



[Looking West](#)

A Transatlantic Relic?

The Future of the WTO and Its Role in the
Transatlantic Economic Relations

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The WTO must adapt to the changes in global trade and investment flows – otherwise its role will be diminished in the future. Europe and the US must resolve their differences and put their weight behind urgently needed reform measures. Because the alternative to the WTO-based global trade order is global trade disorder – and that cannot be desirable on either side of the Atlantic.

What Will Become of the Transatlantic Trade Partnership?

This question, which is significant for both Europe and the US, is not easy to answer, and crystallises itself to a certain extent in an examination of the World Trade Organisation (WTO). Decision-makers from politics, business, and society are confronted with a paradox situation: At the political level, the Trump administration's aggressive trade policy has triggered a certain amount of upheaval in the transatlantic trade partnership. Especially the relationship between the US and Germany has suffered greatly. At the economic level, on the other hand, an increase in reciprocal investment and trade flows have meshed Europe and the US to a greater extent than ever before. Europe and the US continue to maintain the most important economic relations in the world. Fundamentally, the two economic areas thus form the basis of a progressive integration of the entire global economy.

It remains unclear what consequences the political tensions will have on the bilateral relationships. Various scenarios are conceivable. At best, the existing disputes can be resolved. The two partners would thus once again find themselves in a close economic alliance, accompanied by a coordinated transatlantic trade policy. In the worst case scenario, the political conflicts could exacerbate existing economic differences to an extreme degree. Such a case could lead to trade sanctions and transatlantic economic boycotts. The geostrategic differences, and the corresponding intransigent economic disputes, might

lead to a *Wagenburg* mentality: “economic power US” against “economic power Europe”.

The WTO as a Crystallisation Point of Transatlantic Tensions

The continuing conflicts concerning the World Trade Organisation indicate that the current state of the transatlantic trade partnership is not particularly good. What is more: The WTO has become a point of crystallisation for the different positions on the two sides of the Atlantic and will therefore be the focus of this article. The institution and the open trading system upon which it is based are experiencing a period of instability. This situation has recently been exacerbated by aggressive, unilateral measures implemented by the current US administration. In response, an alliance of industrialised OECD countries as well as emerging and developing countries met in Ottawa in October 2018 to discuss reforming the WTO, restoring a certain degree of stability, and jointly assuming a leadership role with respect to trade policy.¹

Despite alarmist statements, it is unlikely that the WTO will “break up”, but if it cannot adapt to the changes in structure of global trade and investment flows, its role will be diminished. The reasons that the WTO is increasingly losing its function as a platform are profound, and stem from issues of WTO policy coordination and the policy challenges facing the governments of WTO countries. The coordination problem is how to deal with the economic shift to Asia and new economic powers. The implicit leadership of the US-OECD club, which has contributed



greatly to the establishment of the existing trade order, is largely outdated with respect to the new powers in the global economy. The challenge for countries' internal relationships consists in reconciling WTO rules – which form the framework for the globalisation of production and investment – with the concerns that exist in each country regarding the loss of control over national policy or regulatory frameworks.

Maintaining an open, rule-based trading system is in the vital interest of all countries. Achieving such a system requires collective leadership on the part of an alliance of industrial and emerging countries within the WTO. The US is currently not exercising a leadership role, and China has so far eschewed any multilateral integration that would limit its industrial and technology policy. Europe has thus assumed an important mediating role. On the



Dealmaker: Trump's strategy, which focusses greatly on his country's own advantage, undermines multi-lateral institutions. Source: © Shannon Stapleton, Reuters.

How Bad Is It Really?

After years of scornful jokes about the WTO being neither alive nor dead, the Organisation presents a bleak picture today.² The immediate crisis was triggered by the US threatening and imposing tariffs in order to extract concessions from other WTO countries. The US administration is obviously following a pattern – it pursued a similar strategy towards its neighbours, Canada and Mexico, in achieving the United States-Mexico-Canada Agreement (USMCA), the successor to the North American Free Trade Agreement (NAFTA). Here, too, the focus was on questioning trade agreements and demanding a new contractual basis for treaties. This raises the question of whether US positions that are critical of free trade (with respect to the WTO and NAFTA) are really new. And, indeed, they are not. Even though the style and rhetoric of the incumbent US president are unique in their escalation, but criticism of the global trade regime can also be heard from Democratic quarters, which tend to be less supportive of free trade (see Bernie Sanders and Hillary Clinton), and from many Republicans, who originally argued strongly for liberalising global trade. Factors that led to this change of heart on free trade within the Republican Party certainly include the massive de-industrialisation of the US over the past 20 years, the feeling of belonging to a dysfunctional WTO, and China's skilful manoeuvres within the WTO regime, acting as a purported emerging economy.

