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Revitalizing the Global Trading System: Member States, the WTO, and the World Economy

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Since 2008, member states of the World Trade Organization (WTO) have failed to make meaningful progress toward concluding the Doha Development Round (DDR).¹ In the meantime, with the U.S. blocking the appointment of new Appellate Body (AB) members, the AB has ceased to function as of December 2019.² The WTO is suffering from a dual crisis—a deadlocked legislative body and a dysfunctional judicial body. Although the challenges facing the WTO have received considerable attention, individual analyses tend to be narrow in scope and scrutinize either the deadlocked DDR or the dysfunctional AB, but not both. This article develops

an integrated and systematic approach for understanding the challenges facing the WTO.

The survival of cooperation at the international level depends on three factors—the states that participate in the international regime, the regime itself, and the international system in which the regime operates. Leveraging these three layers of analysis—states, regime, and system—I argue that the WTO’s dual crisis can be attributed to institutional features that disincentivize co-operative efforts by member states, the WTO’s ineffectiveness as a facilitator of cooperation, and its inability to correct systemic imbalances. In the following sections, I discuss each layer in turn and illustrate how specific institutional

features drive the WTO's dual crisis. Subsequently, I leverage my findings and propose a three-part institutional reform package.

State Incentives

The effective functioning of the WTO predicated on member states' willingness to engage in constructive dialogue. However, the WTO's institutional design creates and sustains systematic biases against less wealthy and less powerful member states. This decreases developing countries' expected benefits from WTO agreements, disincentivizes them from engaging in and concluding multilateral trade negotiations, and leads to negotiation deadlocks. Concretely, developing countries are excluded from "Green Room" meetings, where powerful players find a common position before pressuring selected developing countries to break ranks with their peers.³ Moreover, the agenda-setting power of the Chair of the General Council is unspecified in WTO agreements and lacks checks and balances, leaving room for power-based improvisation.⁴ Similarly, no institutionalized rules govern the selection of negotiation "facilitators" who exercised considerable influence over negotiations.⁵ The Green Room and the lack of rules governing negotiations allow developed countries to exert disproportionate influence, to the detriment of developing countries. For a case in point, during the Ministerial Conference in Cancún, facilitators were reported to have replaced multilateral meetings with bilateral consultations, which prevented developing countries from operating in coalitions and reduced their bargaining power vis-à-vis the more powerful players.⁶ This rendered developing countries unable to meaningfully influence negotiated outcomes, thus reducing their expected gains and leading to the breakdown of negotiations.

Developing countries face similar disadvantages in the WTO's judicial bodies. While developing countries

make up more than two-thirds of the WTO membership, over 60% of all complaints were filed by developed countries.⁷ For one thing, high costs and complex legal procedures often inhibited developing countries from taking full advantage of the dispute settlement system.⁸ For another, since the enforcement of WTO rulings involves countermeasures by the winning complainant, and developing countries are less able to impose costly sanctions, they have less incentive to use the WTO's dispute settlement system.⁹ Arguably, the procedural reforms introduced by the Dispute Settlement Understanding (DSU), such as stricter timelines and the automatic adoption of panel reports, would benefit less powerful countries;¹⁰ however, the increased complexity of legal procedures may offset these benefits for developing countries without enough administrative and bureaucratic capacity to utilize the more complex legal procedures.¹¹ As a result, benefits associated with the DSU have accrued disproportionately to developed countries.¹² Facing a dispute settlement system where powerful players prevail, developing countries expect lower gains from WTO agreements and are disincentivized from engaging meaningfully in multilateral trade negotiations. This dynamic leads to the persistence of the DDR deadlock.

