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Addressing Past Flaws and Looking to the Future: How Can the WTO Be Made More Relevant?

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The World Trade Organisation (WTO) is celebrating the 20th anniversary of its creation. As the successor of the General Agreement on Tariffs and Trade (GATT), it has inherited a wide scope of trade issues to address. An ambitious agenda along with a lack of consensus, mainly between the developed and developing states, are the main reasons for a stalemate in negotiations within the flagship initiative, The Doha Round. The ineffectiveness of the talks has pushed numerous countries to seek regional cooperation, which further hampers multilateral negotiations. In this situation, it is high time to rethink the future shape of the WTO and its role in the world economy.

After 20 years in existence, the World Trade Organisation is still perceived as one of the most important global economic governance institutions, along with the International Monetary Fund and World Bank. Nevertheless, it is criticised for a lack of effectiveness. One can claim that the stalemate in negotiations on the Doha Development Agenda (DDA) proved that the WTO is not the right place to decide on further trade liberalisation in the context of the rising complexity of the world's economy in the 21st century. In the two decades of the WTO's existence, international trade has changed significantly due to the globalisation processes (including enhanced global value chains), rising importance of various trade-related aspects (such as intellectual property rights, or IPR) as well as the emergence of new trade powers (namely China, India and Brazil). All of these have created challenging conditions for conducting an ambitious trade liberalisation agenda.

However, in December 2013 during the Ninth Ministerial Conference of the WTO in Bali, Indonesia, this long-lasting impasse was overcome with the Agreement on Trade Facilitation (ATF), or the so-called Bali Package. It is the first multilateral agreement in WTO history. According to WTO estimates, the decisions taken in Bali could generate between $400 billion and $1 trillion in the world economy, mainly by reducing the costs of trade by cutting red tape and easing customs procedures.[1] As WTO Director-General Roberto Azevêdo claims, the deal has given new hope for reviving the WTO and boosting negotiations within the framework of the Doha Round. Although final agreement within the Doha Round is little bit more realistic than it was even two years ago, there are still numerous, serious obstacles to overcome. Some of them can be connected with the wide scope of issues undertaken by the WTO.

[1] These measures are supported by development and agricultural concessions for developing states, including food security and a commitment by developed states to reduce export subsidies for agriculture. It also includes a pledge of assistance for developing and least developed countries in implementing the agreement, i.e., to improve their infrastructure and train customs officials.

GATT and Much More

The WTO is a direct successor of the General Agreement on Tariffs and Trade (GATT), which was agreed as a temporarily settlement in October 1947 and officially launched in January 1948. Nearly half a century of GATT existence brought significant progress in liberalising world trade[2] and impressive growth in world exports of goods—in 1948, they amounted to only $0.1 trillion, but by 1995 they had risen to $5.2 trillion.[3] However, given the broadening scope of trade issues as well as changed political and economic circumstances after the end of the Cold War, GATT was not enough to regulate the world trade system. Therefore, as a result of the GATT Uruguay Round (1986–1994), member states decided to create the WTO, the aim of which was not only to continue the trade liberalisation process but also to systematise and monitor all the existing arrangements concerning world trade.

The WTO was officially launched on 1 January 1995. To a large extent, the WTO is based on the GATT legacy and embraces its main rules, such as Most Favoured Nation (MFN) and National Treatment statuses. However, there are several major changes in comparison to GATT. First, the range of issues embraced by WTO is much wider. GATT focused on trade in goods while the WTO agenda covers manifold other areas, such as trade in services (based on the General Agreement on Trade in Services, or GATS), investment in and protection of intellectual property rights (based on the Agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPS).[4] Second, GATT was an international settlement instrument without legal personality, while the WTO is a typical international organisation with a legal personality as well as governing (Ministerial Conference, General Council) and permanent bodies (Secretariat and Director General). Third, in contrast to GATT, which put in the limelight reductions of customs duties, the WTO tries to also address various non-tariff barriers (NTBs) in trade, such as internal regulation and other red tape, customs procedures, export subsidies and antidumping measures. Finally, the dispute settlement system (DSS) under WTO has been improved and become more effective.[5] This has been achieved mainly by eliminating the possibility for a single party to block the procedure (so-called "reverse consensus"). The WTO also provides formal surveillance of the implementation of countermeasures. Hence, many disputes are solved already at the consultative stage. Therefore, DSS contributes to the elimination of protectionist measures, which can allow a country to be sued, and thus brings stabilisation in world trade exchange. Additionally, the WTO ensures the transparency of member states' trade policies, mainly through the Trade Policy Review Mechanism.