one hand, it must influence the US in order to keep an important cornerstone of transatlantic trade policy functional. On the other, it must influence China in order to put an end to free-riding within the WTO regime. In the short term, there can be no doubt that it is necessary to meet the threats to the system with compromise, but a lasting solution requires genuine consensus at the national and international levels.

The example of China in particular shows that the WTO is having trouble keeping pace with new developments in realpolitik. This is illustrated by the fact that existing trade provisions date largely from 1995, if not from the time when the Uruguay Round of Negotiations was concluded and the WTO was established. This

was a time before globalisation had triggered apprehension; before the internet enabled the management of dispersed production plants; before global value chains offered huge competitive advantages; and before China emerged as an important fixed point in a multi-polar global trading system.³ Of course, experts have long since identified the WTO's difficulties. But so far, no large WTO country has questioned whether the WTO should continue to exist, as the current US administration is doing.

What Is Driving the United States?

The current crisis was triggered by the US imposing tariffs “for reasons of national security” on imports of steel and aluminium from a number of countries, and repeatedly threatening to impose tariffs on automotive imports, too.⁴ The US government also imposed a wide range of import tariffs on Chinese products because Beijing is allegedly guilty of failing to protect property rights and engaging in unfair trade practices by subsidising state-owned enterprises. The reference to “national security” in US tariff policy can be considered a calculated affront to the WTO. Article XXI of the General Agreement on Tariffs and Trade (GATT) in fact provides for an exception if national security is threatened; but so far, all WTO members – with the exception of the US in the case of the Helms-Burton Act of 1996 – have refrained from using it as a justification for imposing protective tariffs. If the WTO were to oppose such a measure, the argument could be made that trade provisions endanger national security. If a WTO committee were to express opposition to the US steel and aluminium tariffs, American support for multilateralism would be further weakened. If the WTO were to determine that these tariffs are compatible with GATT Article XXI, the principles and measures supporting the WTO's rule-based system would be fatally undermined.

The second element of the American challenge affects the core of the WTO's dispute settlement mechanism itself. The US has questioned the functionality of the dispute settlement system

and, in particular, blocked the appointment of Appellate Body (AB) members. At the time of writing, only three members of the AB remain, which is the minimum required to process an appeal against a Dispute Settlement Body decision. Two of them will leave the AB in December 2019, rendering it – and thus the WTO's dispute settlement system – no longer operational.

It remains unclear what the mid- to long-term goals of the US government are. If it intends to trigger a crisis in order to force WTO members to find solutions for several long-standing problems, the current destabilisation might be seen as useful.⁵ But that is not how it looks at the moment. Rather, the current US administration is drastically accelerating a gradual trend away from multilateralism towards unilateral policy. Trump's strategy, which focusses greatly on his country's own advantage, has inevitably led to countermeasures in the affected countries. As a result, at the beginning of 2019, things seem to be developing a dangerous momentum of their own. This has led a group of WTO countries to seek to create a new form of collective leadership and to attempt to breathe new life into cooperation on trade policy, reacting to several of the points of criticism levelled against the WTO.⁶

Effectiveness and Legitimacy

The WTO's work fundamentally rests on three pillars:

- first, the negotiation of new provisions,
- second, the resolution of conflicts, and
- third, the ongoing organisational work aimed at improving the practical exchange of goods.

For several years, the first pillar of regulation has not been functioning correctly. The Doha Development Agenda (DDA), a round of multilateral trade agreement negotiations initiated in 2001, was the first of these series of discussions to fail since the GATT was founded in 1948. This failure is viewed, especially in OECD countries, as one of the primary reasons that the WTO has been unable to keep pace with globalisation.

