

# The WTO Looking Towards the Future

By David Shark



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The rise of mega-FTA negotiations and, at least until recently, the difficulties the WTO has experienced in concluding the Doha Round of multilateral trade negotiations have led some observers to question what the future holds for the WTO. It is a challenge to answer that question given that the WTO is very much a member-led organization and its future is still to be written. As the physicist Neils Bohr famously said, “Prediction is very difficult, especially if it’s about the future.” That being said, the picture at present is quite a bit brighter than some would suggest; and Bali has provided a much needed lift. Nevertheless, we cannot afford to become complacent.

## A Three-Legged Stool

Any discussion of the WTO’s future must start from a clear understanding of the present. While the WTO’s negotiating function rightly receives a great deal of attention, it is important to understand that the WTO is much more than that. The WTO is like a three-legged stool. The negotiating function is one leg. The other two are managing and monitoring the implementation of the large body of international agreements that make up the WTO rule book and the settlement of disputes relating to those agreements. The implementation and dispute settlement legs of the WTO have proven to be both strong and effective.

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The Centre William Rappard from the air

The rules-based multilateral trading system embodied in the WTO has provided a platform for growth and development that is open to all its members, that operates by consensus among them, and that is founded on non-discrimination. It has been a foundation for the phenomenal growth in trade and development that has taken place over the past 60-plus years. The WTO has a plethora of councils and committees where members meet regularly to review implementation of each of the WTO agreements and discuss matters of concern. These bodies review national implementing legislation, review specific actions by members of relevance to the agreements, provide a forum for raising specific concerns and offer an opportunity to identify and consider how best to address emerging issues.

This implementation and monitoring function played a particularly important role in the aftermath of the financial crisis. At the urging of G20 leaders, the WTO Secretariat has prepared over 20 periodic reports on the actions taken by members in response to the crisis and members have met regularly to review the situation. Through this process of transparency and peer pressure, the WTO has been able to help members resist pressure for protectionist actions that could have led to a downward spiral that would have greatly amplified the effects of the financial crisis on the global economy.

WTO members are also rightly proud of the WTO’s dispute settlement system, which is undoubtedly one of the most fully developed systems in the world of multilateral institutions. Through this system members, whether large or small, can seek a resolution if they believe their rights under the WTO agreements are not being honoured. Members have demonstrated their confidence in the WTO’s dispute settlement procedures by their active use of them. Since the inception of the WTO, 474 cases have been taken to dispute settlement with 20 of those cases initiated in 2013 alone. And the number of WTO disputes actually understates the impact of the WTO system, since having an effective system of dispute settlement is a strong deterrent to the kind of behavior that gives rise to disputes in the first place.

The resolution of commercial disputes in a transparent, predictable and credible manner is a public good of great value in an increasingly uncertain and fractious world. Once a case is brought to the WTO, members know that the issue resides in a process which will deliver an outcome in a reasonable period of time which will be definitive. Global leaders need no longer spend precious time over trade disputes when the WTO system offers a legitimate method for peacefully addressing such disputes.

In focussing thus far on the implementation and dispute settlement functions of the WTO my intention is not to downplay the importance of its negotiating function but rather to round out the picture. In point of fact, the metaphor of the three-legged stool is meant to convey that all three legs must be strong for the future of the WTO to rest securely. As former WTO Appellate Body member David Unterhalter noted in his farewell remarks in stepping down from the Appellate Body, “Adjudication is robust when it lives in a dynamic relationship with legislative competence. If too much rests upon dispute settlement, the system gets out of kilter, and the atrophy of one part of the system ultimately takes hold of everything else.”

## The WTO & PTAs

Some have expressed concern that the WTO may be undermined by the growing number of preferential trading arrangements (PTAs) and particularly a few large PTAs that are under negotiation. There is no reason why this must be so. The multilateral trading system, first in the form of the General Agreement on Tariffs and Trade (GATT) and now in the form of the WTO, has coexisted and benefited from other trade initiatives since its very inception. This is reflected in the fact that there are specific rules under GATT/WTO providing scope for such agreements.

