relationship between these issues and trade via GATT Article XX, it may fall back on terms and concepts that have been preserved in legal amber for generations, and that do not necessarily reflect the changes that have since occurred in social and scientific ideas.

This question relates to another recurring theme in this history: the concern over an imbalance between the judicial and legislative functions of the WTO. Or to put it another way, members sue one another too often and reach new agreements too rarely. This is a widely held view, although it is difficult to know what might be the optimum number of disputes in which the system as a whole should be engaged. One can easily imagine two undesirable extremes. At one end of this spectrum would be agreements that generate no disputes at all. While this might seem to be the most peaceful outcome possible, it would also suggest that the commitments that countries had made in WTO agreements – whether of the horizontal, systemic variety or in the specific goods and services schedules of individual members – were not ambitious enough either to oblige countries to change existing practices that restrict trade or to impose meaningful constraints on their enactment of new, restrictive measures. At the other end of the spectrum would be a number of disputes so large that it causes a breakdown in the system or a backlash among members. The system now in place seems to have navigated some sort of middle course between these extremes, but the weight of opinion among commentators suggests that if the system errs it does so in the direction of too many rather than too few disputes. That judgment is based on the relative importance that members have placed on the judicial rather than the legislative function of the WTO. The obvious, if difficult, solution to that quandary is not to impose restrictions on members' rights to enforce the commitments of their partners, but to promote the negotiation of new commitments. In some cases, that may mean taking up wholly new topics, although members would be well advised to consider not just the economic benefits, but the potential political costs of incorporating new issues into the body of WTO law.

The future of the trading system will therefore be determined in part by how it deals with such subjects as competition policy, investment, government procurement, state-owned enterprises, labour rights, the environment, the relationship between exchange rates and trade, and other topics that are either outside the current scope of WTO law or for which the current rules are arguably incomplete. Even if members do not conclude new multilateral disciplines on these issues, they may still deal with them in one form or another of negotiation, legislation or litigation.

Sovereignty, democracy and the market

Taking the long view, the problems that the trading system faces today are only the latest manifestation of a centuries-long debate over three Enlightenment ideals. The principal theme of European thought in the late seventeenth and eighteenth centuries was freedom and the rebellion against central control, and the leading lights of the time advanced three ideas that each trusted countries and individuals to make choices for themselves: sovereign states should be independent of emperors, popes or stronger neighbours; people should be free to choose their own leaders and legislators; and producers and consumers should decide for themselves what they will make, buy, and sell. These ideas were not adopted universally or immediately, nor did they advance from theory to practice at the same pace. All three ideas have nonetheless come down to the present time as foundations of modern international society, and to which all members of that society are at least rhetorically devoted. Two of these three concepts are indispensable to the multilateral trading system: there could be no WTO without sovereignty and international law, and it would have no purpose without market economics. Those two ideas can be in conflict, especially in disagreements over the degree to which countries should restrain their exercise of sovereignty for the sake of opening their markets, but the principal difficulties arise in connection with democracy. Both at the national and the international levels, this Enlightenment ideal stands in creative tension with the others.

The conflicts are more prominent in the WTO era than they were in the GATT period, and give rise to two questions for the future. First, how will WTO members handle the continuing redistribution of economic and political power in the world? Can a system that had depended for its forward momentum on leadership from the few adjust to a new environment in which power is more widely distributed? Second, how will the democracies that gather in this organization handle the issue at home, especially in light of the incorporation of new issues and the growing association between trade and other high-profile political topics?

Democracy between members: leadership and burden-sharing

International society is democratic in principle, as exemplified by the juridical equality of states, but in practice it is impossible to erase the differences between its members. Nor does everyone agree that it is always desirable to do so. While many developing countries have long urged that the multilateral trading system be made to operate more like the United Nations, or even be brought under UN auspices, that proposal is anathema to developed countries. The question is relevant not just to practical politics but to political theory: if one accepts the premise of the theory of hegemonic stability, as discussed previously (see Box 1.1), open markets are a public good that tends to be underprovided unless there is one country with the motive and the means to supply it. Great Britain rendered this service in the latter half of the nineteenth century, and the United States did so in the latter half of the twentieth century. One problem that international society faces in this first half of the twenty-first century is how to handle a multilateral trading system in which there is no longer a clear hegemon. The facile solution would be to rely on the democracy of nations, hoping that in this supposedly more

enlightened age we may expect countries to understand and act upon their shared interest in maintaining a system of open markets. That demands a great deal of sovereign and self-interested states.