The second pillar, dispute settlement, was strengthened at the time of the WTO's founding and has largely proven its value in enforcing existing rules. The dispute settlement system consists of an arbitration process, committees for processing complaints, and the Appellate Body, which ensures that the decisions of the committee are in harmony with the agreements.⁷ After the 2008 financial crisis, WTO provisions and their effective enforcement via the dispute settlement procedure were important in stemming protectionist tendencies. However, after 24 years, several aspects of the WTO dispute settlement procedure need revision. Such a revision was discussed back at the Doha Round, but not implemented. One reason for the effectiveness of the WTO dispute settlement procedure is that no member country is allowed to circumvent the committee's decisions. They can be appealed, but once the Appellate Body has spoken, law has fundamentally been given.

Emerging countries often perceive WTO provisions as attempts by industrialised countries to exert influence.

The ongoing work of the Organisation forms the third pillar of the WTO. It consists of monitoring the application of various treaties. Such monitoring is largely dependent on the goodwill of states and on national transparency. Implementation of and compliance with many WTO treaties requires constant effort. For example, for agreements on regulatory measures, such as those governing product, food, or consumer safety, new national regulations are constantly being introduced. In such cases, trade provisions govern the procedure by which WTO countries can minimise the competition-distorting effects of such new rules. There are reporting obligations for general trade policy developments as part of the Trade Policy Review Mechanism (TPRM) and for specific agreements and issues. These include regional or preferential trade agreements and national subsidies. However,

the effectiveness of this third pillar, especially that of the Committee on Regional Trade Agreements, has been impaired by the reporting negligence of some WTO countries. The third pillar also provides for a permanent dialogue, and thus the capability of efficiently solving trade policy problems. Without active participation of the parties to the dispute, however, there can be no progress on cross-border trade disputes. The result is that an important multilateral forum is being undermined, resulting in a vacuum. While many experts see the WTO as an organisation that has fallen behind the requirements of a globalised world economy, others see it as one of the primary sources of unfettered globalisation and all problems it entails. The latter opinion is held by several civil society NGOs that consider WTO regulatory work to be detrimental to the political or regulatory framework. These civil society NGOs also question the legitimacy of the WTO, since they view its decision-making and negotiation processes as being neither democratically legitimised nor transparent. Emerging countries often view efforts to expand WTO provisions as a threat to their political latitude and thus their ability to catch up in the industrialisation process. And this does not even address the fact that they also perceive trade provisions as having been shaped by industrialised nations. This perception has so far been justified, even though the WTO, with its "one member, one vote" system, is more democratic than other international economic institutions. In the face of civil society resistance in individual countries, governments are thus hesitant to take on new obligations. This creates a tension between effectiveness and legitimacy.

What Should the Objectives of the WTO Be?

One reason for the latent trade tensions was the absence of a consensus on the scope of WTO rules. This, too, is not a new debate.⁸ As early as the Uruguay Round negotiations, some trade economists argued that it was wrong to overload the WTO with "new issues" such as services and intellectual property rights, not to mention labour and environmental standards. Others argued that trade provisions should reflect the

nature of trade, and that this would require greater coverage of “trade-related” issues. Today, the question is whether trade provisions should apply not only to services, but also to e-commerce, and, if so, what the relationship between regulatory competence at the national or EU level and greater liberalisation should look like. Should, for instance, WTO rules today regulate the role of state-owned enterprises, or should emerging markets be able to use these and other instruments of industrial policy to catch up with other countries? One should keep in mind that most European economies, in the period following 1945, had significant public sectors with large state-owned enterprises, which were then slowly reduced. Since public and private investment are of central importance to the prosperity of global value chains, should there not be a multilateral investment framework, and if so, how should it reconcile investment protection with the right to regulation? In many countries, and within the European Union, there is no broad domestic consensus on these questions. Without a debate on the role of a country’s trade and investment policy, it will remain difficult to achieve progress at the international level.

Why Has the WTO Not Kept Pace?