The fact that some of the PTAs currently under negotiation involve participants that account for a large share of global trade is not unique either. In the past we have witnessed the formation and expansion of very large preferential arrangements such as the European Union and the creation of the NAFTA with no detriment to the multilateral trading system. Indeed, the EU and the NAFTA partners are very active and constructive members of the WTO and played an important part in reaching the deal in Bali.

It is important to bear in mind that the WTO can do things that PTAs are ill-equipped to handle. Two important examples are the negotiation of disciplines on agricultural subsidies and on trade remedies, like the application of anti-dumping or countervailing duties. The WTO also holds the advantage of being able to negotiate uniform international rules of the road, so that traders do not have to navigate multiple differing and overlapping sets of rules. This is



*Delegates of the WTO member nations gather for a meeting of the Trade Negotiations Committee in the Council Room of the Centre William Rappard in Geneva.*

particularly important given the rise of global value chains.

Nor should we forget the systemic effects that will be felt if non-multilateral undertakings become the sole negotiating channel. We would then have a major problem both in terms of asymmetry of the agenda and the issues covered.

In such fora the voices of Least-Developed Countries are not always fully heard or, worse still, they simply do not have a seat at the negotiating table. Moreover, the agenda is inevitably limited and neglects issues that are critical for the global trade agenda such as agricultural subsidies.

In addition, many of the deals that are currently being discussed ignore the most important and dynamic frontier of international trade: the big emerging players. The emergence of these new players is one of the central facets of the evolution currently taking place in global trade and global governance mechanisms. The multilateral system is the only system that can truly and adequately respond to this evolution, and to the challenges that are appearing on several fronts.

At the same time, it is clear that WTO disciplines also need to evolve to reduce the gap that will exist between multilateral regulations and the new generation regulations negotiated outside Geneva. The two processes, multilateral and bilateral, must move forward together to reduce costs effectively and to curb protectionism. Otherwise, we could see results that are exactly the opposite of what we are seeking.

So we need to consider how the multilateral system can continue to deliver in the years ahead.

## Where Do We Go From Here?

After an 18-year dry spell, the results of the WTO's 9th Ministerial

Conference in Bali, Indonesia, demonstrated that WTO members are able to come together, make hard decisions and deliver meaningful negotiated results. These results, covering trade facilitation (TF), agriculture and development, are a very substantial achievement which will promote growth, development and jobs. The Petersen Institute says the TF deal will generate more than \$1 trillion in new trade flows, close to \$1 trillion in economic gains and 21 million new jobs, 18 million of which will be in the developing world. The OECD says the economic gains will be closer to \$400 billion. Either way, it is clear that an agreement which renders customs procedures more transparent, predictable and efficient can only be a good thing. Agreements in agriculture and on issues of importance to our poorest members will bring about greater transparency and will encourage sounder and more equitable trade policies in the future.

While WTO members can rightly take pride in what they achieved at Bali, there is much more that remains to be done. To begin with, we need to implement the agreements that were reached at Bali. This will include, for instance, a final legal scrub of the Trade Facilitation Agreement and ratification of that agreement by members, which will be necessary for it to enter into force. We also need to make the most of the opportunity that Bali created to revive negotiations on the Doha Development Agenda (DDA). The Bali Ministerial Declaration is very clear on this point — it directs WTO members to develop a clearly defined work program on the remaining DDA issues by the end of this year. How members respond to this opportunity will be the key to answering the question that we are discussing here regarding the nature of the WTO's future role. Therefore it is important to consider what the best approach to this task might be — and the success in Bali was very instructive.