This is partly a matter of numbers. Using the same logic that Parkinson (1957) employed in his speculations on the inverse relationship between the size and the effectiveness of a group, and that Olson (1968) developed more formally in his theory of collective action, many see the near-universal membership of the WTO as a challenge. GATT began with just under two dozen contracting parties, but as of 2013 the WTO has seven times as many members; it will have grown eight-fold when the pending accessions are complete. The practice of coalition diplomacy helps to manage the problem but can create difficulties of its own. Compared to the GATT period, regional and other blocs have come to play a more prominent role than did single-issue coalitions. Where coalitions were once fluid enough in their membership to encourage cooperation and trade-offs, blocs can harden the lines between groups. By contrast with the Uruguay Round, a defining characteristic of the Doha Round is the paucity of North–South coalitions. Not all observers believe that larger numbers pose an insuperable problem. Gilligan (2004) called into question the common belief that there exists a trade-off in international organizations between the breadth of their membership and the depth of the agreements that they can reach; Kahler (1992) also offered an essentially optimistic view on the ability of international organizations to operate effectively, even with a large membership. The collective wisdom of experienced negotiators nevertheless suggests that relations are more difficult to manage among WTO members than they were among GATT contracting parties, and that the membership will need to address this problem in the years to come.

The problem appears more daunting when one looks past the simple numbers and considers three related challenges that the wider and more diverse membership poses for the multilateral trading system. One is that power is more diffuse than it had been throughout the GATT period, making it impractical for the system to rely on the leadership of one or a few members. Second, several of the participants in this system that are either new to it, or have long been a part but are newly powerful and active, do not share the same historical and cultural ties that were common to the leaders in the *ancien régime*. Third, the rivalries between the old leaders and the emerging economies extend beyond the economic sphere. The future of the WTO may be defined to a considerable degree by the state of relations between China and the United States, a G2 across the Pacific that replaces its transatlantic predecessor. The biggest problem that GATT negotiators faced was in bridging the differences between the European Union (in its earlier incarnations) and the United States, but that task was facilitated by the congruent perspectives of these partners on trade and much else. Economic and security relations reinforced one another: GATT and NATO were two very different entities that nevertheless came into being at roughly the same time, and were both led by the same countries. The members of the WTO are not divided by the old antagonisms of the Cold War, but neither are they united by them.

One recurring problem is the declining US interest in providing leadership in multilateral negotiations. That was already apparent in the years preceding the launch of the Doha Round,

when Washington took an ambivalent approach to a new round and allowed Brussels to act as the chief *demandeur*. The US priorities changed in the immediate aftermath of 9/11, and many observers believe that the launch of the Doha Round would not have been accomplished but for the leadership that Ambassador Robert Zoellick provided. In the years that followed 2003, however, the United States has either emphasized bilateral and regional negotiations or, for a few years following the financial crisis of 2009, appeared to lose interest in trade policy altogether. When that interest revived, it focused on the TPP and the launch of negotiations with the European Union. If the strategy of competitive liberalization is valid, these two initiatives are good signs for the multilateral trading system. Strict multilateralists fear that they portend just the opposite. The direction taken in these latest RTA negotiations underlines the differences in the approaches that Washington takes towards Brussels and Beijing. Whereas one of them is aimed at cementing transatlantic relations, from the US perspective the TPP is defined as much by one country that is not a party to the talks (China) as by the 12 that are.⁸

China is increasingly more active in the WTO, with its role in the system having progressed since accession from a “rule taker” that “passively accepts existing rules imposed by other countries” to a “rule shaker” that “tries to exploit the existing rules to its advantage,” and then to a “rule maker” that “is making new rules that reflects its own interests” (Gao, 2012: 76). The mid-2008 mini-ministerial was a failure, but one of its more lasting effects was the debut of China in the inner circle of G7 negotiators. China has also come to be a more frequent litigant in the Dispute Settlement Body. The capacity constraints and cultural inhibitions against legal disputes both broke down in response to changes in China’s interests and experiences, to the point where the former dominance of EU–US cases on the docket has been replaced by Chinese–US cases. The future of the dispute settlement system in the WTO will be determined in part by whether that trend continues or, as was the case in transatlantic litigation, these two parties find other ways to deal with the frictions in their trade relationship. China is also actively negotiating agreements outside of the WTO. As of early 2013, it had nine bilateral or regional FTAs in effect, five more in negotiation and four others under study.