Besides the lack of an internal consensus on the goals and scope of multilateral trade provisions, the biggest obstacle to WTO progress has probably been the difficulty in distinguishing member countries according to their level of development. One of the things that the US are complaining about is the possibility for countries of granting themselves developing country status within the WTO. Critics say that this allows countries such as China and India, as well as other emerging markets, to circumvent obligations. Those countries are obviously no longer willing to accept rules that have been shaped by OECD countries. The WTO Ministerial Conference of 2003 in Cancún can be considered a turning point in this respect; there, a G20 coalition of developing and emerging countries formed to oppose the joint leadership of the US and the EU. OECD countries, and especially the

US, are no longer willing to tolerate so-called free-riding, especially by system-relevant players such as China. This, along with fundamental differences of interest, has brought about a standstill in multilateral trade rounds.

The WTO’s decision-making process is impaired by the fact that veto-capable countries often obstruct negotiations.

A second obstacle was the WTO’s fundamentally consensus-oriented decision-making system based on the principle of “one member, one vote”. Although this leads to an integrative, democratic decision-making process, it also gives veto power to many players and, together with the “unity of action” concept, has made things very difficult. Unity of action is the standard according to which negotiations such as the Doha Round must be agreed by all WTO countries. The principle was introduced by developed economies in the Uruguay Round to ensure that less developed WTO members would sign treaties governing intellectual property and services as well as treaties that favoured developing countries. Today, it offers large emerging countries or coalitions the opportunity to obstruct negotiations.

Another reason for the failure of the Doha Round is the fact that preferential trade agreements (PTAs) offered a promising alternative. There is a clear link between the growing number of PTAs and the stagnation of multilateralism, but causality is more difficult to determine. Until the end of the 1990s, PTAs were the “building blocks” for a more comprehensive international treaty. But after about 2000, there was a growing tendency towards “competitive liberalisation” strategies that viewed PTAs as an alternative. PTAs have allowed trade provisions to expand to new areas outside WTO jurisdiction, thus updating trade and investment rules. They reflect the deepening of global value chains, since the treaties concluded by OECD countries

encompass provisions governing investment, e-commerce, more services, and often cumulation of rules of origin. What was good about the PTAs concluded in the 2000s and, to a certain extent, those concluded today is that there is a tendency to implement already existing international standards. These are standards developed in the OECD, specifically in the World Customs Organisation, the International Labour Organisation, or in multilateral environmental treaties governing such issues as procurement. Many of the provisions go beyond WTO standards in procedural terms. In other words, they incorporate existing WTO rules and provide procedures for their more effective implementation.

A greater degree of member flexibility is central to a successful WTO reform.

Towards More Flexibility

The conclusion of the Doha Round probably came closest to implementation in 2008. Subsequently, efforts were made to implement various partial steps to support developing countries, but they also proved unfeasible. The discussion then turned to the introduction of more flexible approaches. The conclusion of the Trade Facilitation Agreement (TFA), which came into force in 2017, shows that some progress can be made.⁹ This multilateral treaty is remarkable in that it tackles the differentiation problem by making compliance with agreed-upon multilateral provisions conditional upon countries' ability to implement the customs procedures necessary to facilitate the flow of trade.¹⁰ Developed WTO countries commit themselves to providing technical and financial support, as they do for other agreements. However, the TFA also provides for a more objective assessment of countries' ability to implement the provisions and could therefore be viewed as a model for dealing with the issue of differentiation. Poorly developed economies without implementation ability are given

more time and assistance; emerging countries or countries such as China that have sufficient capacity should be able to commit to compliance with and implementation of the provisions.

Another alternative approach was the return to plurilateralism. Specific proposals for plurilateral negotiations have been made, primarily by the US, to overcome the impasse of multilateral negotiations.¹¹ The argument now, as it was in the GATT system of the 1960s to the 1990s, is that like-minded countries can certainly make progress on particular issues. Once multilateral agreements are in place, other WTO members will join, following the "clubs within a club" principle. Further plurilateral initiatives include the negotiations on the Trade in Services Agreement (TiSA), which even gave rise to the question of exclusive membership. At the WTO Ministerial Conference in Buenos Aires in November 2017, further plurilateral measures were initiated or relaunched: trade-related electronic transfer, national regulation of services, environmental goods, and investment facilitation measures. A key question for plurilateral initiatives is whether they should be expanded to include non-participating WTO countries as part of the most-favoured-nation (MFN) principle. The 1996 Information Technology Agreement included the MFN and was able to do so because it achieved a critical mass of members. It will certainly be more difficult today to conclude exclusive plurilateral agreements among like-minded countries, the provisions of which can then be subsequently expanded – especially since this can scarcely contribute to a sustainable rule-based order. It is in any case doubtful whether emerging economies will enter into agreements that have been negotiated by a group of industrialised countries without them. Such a buy-in is only likely in two cases: when the plurilateral trade volume is so large that it creates positive externalities for non-members, or when there is a broad consensus on the provisions. In the first case, without China and India, it will be difficult to achieve the required critical mass to generate positive externalities. In the second case, consensus on standards will be difficult to achieve if the development of said