Developing countries are not alone in facing an adverse incentive structure; the U.S. complaint about the AB is a case in point. The Obama and Trump administrations blocked the reappointment of Jennifer Hillman, Seung Wha Chung, Shri Baboo Chekitan Servasing in 2011, 2016, and 2018, respectively,¹³ claiming that the AB had overstepped the institutional role assigned to it in the Uruguay Round and had committed judicial activism through expansive interpretations of WTO provisions.¹⁴ To be sure, "judge-made law" is inevitable given the ambiguities in WTO provisions, and such ambiguities themselves can be diplomatic necessities. However, judicial activism becomes problematic in the WTO for

two reasons. First, there are no effective institutional checks on the WTO's dispute settlement bodies. Although member states can amend and interpret WTO rules, should they decide the judicial bodies have gone too far, such processes are extremely cumbersome.¹⁵ For example, interpretations are adopted only with the support of three-quarters of the WTO membership.¹⁶ To date, no attempt at reinterpreting WTO provisions has been successful. Second, WTO panels tend to base their decisions on the past panel and AB reports, despite *stare decisis* not being a source of international law listed under the Statute of the International Court of Justice.¹⁷ This further expands the legal effect of judicial activism and heightens concerns regarding sovereignty. Democratic accountability and sovereignty concerns associated with judicial activism disincentivize member states from concluding legally binding agreements through the WTO and restoring the AB, thereby reinforcing the DDR deadlock and the AB crisis.

Regime Effectiveness

Apart from member states' willingness to engage in cooperation, sustaining cooperation requires an international regime that functions as an effective facilitator. In this respect, the WTO suffers from two primary setbacks. First, it is not an effective provider of information. International regimes facilitate cooperation through, *inter alia*, reducing information costs and alleviating information asymmetries.¹⁸ As a member-driven organization, the WTO assigns a minor role to its information-provision body—the Secretariat. While the WTO has 625 regular staff,¹⁹ the International Monetary Fund (IMF) has roughly 2,700,²⁰ and the World Bank has 15,907.²¹ The relatively small size of the WTO Secretariat undermines its capacity to provide information and assistance during multilateral negotiations, which is necessary for productive discussion, as many delegations find the number of meetings

unmanageable.²² In addition, it prevents the WTO Secretariat from providing sufficient analytical support, which facilitates informed policy deliberation.²³ Due to the dearth of information regarding negotiations and policies, member states often struggle to identify mutually acceptable arrangements and conclude multilateral negotiations. Second, the WTO lacks a strong meta-regime, defined as the principles and norms underpinning the regime,²⁴ as major players disagree on the principles and norms according to which trade liberalization ought to take place. This misalignment of values hampers the WTO's ability to generate solutions attractive to all member states and resolve distributive tensions.²⁵ Concretely, developing member states assign greater importance to the norm of economic development than their developed counterparts.²⁶ This ideological division is evident in the DDR agenda: While developing countries advocated prioritizing “development issues”—implementation of Uruguay Round agreements and special and differentiated treatment—they were accorded low priority by the agenda setters, who heavily reflected the interest of developed countries.²⁷ This undermined the WTO's ability to resolve development-related issues, which are at the heart of the DDR deadlock.²⁸

Systemic Factors

Even assuming state incentives and regime effectiveness are fully rectified, the success of the WTO depends on characteristics of the international economic system, which dictate the nature of the issues the WTO is confronted with. From this systemic perspective, the failures of the WTO can be attributed to its inability to address the structural imbalances in the international economic system. One of the key justifications behind former President Donald Trump's move away from complying with WTO rules toward a trade war with China was the U.S. trade deficit vis-à-vis China, which stood at \$419 billion in

2018.²⁹ However, fixing the current account deficit is no simple task, as it is partially driven by the capital account surplus,³⁰ and the effects of trade policy are likely overshadowed by the fundamental determinants of saving and investment.³¹ Behaviors of international actors matter, too. For example, the buildup of foreign-exchange reserves by East Asian countries since the 1990s fueled a global saving glut, and the attractiveness of the U.S. as an investment destination, as well as the reserve-currency status of the U.S. dollar, meant capital flowed disproportionately into dollar-denominated assets.³² This capital inflow then shaped household saving and investment behavior, leading to a current account deficit in the U.S.³³ As the trade deficit is partially rooted in patterns of saving and investment, not trade policy, it is unsurprising that diplomatic exchanges in the WTO, which mostly focus on trade policy, have struggled to prevent the trade war. In a nutshell, systemic factors altered the nature of the issues confronted by the WTO. With an institutional design from an earlier era, the WTO is no longer an effective forum for addressing contemporary challenges in the world economy. This encourages member states to substitute toward alternative solutions, such as a tit-for-tat tariff war.