Negotiations within the WTO framework are not easy because of the various interests, often contradictory, of the states, which have to be taken into account. Nevertheless, there is the possibility to make arrangements in particular sectors among willing states. Several of these so-called pluri-lateral agreements within the framework of the WTO have been concluded. They facilitate trade in such areas as information technology products (agreed in 1996), financial services (1997), telecommunications (1998) or enhanced access to government procurements (2011).[6] Even if they include numerous countries with significant shares of particular sectors,[7] not all WTO members are parties to the agreements. Therefore, the biggest challenge is to reach a complex, global agreement among all of the WTO's members. This emerged along with the launch of the new round of multilateral trade liberalisation negotiations during the Fourth Ministerial Conference in Doha, Qatar, in November 2001.

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[2] Overall, there were eight rounds of trade liberalisation negotiations within the framework of GATT. During the Uruguay Round (1986–1994), the average cuts in customs duties amounted to 38%. For more details on the creation and history of GATT, see: C. VanGrasstek, *The History and Future of the World Trade Organization*, WTO, 2013, www.wto.org.

[3] K. Śledziewska, "Regionalizm handlowy w XXI wieku. Przesłanki teoretyczne i analiza empiryczna," Wydawnictwa Uniwersytetu Warszawskiego, Warszawa, 2012, p. 35.

[4] GATS and TRIPS were both agreed during the GATT Uruguay Round.

[5] DSS is used in case of a violation of WTO rules, such as MFN or National Treatment, by one of its members, which implies economic loses for the other member state.

[6] The agreement has revised the Government Procurement Agreement (GPA) from 1994.

[7] For instance, Agreement on Trade in Information Technology Products (ITA) includes 80 countries representing about 97% of world trade in this area. See: www.wto.org.

Doha, We Have a Problem…

The Doha Round was perceived as the WTO's most important project to date, which gave hope to reforms of the international trading system by reducing trade barriers and implementing revised trade rules. As one of its main goals is to address challenges concerning developing countries, the Doha Round is also semi-officially called the Doha Development Agenda (DDA). The opening of the negotiations was already described as a success since members agreed to the ambitious agenda embraced in the Doha Ministerial Declaration. Moreover, the decision to initiate the new round of trade negotiations was underpinned by growing uncertainty in the global economy, given the attacks on the World Trade Center in New York two months earlier and looming world economic stagnation.

The DDA was meant to be a complex agreement embracing almost all important aspects of world trade. Therefore, the agenda covers about 20 areas, among which three are crucial: trade in agricultural products, non-agricultural market access (NAMA) and trade in services. The others include investment, competition, trade and environment, IPR protection and trade facilitation. As it has turned out, the wide scope of these often controversial issues was one of the factors that has hampered the negotiations. Moreover, the negotiations process is conducted according to the "single undertaking" principle, which means that participants have to reach agreement in all areas to close the round. Originally, that rule was intended to encourage countries to make concessions in one field in exchange for larger benefits in others. In fact, given the consensus rule within WTO, it has become a serious obstacle to the negotiations as they can be easily blocked.

The protracted negotiations have resulted in several missed deadlines for DDA completion. Initially, it was planned to be completed by the end of 2005. However, from the very beginning the pace of talks was sluggish. The Ministerial Conference in Cancun in 2003 failed to boost the negotiations due to divisions between developed and developing countries on agriculture, mainly on the elimination of export subsidies and trade in cotton.[8] The next ministerial meeting in Hong Kong in 2005 brought decisions on trade concessions for the least developed countries (LDCs) and launch of the Aid for Trade Initiative.[9] Yet, progress on the most contentious issues, especially agriculture, was negligible. In 2008, during the General Council in Geneva, the so-called July Package was discussed, embracing such things as cuts in tariffs in some key industrial sectors and trade in services. However, the lack of compromise between the U.S., China and India over a safeguard mechanism for farmers led to a breakdown in the talks.[10] It was a serious hit for the DDA. Moreover, soon after the Ministerial Conference in Geneva, the global financial crisis broke out, during which the wider usage of protectionist measures found fertile ground worldwide. Despite declarations by world political leaders, such as those made at the G-20, on reinvigorating the Doha Round, no serious achievements were seen until the end of 2013 and conclusion of the Bali Package.[11]

Currently, the main hurdle for progress within DDA is the divergent approach of the developed and developing countries to multilateral trade negotiations. On the one hand, developed countries insist on greater access for their industrial goods and services and thus reduced trade barriers in these sectors. Moreover, they insist on greater access to the general procurements market and effective IPR protection. Concurrently, they would like there to remain some instruments of market protection, especially concerning politically sensitive areas, such as agricultural products. On the other hand, developing countries advocate for a reduction of trade-distorting instruments, particularly related to the agricultural sector in industrialised countries (e.g., direct payments, export subsidies), enhanced trade concessions (including

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[8] Moreover, developing countries insisted on excluding the so-called "Singapore issues" from the negotiations. These issues, identified during the WTO First Ministerial Conference in Singapore in 1996, encompass government procurements, trade and investment, trade and competition, as well as trade facilitation. After the meeting in Cancun, only trade facilitation remained in the DDA.