More participation: Central to the reform of the WTO would be a broader distribution of leadership responsibility, with a greater role for emerging countries. [Source: © Edgar Su, Reuters.](#)

standards is tied to questions of market access. In other words, the question is whether plurilateral agreements serve the goal of strengthening the international trading system, or the market access interests of certain WTO countries. So far, the debate on plurilateral approaches appears to have been dominated by the latter consideration.

Rethinking Leadership

Insufficient internal and external leadership is another reason given for the current WTO paralysis. When the WTO was founded, there was joint leadership by the US and the EU, supported by a number of other OECD countries. Fundamentally, the two transatlantic players had and have common interests in the area of trade policy: Firstly, a rule-based system of

trade that includes agreements on anti-dumping measures, investment and competition law, public procurement, and de-bureaucratization of customs procedures is in the economic and political interests of both the US and Europe. Secondly, both economic powers are interested in incrementally achieving free access to the Chinese market and in consistently sanctioning Beijing's rule infractions within the WTO regime (to prevent imitators and to rein in China). So far, Europeans have been too lenient on the issues of intellectual property theft, industrial subsidies, and technology transfer rules imposed by Beijing on its trading partners. Thirdly, it should be in the interest of both Americans and Europeans for the Western alliance to remain strong, since more is at stake than considerations of economic policy. However, recent US actions have done a disservice to joint leadership. Conflicts

of interest between Europe and the US on questions of trade policy are therefore on the agenda, and it is not surprising that the American withdrawal from multilateral trade policy will necessarily lead to new alliances for Europe. It must also be remembered that the EU is not a monolithic bloc. Unlike the US, it must not only reach a compromise with its respective trading partners, but also strike a balance among the interests of EU members, including individual countries which benefit greatly from exports. Intra-regional trade also plays a very important role within the EU. It is also striking that Europe regularly links its trade policy measures to important socio-political goals, such as environmental, health, and consumer protection, while the US does not think much of such linkage.

Irrespective of the US-EU tandem, the large emerging countries are demanding more influence and participation in decision-making within the rule-based system, commensurate with their greater trade and economic power. It is clear that progress will require the cooperative efforts of both of these groups. One solution would be a broader distribution of leadership responsibility within the WTO, with a greater role for emerging countries. Potentially, this could be achieved by the creation of an informal or even formal governance body, composed of the G20 trading group and one representative from each of the negotiating alliances, such as the Africa Group. This body could act as an interface between members and the General Council, and would be responsible for promoting systemic goals and building consensus on negotiation points. The provision of greater funding for the WTO Secretariat to allow it a more active role – whether by promoting dialogue and consensus building, or proactively making proposals – would also help to make the work of the WTO more strategic and less dependent on member leadership.¹² This is already happening behind the scenes and would be especially important in a situation in which an alliance of WTO countries attempts to assume a leadership role. The disadvantage of establishing a form of joint leadership is that, by definition, it cannot involve everyone.

Concluding Remarks

The US is a central political and economic partner for Germany – despite the political tensions of recent months. Berlin and Washington must remain in dialogue with one another. This applies not only to the relationship between the two countries, but also to cooperation within the WTO, and to their dealings with China. In the short term, it will certainly be necessary for calm heads to attempt to relax current tensions between the US and China, and to lift the blockade on the selection of members to the Appellate Body. This was the goal of the group of WTO countries that met in Ottawa in October 2018. The means of achieving such a goal is through continuing an inclusive dialogue on reforms. Finally, in the debate about the WTO, one should not lose sight of the fact that the greatest obstacles to trade policy progress lie at the national level. The WTO is and will remain a member-driven institution. And the US and Europe have its course and direction in their hands.