The flows of trade and investment between China and the United States are large, but the levels of cooperation and coordination in this new G2 remain much lower than was the case for its predecessor. The relationship is also burdened by competition in other areas of public policy. If Washington is not inclined to provide the leadership, Beijing is not yet in a position to do so, and the two of them are not predisposed to act in unison, can the system instead proceed in a more democratic fashion? Developments inside and out of the WTO suggest that members wish to try. That can be seen outside the WTO in the creation of the summit-level G20, which is more inclusive than its G5, G7 or G8 predecessors, and is also demonstrated inside the WTO by the evolution of the green-room process. Entry into this room is still restricted, but some of the new entrants are expected to represent their regions or other groups. This transition from something like oligarchy to something that is more like representative democracy is one way that the system seeks to handle the always difficult trade-off between the ideals of inclusiveness in representation and efficiency in bargaining.

The stalemate in the Doha Round nonetheless shows that members have yet to work out the proper division of the burdens, with developed countries and emerging economies having very different views of how much each of them should bear. The wider membership demonstrates less of the *affectio societatis*, or commitment to a shared sense of purpose, than did the tighter-knit GATT society. The diversity of membership may also exacerbate the problem of “bounded rationality”, a phenomenon by which “agents are rational in the sense that they aim to achieve objectives as effectively as they are able, but their rationality is bounded” insofar as they “lack not only complete information but also the ability to perform the computations needed to optimize” (Odell, 2006a: 9). A negotiator that acts within the confines of bounded rationality may have more trouble comprehending the way that his or her partner thinks. Determining the difference between a bluff and a true bottom line can be hard enough even when dealing with someone from a similar cultural, economic and language background, but becomes more challenging in a larger and more diverse group of members with different historical and cultural backgrounds.

Democracy in members: parliaments and the private sector

Democracy at the national level is as important a factor in the trading system as it is at the international level, and offers another example of how the political economy of the WTO system is more challenging than was its GATT predecessor. For much of that earlier period this issue manifested itself in what we have called the Washington problem, in which US presidents and trade negotiators are only agents acting on behalf of congressional principals. The most democratic branch of the US government has long been a gate-keeper in the trading system, from the Havana Charter (which the US Congress refused to approve) through the deal that was on the table in mid-2008 (which US officials feared might suffer the same fate). No other legislative body exercises as much control over trade and foreign policy as does Congress, but its counterparts in other countries may come to exercise greater scrutiny than before and may even reject the agreements that are submitted for their approval.

The world is a more democratic place today than it was for most of the GATT period, and the significance of democracy for trade policy-making has expanded along three dimensions. One is the spread of democracy and freedom overall: by Freedom House’s standards, the share of free countries in the world rose during the late GATT period from 31.5 per cent in 1980 to 39.8 per cent in 1995, and then to 46.2 per cent in 2012. Or to employ a less exacting standard, 117 out of 195 countries (60.0 per cent) were electoral democracies in 2012, up from 69 out of 167 (41.3 per cent) in 1989.⁹ Second, even some WTO members with long democratic traditions are only now extending greater authority to their legislative branches in matters of foreign policy in general or trade policy in particular, revising or reversing long-standing traditions of deference to the executive in this field. That is most clearly evident in the case of the European Parliament, which under the Lisbon Treaty is now more powerful vis-à-vis the European Commission than in the past. The Inter-Parliamentary Union urges legislatures in other countries to follow suit. The third trend may lead to still greater involvement on the part of legislative bodies: the subject matter of trade policy now includes issues that have higher political profiles than tariffs, quotas and the like, and initiatives are

bound to attract more attention from the public and its elected representatives when negotiations or disputes involve such topics as pharmaceutical patents and the environment. The experience with the Anti-Counterfeiting Trade Agreement, a WTO-plus agreement that failed to win approval in most of its signatory states, demonstrated the readiness of national parliaments to question the pacts that their executives conclude.