[9] Its aim is to increase LDCs' ability to participate in international trade, e.g., by removing obstacles regarding underdeveloped infrastructure.

[10] For more, see: A. Gradziuk, "Ocena i perspektywy Doha Development Agenda po spotkaniu ministerialnym WTO w Genewie," *Biuletyn PISM*, no. 35 (503), 4 August 2008, www.pism.pl/files/?id_plik=667.

[11] For more, see: A. Gradziuk, "Conclusion of Doha Round in 2010: Another Deadline Missed?," *PISM Bulletin*, no. 50 (126), 30 March 2010, www.pism.pl/files/?id_plik=2720.

exemptions, longer transition periods) and to protect the internal market, particularly infant industries, from foreign competition.[12]

However, the pattern of international trade has been changing in recent years. It is now characterised by the growing significance of emerging markets, such as China, India and Brazil.[13] These states are still recognised as "developing countries" although they have much more impact on global trade than the least developed countries (LDCs), which are gathered in the same group. However, emerging economies point out that many other indicators, such as the low level of GDP *per capita*, should enable these countries to benefit from concessions granted to the developing states. Nevertheless, emerging economies also use protectionist measures on as large a scale as developed countries do, for example, in 2013 China subsidised local agricultural production to around $260 billion.[14] What is more, the emerging markets are not homogenous. For instance, China significantly reduced customs duties when it entered the WTO in 2001, while India and Brazil still want to maintain a high level of protection of their domestic markets.

Given these circumstances, it is not clear how to treat emerging economies in terms of granting wider market access and trade concessions, such as lower cuts in duties or longer transition periods. It may happen that most of the market-opening moves will be made by developed states while in emerging markets, tariffs on such things as industrial goods will remain high. Therefore, the developed countries, especially the United States, insist on creating a level playing field by asking emerging markets to take on other obligations. This would be achieved by adjustments in "modalities," a kind of blueprint for a final deal that encompasses formulas for cutting tariffs and trade-distorting subsidies to an emerging economy's rising share of global trade. However, some sort of flexibility for emerging economies regarding sensitive areas should be preserved, such as for India, which insists on provisions ensuring the country's food security.

Shift to Regional Cooperation

The stalemate in the multilateral negotiations within DDA is the main reason why more and more countries have decided to shift their attention to regional trade agreements (RTAs). Since the creation of the WTO, more than 400 RTAs (mostly bilateral) have been agreed, more than three times the number in the GATT era.[15] They result in different trade regimes, not only regarding duties but also non-tariff barriers in trade and regulatory measures. That makes harmonisation of the level of customs duties as well as rules and standards on the global stage harder. Moreover, a vast network of preferential trade regimes could discourage WTO members from putting efforts into more complex multilateral talks. Thus, the rising number of RTAs poses a serious challenge to the WTO's role as the centre of trade liberalisation initiatives.

Furthermore, none of the existing RTAs has enough capabilities or share of world trade to become a template for a multilateral arrangement. Recently, though, there have been two ambitious projects launched that could have a significant impact on the shape of the world trade system. One of them, the Transatlantic Trade and Investment Partnership (TTIP), would cover economic relations between the U.S. and European Union, while the other, the Trans-Pacific Partnership (TPP), would affect trade between 12 countries in the Pacific region (including the United States and Japan, but not China). Given the potential members of both agreements' high share of global trade,[16] the rules applied within these RTAs could resonate in other agreements as well as multilateral trade negotiations. Yet, if the agreements are concluded, they will

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[12] In this context, developing countries argue that in the past, European countries and the United States used high customs duties to protect the development of their own industries.

[13] As UNCTAD data show, in the period 2000–2013, China's share (without Hong Kong and Macau) of world merchandise exports rose from 3.8% to 11.7%, India's share from 0.6% to 1.6%, and Brazil's share from 0.8% to 1.3%. Taking into account its share of global merchandise imports, China's share rose from 3.4% to 10.4%, India's from 0.8% to 2.5%, and Brazil's from 0.9% to 1.3%. See: *UNCTAD Handbook of Statistics*, United Nations, 2014, www.unctad.org.

[14] D. Patton, "UPDATE 2—China to spend 10 pct more on farm subsidies in 2014—minister," *Reuters*, 6 March 2014, www.reuters.com.

[15] In the period 1948–1994, there were only 124 notifications of RTAs. See: www.wto.org.

