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A clear agenda to save the WTO

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The fate of the World Trade Organization (WTO) hangs in the balance after four years of assault by the Trump administration. But things are not as dismal as they appear. Turning the corner in 2021, the WTO has an opportunity to usher in a new era of trade cooperation.

To ensure the WTO remains fit for purpose, members should pursue changes in three areas: dispute settlement, negotiations and the WTO's monitoring function.

Rules are only as good as they are enforceable. WTO rules have taken a hit with the continued blocking of appointments to its Appellate Body by the United States. Since the Appellate Body became defunct in late 2019, appeals to panel decisions have remained unresolved. As of March 2021, a total of 18 disputes have fallen into this crevasse.

While US President Joe Biden has not yet acted on lifting the impasse at the Appellate Body, there is hope that a solution can be found. The core of any compromise, however, requires a rethink of the Appellate Body.

Simon Lester has suggested that a possible compromise could involve limiting the scope of appellate review, increasing deference on 'trade remedies' and giving members more power to object to reasoning they disagree with in reports. Jennifer Hillman has put forward a number of strong suggestions such as an oversight committee, an amended set of the Walker Principles, and limiting the length of service of the Appellate Body Secretariat's staff.

This idea should be taken further by limiting service to the Secretariat to five years, after which individuals must leave the WTO entirely. While this may sound like a radical proposition, it solves the problem of Secretariat staff being shuffled to the Legal Affairs or Rules Divisions where they then assist panellists with the drafting of panel reports, and also would breathe new life into the organisation every few years with a new cadre of young lawyers.

The next crucial area for reform is in the WTO's negotiating function. The WTO has not concluded any major negotiating 'rounds' since its founding, though it has completed other important negotiations such as the Trade Facilitation Agreement (TFA). These stalled negotiations stem, in part, from disagreements over the level of commitment that developing countries should undertake.

Recent negotiations to eliminate subsidies that contribute to illegal, unreported and unregulated fishing, as well as subsidies that lead to overcapacity and overfishing, are a case in point. China leads the top five providers of subsidies, followed by the European Union, the United States, South Korea and Japan. Together they make up 58 per cent of all global fisheries subsidies. And

while nine out of fifteen of the largest marine capture fish producers are developing members, many continue to request special and differential treatment (SDT).

The fisheries talks are important because the subject best illustrates modern challenges to trade. This is not just about subsidies, but environmental sustainability and development as well. How we navigate the intersection of these issues will test the WTO's ability to adapt to new circumstances.

Finally, one of the greatest achievements of the WTO is one of its least talked about functions — to monitor whether members uphold their obligations. This monitoring largely takes the form of peer-to-peer exchanges, but also includes thematic discussions on certain issues to avoid the emergence of trade barriers in the first place. A standout in this regard is the Technical Barriers to Trade (TBT) committee, where members can raise 'specific trade concerns' (STCs) against another member's measure if it is thought to be in violation of the TBT agreement.

The committee provides a forum for discussion of regulatory outliers and gives members the opportunity to express why certain actions may have a negative impact on trade. Even during the pandemic, the TBT committee continued to function and had a record number of STCs submitted through a newly established written procedure. Its success should be studied and, if possible, replicated in other committee work throughout the organisation.

One persistent issue that has plagued the monitoring function is the submission of notifications. Members are obliged to notify measures that could potentially impact trade and these notifications serve as the basis for many of the discussions in committees. While this has received acute focus during the COVID-19 pandemic, as members called for greater transparency in trade actions, the notification problem touches a number of other areas.

For instance, notifications on subsidies are a key issue for the largest members, especially given the growing concern over industrial subsidies. Frustration with the lack of notifications has led some members to file 'counter-notifications' where they notify on another member's behalf. But counter-notifications are a time and capacity intensive process, leaving less developed members at a disadvantage. The only solution is to improve the notification process across the board.

The WTO is a vital part of the international trading system. The problems it is currently facing may seem insurmountable, but that would be the case even if we were to try to create a new organisation from scratch. The options are clear — a return to beggar-thy-neighbour policies and a growing spaghetti bowl of rules, or a multilateral approach that makes the benefits of trade accessible to all. The choice is up to the WTO's members.

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