Policy Implications

The preceding analysis suggests that institutional reforms to the WTO ought to incentivize cooperation by its member states, improve its capacity to facilitate cooperation, and empower it to address systemic drivers of trade conflicts. This can be achieved through a three-part reform package, covering the WTO's Secretariat and its legislative and judicial processes.

First, the WTO should expand the budget and the mandate of its Secretariat.³⁴ In particular, the Secretariat ought to play a greater role in conducting trade policy analysis, assisting national delegations

during multilateral negotiations, and facilitating informed policy deliberations. In the meantime, the Secretariat should actively engage governments, non-governmental organizations, and multinational corporations in regular discussions on the overarching principles and norms of the global trading system. This would strengthen the WTO's meta-regime. In addition, the Secretariat has a role to play in leveling the playing field. For example, it could extend extra analytical and logistical support to delegations from developing countries, whose lack of expertise often compounded the institutional flaws that disadvantage developing countries during multilateral negotiations.³⁵ Similarly, it could provide legal advice and technical support for developing countries, should they decide to file disputes. Finally, the Secretariat should extend its research efforts toward systemic factors, such as patterns of saving and investment, potentially via partnerships with the IMF, whose research focuses more heavily on the international monetary system.

Second, the WTO should ensure the clarity and equity of rules governing multilateral negotiations. For one thing, clarity is urgently needed in the agenda-setting procedure and the selection of negotiation facilitators, since a lack of institutionalized rules leaves room for power politics. For example, the agendas of multilateral negotiations could be set by a permanent body consisting of an equal number of representatives from developed and developing countries. Similarly, negotiation facilitators should be elected from a permanent board of trade experts, whose appointment requires approval by both developed and developing countries. For another, more equity is needed in the structure of multilateral negotiations. Power imbalances of the Green Room can be mitigated by, for example, mandating that initial drafts of multilateral agreements be written by a group in which developed and developing countries enjoy equal representation.

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Third, the WTO should reform the operation and oversight of its judicial bodies, with the goal of leveling the playing field and addressing accountability and sovereignty concerns. For instance, the WTO could extend financial assistance to least developed countries, for which filing a dispute can be prohibitively costly. In fact, one-time financial assistance may be sufficient, as prior experience in fighting disputes has been shown to increase the likelihood for a developing country to initiate disputes.³⁶ In addition, the WTO needs a mechanism to periodically evaluate, or even overturn, panel and AB rulings.³⁷ These reforms would bolster member states’ confidence in the WTO and incentivize cooperation by both developed and developing countries.

Conclusion

To sum up, this article argues that the WTO’s dual crisis—legislative and judicial—can be attributed to how it shapes state incentives, its ineffectiveness as a facilitator of cooperation, and its inability to address systemic drivers of trade conflicts. These challenges can be addressed by reforming the WTO’s Secretariat, as well as its legislative and judicial processes. Notice that the bulk of the policies recommended here are motivated by the state-incentive and regime-effectiveness layers of analysis and aimed at reducing tensions between developed and developing countries, whereas considerably less attention is paid to addressing the systemic factors underpinning the U.S.-China trade conflict. Since more powerful players, such as the U.S. and China, have greater

incentives to deviate from WTO rules, resolving their tensions is arguably more difficult. Therefore, this article simply recommends that the WTO Secretariat dedicate more re-search efforts to systemic factors, a move that would create the condition for the eventual resolution of the U.S.-China trade conflict. Given political constraints, the WTO likely has the most feasible path forward by pursuing a multi-phased reform strategy—adopting an initial emphasis on North-South tensions and laying the foundation for the later resolution of West-East tensions.

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