Some members of the trade community take a cautious view of democratic procedures. Negotiators will commonly time their work to avoid concluding agreements in election years, for example, and attention from the press is not always welcome. These concerns underlay one explanation that the High Level Trade Experts Group (2011: 5) offered for the reluctance that members have shown to bringing the Doha Round to a conclusion. The group suggested that surveillance can inhibit or intimidate negotiators:

What is regarded as sound economic policy when it is conducted unilaterally or bilaterally becomes intensely difficult when it is reframed as a series of political concessions of market access to be traded in a multilateral setting. This is especially so given the fact that this is done under the close scrutiny of both the media and defensive domestic constituencies.

It has not always been so. The rationale behind the surveillance proposals that academics and international organizations advanced in the early 1980s, and that produced the Trade Policy Review Mechanism, was based on a more confident perception of public opinion: people will oppose protectionism if they know what it costs, and it is therefore important to shine a bright light on market-restricting initiatives. A less hopeful view starts from the premise that democratic debates over trade are stilted by the public-goods barriers to organization. While it is economically rational for small numbers of producers to band together in support of continued protection, there is little incentive for large masses of consumers to organize in counterpoise to the protectionists. The problem is exacerbated by the fact that when consumer groups do overcome these barriers they tend to focus on just one side of the trade issue. These organizations are rarely involved in promoting the tariff-cutting agreements that would deliver wider choices and lower prices to consumers, but will protest against decisions in the Dispute Settlement Body that find fault with the environmental and safety regulations that they favour.

Some governments have been more active and effective than others in coordinating policy with the private sector, and the spread of democracy can offer not just a challenge but an opportunity. When Shaffer et al. (2010: 99) sought to explain how Brazil became so effective in the development and pursuit of its objectives, they pointed to “the rise of pluralist interaction between the private sector, civil society and the government” in which the “institutionalization of a legalized and judicialized system of international trade relations, combined with Brazilian democratization and a shift in Brazilian development policy, has catalyzed the formation of new public-private trade policy networks.” That coordination between the public and private sectors may be more difficult to accomplish on some issues, however, as policy-makers tend to be less successful in their interactions with those domestic interests that are outside the

trade ministry's natural constituency. "At the national level," as Deere-Birkbeck (2012: 128) noted, internal coordination needs "to engage a broader range of domestic political actors – beyond trade technocrats – such as parliamentarians, the private sector, trade unions and civil society."

The WTO itself has greatly expanded its outreach to non-governmental organizations in the years since Seattle. One of the largest challenges that trading policy-makers face is thus more in their national capitals than it is in Geneva. The future of the multilateral trading system depends in part on the ability of negotiators and political leaders to demonstrate the value of trade liberalization to legislators and representatives of civil society.

The institution, information and ideas

The last set of questions for the future is more horizontal in nature. At issue are the changes the members might make in the WTO as an institution, how they might make better use of the information that the system generates, and what new ideas may develop for the trading system.

Institutional reforms

The WTO had barely started to function before participants and observers began to suggest ways that its structure or procedures might be improved. The number of proposals grew after each setback for the system, most especially the disastrous ministerials of 1999 and 2003 and the general slowdown in the negotiations thereafter. By the time Deere-Birkbeck and Monagle (2010) mapped the proposals, they filled 177 pages. The highest profile of these exercises in institutional reform was the Sutherland commission. Appointed by Director-General Supachai Panitchpakdi and headed by former Director-General Peter Sutherland, this consultative board issued its report upon the tenth anniversary of the WTO in 2005. Although this report was rather cautious on some topics, either declining to propose radical changes or couching recommendations in delicate terms, some academics have dared to go where commissions fear to tread. The issue has also been taken up by a series of studies and reports from other individuals and institutions. Among the possible reforms that these various commissions and authors have proposed are changes in the institutional structure, management and resources of the WTO; greater transparency and closer consultation with legislatures and non-governmental actors; more accommodations to the needs of developing countries; and addressing the relationship between the WTO and regional trade arrangements.