[16] The EU and U.S., which would form the TTIP, account for around 30% of global trade, while countries engaged currently in the TPP negotiations account for about 25%. See: www.trade.ec.europa.eu, www.dfat.gov.au.

probably create highly different trade regimes due to the divergent level of development and interests of their participants.[17] The U.S. role is crucial, as it is a participant in both deals. Therefore, the U.S. can be the driving force to create as similar regulations between the world's two largest trading areas as possible. That could also contribute to the arrangement of global rules and standards. The third pole in the emerging global trading system could be created by China. Its influence may be based on its existing free trade area with ASEAN or the discussed Regional Comprehensive Economic Partnership (RCEP), which could be a counterweight to TPP. Countries from the region may be encouraged to join RCEP if there is easier access to the huge Chinese market and likelihood of eased trade regulations than under TPP. Nevertheless, the Chinese initiative is still at the initial stage, and thus TPP is closer to marking the track for RTAs that may follow.[18] Russia also has an ambition to play an important role in world trade. The emanation of this goal has been the creation of the Eurasian Economic Community, which includes Belarus, Kazakhstan and Armenia and which was launched at the beginning of 2015. However, given Russia's dependency on oil and gas export, current economic challenges, in part because of the falling rouble and low prices of oil, as well as its costly engagement in the conflict in Ukraine, it is less probable that Russia can play a significant role in the world trade system in the near future.

Adjustment to Tough Realities

The WTO is currently the major worldwide platform for discussions on trade issues and resolving disputes, which brings stability and certainty to trade. The authority and importance of WTO is confirmed by its growing number of members[19] and that it has opened doors in the last 20 years to such countries as China and Russia. Moreover, since the creation of the WTO the value of exports of goods alone has increased more than three and half times, to $18.6 trillion in 2013.[20] However, the stalemate within the Doha Round has seriously undermined the WTO's prestige. As the history of the DDA negotiations shows, that initial agenda was too complex and ambitious given the divergent interests of the states or their groups. Pursuit of a comprehensive agreement on the world scale is understandable as it could bring more economic gains than separate regional agreements. However, progressive globalisation and the changing realities of the world economy have created much different circumstances in comparison to the beginning of the Doha Round. Thus, the guidelines for the negotiations should be adjusted further to the changing economic environment and rising power of the emerging economies. In the current situation, agreement on less ambitious conditions could be termed a success for the DDA.

What can push negotiations further is to identify less controversial issues from different areas of negotiation and create from them a negotiations package modelled on the Bali Agreement. High expectations regarding some topics should be revised and made more realistic, leaving the most sensitive issues aside. However, the package should contain even moderate concessions (such as shorter transition periods) from both developed states and emerging markets concerning core issues of the DDA, which are the agricultural market (e.g., the level of export subsidies), NAMA, and services. Conclusion of the Doha Round would also require significant concessions for LDCs, mainly financial and technical support, trade exemptions and longer transition periods for decisions to be implemented. It would be in accordance with the "development" dimension of the DDA. Moreover, technical matters such as harmonisation of bound and applied tariff rates could contribute to trade stability. Nevertheless, there is a need for strong political will to move the negotiations forward. Along with overcoming the effects of the global financial crisis, during which the number of protectionist measures increased,[21] the approach to multilateral liberalisation talks could be more constructive. Another chance to revive DDA will occur in Nairobi where the 10th

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[17] Among the TPP's potential member states, one can find such developing countries as Vietnam, which can affect the level of market access within TPP.

[18] J. Szczudlik-Tatar, "From a Follower to a Rule-Shaper: Augmenting China's FTA Policy," *PISM Bulletin*, no. 14 (746), 3 February 2015, www.pism.pl/publications/bulletin/no-14-746.

[19] Soon, Seychelles is going to become the 161st member of the WTO.

[20] See: www.unctadstat.unctad.org.

[21] According to WTO data, from the onset of the crisis in 2008 to November 2014, there were more than 1,200 restrictive measures among the G-20 members, who account for the lion's share of world trade. Only 282 have been removed.

Ministerial Conference will take place in December this year. Even consensus on the agenda for further meetings could be called a success.

Nevertheless, it seems that the WTO will maintain its significant role in the world's future economic system. However, its mission should be adjusted to the new realities. In the long term, the WTO should depart from complex negotiations towards discussion and implementation of measures that better facilitate trade in specific sectors. Therefore, the future WTO agenda should embrace a limited group of topics important to the evolving character of trade in the 21st century, such as e-commerce and global value chains. Moreover, WTO is needed as a forum for resolving disputes, as its decisions are respected by the bulk of countries.

Poland, as a member of the European Union and its common trade policy, is represented in the negotiations by the European Commission. It is worth remembering that possible liberalisation of trade within DDA could enable better market access for Polish goods to foreign markets but it can also diminish import protection and thus increase competition on the EU market. Therefore, in such areas as agriculture, the Poland’s stance is rather defensive, and it is reluctant to embrace the far-reaching reform of the EU Common Agricultural Policy. However, the conclusion of the Doha Round with even a limited opening of emerging markets could create opportunities for Polish businesses looking to diversify their export directions.