–translated from German–

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- 1 A joint communiqué by Australia, Brazil, Canada, Chile, Japan, Kenya, Korea, Mexico, New Zealand, Norway, Singapore, Switzerland, and the EU expressed the common intention of finding solutions to controversial WTO questions, Global Affairs Canada 2018: Joint Communiqué of the Ottawa Ministerial on WTO Reform, in: <https://bit.ly/2PVamQF> [21 Jan 2019].
- 2 Background information on the debate over reforms to and powers of the WTO can be found at: Sutherland, Peter 2004: *The Future of the WTO*, Geneva. The Warwick Commission 2007: *The Multilateral Trade regime: Which Way Forward?*, Coventry. WTO 2013: *The Future of Trade: The Challenges of Convergence*. Report of the Panel on Defining the Future of Trade convened by WTO Director-General Pascal Lamy, 24 Mar 2013, in: <https://bit.ly/2SQQwDR> [15 Feb 2019]; Meléndez-Ortiz, Ricardo / Bellmann, Christophe / Rodriguez Mendoza, Miguel (eds.) 2012: *The Future of the WTO: Confronting the Challenges*. A Collection of Short Essays, International Centre for Trade and Sustainable Development (ICTSD), 23 Jul 2012, in: <https://ictsd.org/node/68965> [15 Feb 2019]; Rodriguez Mendoza, Miguel / Wilke, Marie 2011: *Revisiting The Single Undertaking - Towards A More Balanced Approach To WTO Negotiations*, in: Deere Birkbeck, Carolyn (ed.): *Making Global Trade Governance Work For Development*, Cambridge; Baldwin, Richard / Evenett, Simon 2011: *Keeping the WTO on track: A Doha down payment plus more*, VOX CEPR Policy Portal, 28 May 2011, in: <https://bit.ly/2W88ZS3> [21 Jan 2019].
- 3 Address by Bill Brock at the Center for Strategic International Studies (CSIS) podium discussion of former United States Trade Representatives: CSIS 2018: *A Conversation with Six Former USTRs*, 17 Sep 2018, Washington D.C., in: <https://bit.ly/2zmrZD0> [21 Jan 2019].
- 4 Rudloff, Bettina 2018: *Yes, He Can: Trump Provokes a Trade War*, SWP Comment 29, Jul 2018, <https://bit.ly/2OmeFUq> [15 Feb 2019].
- 5 The reader should remember that President Trump and the political representatives of his administration consistently opposed the WTO and other trade agreements prior to his election.
- 6 This group includes Canada, the European Union, Australia, New Zealand, Brazil, Chile, Switzerland, Singapore, Norway, South Korea, and Mexico, but not the United States or China – at least not yet. See Ljunggren, David / Dalgleish, James 2018: *Canada to host meeting on WTO reform, U.S. and China left out for now*, Reuters, 27 Jul 2018, in: <https://reut.rs/2sEEJkg> [21 Jan 2019].
- 7 The WTO rules consist of a number of treaties, among them the General Agreement on Tariffs and Trade, or GATT (1994), the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Trade Related Investment Measures (TRIMs).
- 8 See Anderson, Kym 1997: *Environment and Labour Standards: What role for the World Trade Organization?*, Seminar Paper 97-04, University of Adelaide, Centre for International Economic Studies, in: <https://bit.ly/2HoZn27> [21 Jan 2019].
- 9 WTO 2017: *Trade facilitation*, 22 Feb 2017, in: <https://bit.ly/1TRw3jW> [21 Jan 2019].
- 10 To emphasise the above point on the development of standards: The WTO's Trade Facilitation Agreement is based to a great degree on codes and standards developed in the World Customs Organisation.
- 11 See Bacchus, James 2018: *Was Buenos Aires the Beginning of the End or the End of the Beginning? The Future of the World Trade Organization*, Cato Institute, Policy Analysis 841, 8 May 2018, in: <https://bit.ly/2BwSgPJ> [15 Feb 2019]. This article shows that there is a view in the US that considers plurilateralism to have already been the path to take at the founding of the WTO.
- 12 For a similar position, see WTO 2013, n. 2.