The latest of these initiatives began in 2012, when Director-General Pascal Lamy appointed a WTO Panel on Defining the Future of Trade. Reminiscent of a "Wise Men's Group" put together in the mid-1980s at a time of uncertain direction in the GATT system, the group was charged with examining and analysing challenges to global trade opening in the twenty-first century. The twelve panellists, who represented numerous regions and walks of life,¹⁰ were asked to

look at the drivers of today and tomorrow's trade, to look at trade patterns and at what it means to open global trade, bearing in mind its role in contributing to sustainable development, growth, jobs and poverty alleviation. Mr Lamy expressed the hope that the group's analysis "will spark debate and open new channels of thinking on how we can best confront the stumbling blocks that today's rapidly evolving world has strewn in our collective path."¹¹

The report identified a series of challenges confronting the WTO, each of which are manifestations of the "convergence" problem. The WTO must promote not only convergence among its members in trade negotiations, according to the panellists, but also between the multilateral trading system and other regimes, between trade and domestic policies, and between trade and public policy non-tariff measures. One way that the report proposes to address these problems is through enhancement of the institutional capacities of the WTO, with the members delegating greater authority and initiative to the Secretariat. The panellists observe that while the "WTO is an organization driven by its Members" and that by tradition "it is also only Members who table proposals for action through a bottom up process," the report states that:

We believe that permitting the Secretariat to table proposals, as is done in some other member-driven international organizations, could speed up deliberative processes and facilitate consensus by providing technical information and fresh ideas. This would in no way compromise the exclusive right of members to decide (Panel on Defining the Future of Trade, 2013: 32).

The report calls the Secretariat "a vital lubricant of this member-driven organization," and urged that members "support a stronger Secretariat, with sharpened expertise across the WTO's range of activities, and stronger research capacity." The panellists believe that the Secretariat "has considerable scope for contributing to effective communication and fostering deliberations," and that "[t]hese activities should be encouraged because they can facilitate the work of the membership." Averting that the Secretariat "can never replace members," they nevertheless observe that "members cannot deliver without a strong, efficient, neutral and well-funded Secretariat."

Information

One of the vices of the trading system is that it does not always take full advantage of the information that it generates. The best example of this can be seen in some developing countries where the customs service produces data that are not properly exploited. Customs officers will classify every shipment that crosses the border, their sole aim being the assessment and collection of any duties that may be owed, but in the process they collect vital information on the country's imports and exports. In a well-run system, the data will be aggregated, analysed and disseminated, to the benefit of the trade ministry, the private sector and academic researchers. That opportunity is wasted in some countries, however, whether for lack of capacity or because of turf battles between ministries.

The WTO has already moved to rectify a comparable problem at the international level. In the course of executing its legislative, judicial and executive functions, the WTO generates vast amounts of information and analysis about members' laws and policies, most of which is made available online but, until recently, had been difficult to access. The problem here is akin to what one often hears about intelligence agencies whose main problem is not obtaining information but in organizing, prioritizing and analysing the massive amounts that are already available through open and other sources. The WTO took several steps in the Lamy administration to make its data more accessible and user-friendly not just to the governments of members, but to the private sector, the press, academics, non-governmental organizations and any other parties interested in trade and related issues. One was a general revamp of the WTO website, which includes numerous finding aids that allow users to access information by subject (e.g. separate pages for each member, each subject, etc.) and type (e.g. different pages and tools for various types of documents and statistics). Several other innovations aggregate data in specific areas or with particular users in mind. Two that were already discussed in Chapter 13 are the Regional Trade Agreements Information System (inaugurated in 2009) and the Database on Preferential Trade Arrangements (2012). A few other initiatives, each of which is especially useful for the private sector, merit special attention.

One such innovation is the Integrated Trade Intelligence Portal (I-TIP)¹² developed in 2011, expanded in 2012, and formally launched for the public in 2013. This service gathers the wealth of data generated in members' notifications to the WTO and through other sources to provide a "one-stop shop" providing practical information on a wide range of issues affecting specific products and sectors. With information on over 25,000 measures, as of early 2013 the service covered tariff and non-tariff measures affecting trade in goods, as well as information on trade agreements and the accession commitments of WTO members. It will be expanded to include data on import licensing, quantitative restrictions, agricultural notifications, state trading and safeguard measures. The system permits users to search by country applying or affected by a measure, by products and sectors and by type of measure.