We probably won't be able to repeat the Bali model where we

avoided the core issues of agriculture, industrial goods and services, and found results elsewhere. Most likely any future deal will require outcomes on agriculture and many WTO members have made clear that, if this is the case, then we must also deal with industrial goods and services. Nevertheless, the Bali experience has taught us some lessons that will help us as we plan the road ahead. Director-General Roberto Azevedo has outlined some of these lessons to a meeting of all WTO members and received a positive response. They will now form parameters for our conversations on the next steps in concluding the DDA. In no particular order — and accepting that this is not a comprehensive list — here are some of those parameters:

First, development has to be preserved as the central pillar of our efforts. Above all, we must have tangible results for the poorest members. This was vital in the success in Bali — and, of course, the DDA remains a development round.

Second is that we must be realistic and focus on those things which are doable. Instead of setting abstract goals, let's look at what we can do and set goals that are reachable. Members have to be honest with each other and with their domestic constituencies about what can realistically be expected from the negotiations. We must find a balance between ambition and realism.

The third parameter is that the big issues in the DDA are interconnected, and therefore must be tackled together. So, again, as it was in Bali, balance is key. We must find an approach in which all members contribute, all members benefit and no one is faced with impossible demands. Bali worked because all members wanted it. Everyone has to feel a sense of ownership in both the process and the outcome that emerges from that process.

Fourth, in order to make headway in these areas, we must be ready to be creative and keep an open mind to new ideas that may

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Roberto Azevedo, director-general of the WTO, presents the first global trade-monitoring report to members at the Centre William Rappard.

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WTO Director-General Roberto Azevedo (L) and then Indonesian Trade Minister Gita Wirjawan shake hands at the successful conclusion of the WTO's 9th Ministerial Conference in Bali.



allow members to overcome the most critical and fundamental stumbling blocks. This creativity, however, has to be coherent with the DDA mandate, which is flexible enough to accommodate new paths.

Fifth, the process must continue to be inclusive and transparent, engaging all members at all stages of the negotiations. This was a very important factor in Bali.

Sixth, our efforts must have a sense of urgency. This was also an essential element of the success in Bali. We must be careful, however, not to rush recklessly into another cycle of failures due to bad planning. We cannot afford to wait another 18 years for a result.

Finally, as well as being open-minded to new ideas, we should also be open-minded about how far-reaching our next steps will be.

Our task is to find a path towards the conclusion of the round — and the conversation has already started. The director-general has held meetings of all WTO members in February and March to discuss our approach, and now Negotiating Groups are meeting to discuss how we may be able to move forward on each specific issue — using the parameters set out above as a guide for discussions.

## Conclusion

Experience has shown us that addressing the remaining DDA issues will be challenging and it is not possible at this point to predict where this process will lead. Nevertheless, it is an inescapable fact the world is changing and the WTO needs to change with it in order to retain its place as the preeminent venue for addressing international trade issues.

The fact that trade negotiations are going on in other fora and formats is not a cause for alarm. Rather, it is a reminder that the WTO is not the only option for those who want to engage in trade



*The Centre William Rappard from the lakeside park*

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*"The Human Effort" by James Vibert (1872-1942), with the Centre William Rappard in the background. The sculpture in the lakeside park was donated to the International Labour Office by the City of Geneva and inaugurated on April 10, 1935*

negotiations — indeed, it never has been — and so these other negotiations serve to underline the challenge of ensuring that the multilateral approach remains central, and that the WTO remains a vibrant fora for international negotiations.

The success in Bali was a statement of political will behind the multilateral trading system. The system exists to benefit everyone, particularly the smallest countries and those with least capacity to manage the intricacies of large-scale trade negotiations — and so it is vital that it remains strong and viable across all three legs of the stool.

The WTO represents an investment of over 60 years' effort on the part of the international community; an effort that has yielded results that have been invaluable to the global economy. Bali has provided reason for hope that we can now build on this investment by tackling the even harder issues that remain. This is important not just to the WTO as an institution but for the hopes and aspirations of its members for growth and economic development. There is cause for optimism but, as noted at the outset, not complacency. If WTO members face the work ahead with realism and flexibility — while also being seized by the urgency of the task ahead — there is every reason to believe that we can succeed for the benefit of all. **JS**

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