The WTO Made in the World Initiative (MIWI)¹³ is a platform that promotes the exchange of projects, experiences and practical approaches in measuring and analysing trade in value added. Launched in 2010 to 2011, the project brings together the work done by numerous national and international agencies that are working on modernizing the statistical systems. The WTO Secretariat cooperates closely with national agencies such as the Institute of Developing Economies-Japan External Trade Organization (IDE-JETRO) and the US International Trade Commission and international statistical agencies such as the Organisation for Economic Co-operation and Development (OECD). The first fruits of these collaborative efforts were a book of conference proceedings on *Globalization of Industrial Production Chains and Measurement of Trade in Value Added* (2010), published in coordination with the Finance Commission of the French Senate and a joint WTO publication with IDE-JETRO on *Trade Patterns and Global Value Chains in East Asia: From Trade in Goods to Trade in Tasks* (2011). In 2013, the WTO and the OECD issued the preliminary results of a joint database in trade in value added (TiVA) project, covering a large share of world trade, and will add data from other countries as they become available.¹⁴

The WTO launched a new International Trade and Market Access tool in late 2012. It presents all WTO data on merchandise and commercial services trade as well as selected market-access indicators from World Tariff Profiles, a co-publication produced jointly with United Nations Conference on Trade and Development (UNCTAD) and the International Trade Centre. The tool is accessed through the WTO website (www.wto.org/stats) and connects users to data on the leading traders by commodity group, sector and year; the evolution of trade between a selected partner and different countries, regions and economic groups; and statistics on market access for goods. Users are able to export the data underlying the graphics. In 2013, the WTO also inaugurated a new web page (www.wto.org/business) for business in order to make key information for the private sector, such as trade statistics and trade monitoring news, easily accessible in one dedicated area. It also issued the first online *Newsletter for Business*, offering business-focused trade news. It will be circulated electronically to all business representatives who have registered on the WTO online database.

The WTO Chairs Programme is another initiative that the Lamy administration inaugurated in order to spread information and ideas. This programme streamlines the WTO's academic cooperation activities by providing dedicated support to beneficiary institutions, offering up to Sfr 50,000 per year per school for up to four years. It started in 2010 with 14 projects chosen through a competitive selection process.¹⁵ The chairs have sponsored papers and conferences on such topics as governance, global value chains for services, retaliatory measures, and sustainable development.

Ideas

This history began with a review of the philosophical and intellectual currents that came together to create the multilateral trading system, and it is fitting to return to them at its conclusion. This is a field in which ideas matter, there being no better demonstration of that point than how the WTO itself came into being. It would be too grand a claim, and involve too much compression of the facts, to draw a short and straight line between John Jackson's publication of *Restructuring the GATT System* (1990) and the creation of the WTO five years later. That line did not get very long or very crooked, however, and Mr Jackson is too modest in suggesting that if he had not existed the Canadians who first proposed the WTO would have invented him. In his case, the times and the book matched perfectly. Generations passed before the ideas of Hugo Grotius became principles of statecraft, and for Adam Smith and David Ricardo that transition from theory to practice took decades, but for John Jackson there were just months separating the book from the formal proposal, and then only a few more years between that proposal and the WTO's entry into force. The mark of his ideas is clear throughout the legislative history of what would become the Agreement Establishing the World Trade Organization.

Sometimes the problem for the trading system comes not from a lack of ideas but from a surfeit of them. The field of trade policy lies at the intersection of politics, economics and law,

and the theorists and practitioners in these three disciplines do not always understand one another. Lord Salisbury warned that:

If you believe doctors, nothing is wholesome: if you believe the theologians, nothing is innocent: if you believe the soldiers, nothing is safe. They all require their strong wine diluted by a very large admixture of insipid common sense.¹⁶

The same might be said of the lawyers for whom no agreement is sufficiently clear, the economists for whom it is never sufficiently open, and the politicians who will always demand wiggle room. One can never fully satisfy all three groups, but must instead fall back upon common sense in resolving the three groups' sometimes contradictory advice. Considering the fact that trade agreements are usually negotiated by lawyers who must answer to politicians, the general trend is for the preferences of those two groups – and perhaps the politicians above all – to be privileged over those of the economists. This has made for a system in which the exceptions often outnumber the rules, but in which the rules do matter and the economic consequences are significant. It also means that observers can have very distinct views of what ails the trading system, and may propose radically different solutions.

We cannot know where the multilateral trading system will be in another generation, nor in the interim how well it will answer the questions posed here. The lawyers, economists and politicians who comprise this field will no doubt continue to disagree over what the main problems are and how they might best be solved. The system has proven to be adaptive and resilient, however, drawing strength from the diverse perspectives and ideas of its members, and there is every reason to expect that it will still be here in 2048 and beyond.

Endnotes

- 1 Author's interview with Lord Brittan on 17 January 2013.
- 2 "Kamal Nath explains how the Geneva talks failed", *TWN Info Service*, (31 July 2008) at www.twinside.org.sg/title2/wto.info/twninfo20080754.htm.
- 3 For example, in Annex 308.2 the NAFTA members agreed that for ten years none of them would make cuts in their MFN tariffs on colour television picture tubes.
- 4 Article IX:3 allows waivers from WTO obligations either by consensus or, failing that, by a three-quarters vote. To date all waivers granted under this provision have related either to preferential trade arrangements between developed and developing or transitional countries (see Chapter 13) or exemptions for some members' laws or policies that do not conform to WTO obligations.
- 5 Article IX:3 of the WTO Agreement provides that "[i]n exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements." Waivers may be granted by consensus, but can also be secured by a three-quarters vote.
- 6 The "Really Good Friends of Services" are: Australia; Canada; Chile; Colombia; Costa Rica; the European Union; Hong Kong, China; Israel; Japan; the Republic of Korea; Mexico; New Zealand; Norway; Pakistan; Panama; Peru; Switzerland; Chinese Taipei; Turkey; and the United States.
- 7 Observing that "this Panel is a reflection of the membership of the WTO," the report states that in their deliberations "many issues were raised by different panel members because they regarded them as important" but that the "priorities attached to these topics varied considerably among the individual panellists." Panel on Defining the Future of Trade (2013: 33).
- 8 It is important to emphasize that this perspective is not shared by all of the TPP countries, many of which have or are in the process of negotiating RTAs with China.
- 9 Calculated from data posted at www.freedomhouse.org/report/freedom-world/freedom-world-2013.
- 10 The members of the group were: Talal Abu-Ghazaleh, chairman and founder, Talal Abu-Ghazaleh Overseas Corporation (Jordan); Sharan Burrow, secretary-general, International Trade Union Confederation; Helen Clark, administrator, United Nations Development Programme; Frederico Pinheiro Fleury Curado, president and CEO, Embraer S.A. (Brazil); Thomas J. Donohue, president and CEO, US Chamber of Commerce; Yoshiaki Fujimori, president and CEO, LIXIL Group Corporation and LIXIL Corporation (Japan); Victor K. Fung, chairman, Fung Global Institute (Hong Kong, China), honorary chairman of the International Chamber of Commerce; Pradeep Singh Mehta, secretary-general, CUTS International (India); Festus Gontebanye Mogae, former president (Botswana); Josette Sheeran, vice chairman, World Economic Forum; Jurgen R. Thumann, president, BUSINESSSEUROPE; and George Yeo, former foreign minister (Singapore), vice chairman of Kerry Group Limited (Hong Kong, China).
- 11 See www.wto.org/english/news_e/pres12_e/pr659_e.htm.
- 12 See <http://i-tip.wto.org/Default.aspx>.
- 13 See www.wto.org/english/res_e/statis_e/miwi_e/miwi_e.htm.
- 14 See www.oecd.org/industry/ind/measuringtradeinvalue-addedanoecd-wtojointinitiative.htm.

- 15 The original beneficiaries of the programme were: Facultad Latinoamericana de Ciencias Sociales (Argentina); University of the West Indies (Barbados); Universidad de Chile; Universitas Gadjah Mada (Indonesia); University of Jordan; University of Nairobi; University of Mauritius; Instituto Tecnológico Autónomo de México; Mohammed V University-Souissi (Morocco); University of Namibia; Shanghai Institute of Foreign Trade; St Petersburg State University; University Cheikh Anta Diop (Senegal); and Vietnam National University. In 2011, the National University of Singapore joined the programme.
- 16 See <http://quoteocean.com/expert-quotes>.

