


The multilateral trade system
under stress:
Charting Asia's path forward





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Abbreviations

AB	Appellate Body
ACCEC	ASEAN Coordinating Committee on Electronic Commerce
AEC	ASEAN Economic Community
ANZTEC	Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation
ARATS	Association for Relations Across the Taiwan Straits
ASEAN	Association of Southeast Asian Nations
ASTEP	Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership
Bn	Billion
CHF	Swiss franc
CPTPP	Comprehensive and Progressive Trans-Pacific Partnership
DDA	Doha Development Agenda
DEPA	Digital Economy Partnership Agreement
DPP	Democratic Progressive Party
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EC	European Commission
ECA	Economic Cooperation Agreements
ECB	European Central Bank
ECFA	Economic Cooperation Framework Agreement
EGA	Environmental Goods Agreement
EU	European Union
EVFTA	EU-Vietnam Free Trade Agreement
FDI	Foreign Direct Investment
FTAs	Free Trade Agreements
G7	Group of Seven

G20	Group of 20
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GPA	Government Procurement Agreement
GSP	Generalized System of Preferences
GVC	Global Value Chain
ICT	Information and Communication Technology
IMF	International Monetary Fund
ITA	Information Technology Agreement
ITA II	Information Technology Agreement Expansion
ITO	International Trade Organization
JSI	Joint Statement Initiative
KMT	Kuomintang
LDCs	Least Developed Countries
M&A	Mergers and Acquisitions
MFN	Most Favored Nation
MC-11	11th WTO Ministerial Conference
MNCs	Multinational Corporations
MRL	Maximum Residue Levels
NAMA	Non-Agricultural Market Access
NATO	North Atlantic Treaty Organization
NSP	New Southbound Policy
NTBs	Non-Tariff Barriers
NTMs	Non-Tariff Measures
RCEP	Regional Comprehensive Economic Partnership
OECD	Organization for Economic Cooperation and Development
R&D	Research and Development
RTAs	Regional Trade Agreements
SAARC	South Asian Association of Regional Cooperation
SCTPKM	Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu
S&DT	Special and Differential Treatment
SEF	Straits Exchange Foundation

SOE	State-Owned Enterprises
SPS	Sanitary and Phytosanitary Measures
TFA	Trade Facilitation Agreement
TiSA	Trade in Services Agreement
TPR	Trade Policy Review
TRIPS	Trade-Related aspects of Intellectual Property Rights
US	United States
UN	United Nations
WBG	World Bank Group
WHO	World Health Organization
WTO	World Trade Organization

Foreword

The hyperglobalized era is increasingly defined by financial insecurity and economic polarization. In particular, increased disagreement over trade rules, currency movements and technological flows threaten to further deteriorate the state of the global economy. The current developments paint a grim global economic perspective leading some observers to point out that the dominant multilateral system is failing to provide both the resources and coordination necessary to stabilize markets, foster a healthy investment climate and create a financial future that works for all.

Does the current multilateral trade system still serve its purpose amidst the erosion of political trust, widening income gaps and a policy agenda that appears to favour hyper globalizations' winners? If not, then how do we rebuild trade multilateralism based on collective action and shared responsibility? How will Asia position itself in the midst of these shifts?

“The multilateral trade system under stress: Charting Asia's path forward” is a special report that is borne out of these massive economic shifts. The volume was first intended as a companion piece to a dialogue conference organized in March 2020 by Konrad Adenauer Stiftung's (KAS) regional programme on social and economic governance in Asia (SOPAS). It was around this time that the COVID-19 pandemic forced border closures and wreaked systemic disruptions to the global economy. In response to social distancing measures and other containment policies, KAS cancelled all conferences and moved its work online, focusing instead on publications and experimenting on digital and hybrid event formats.

This volume is part of the literature created during this time of crisis. It aims to examine questions surrounding the shifts occurring to the current multilateral framework and propose answers that can enrich current policy dialogues on free trade and the limits to multilateralism. Current developments and supranational responses to the challenges faced by

the dominant multilateral trading system are discussed with special focus on the proposals for reforming the World Trade Organization (WTO). Asia's role and country responses from leading economies in the region are also presented and discussed. It brings with it the need to revitalize multilateralism, upholding a cooperative international system that facilitates the achievement of common goals.

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German-Asian economic relations

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Again and again one can hear these days: The 19th century was European, the 20th century dominated American and the 21st century could become the Asian century. "The Future is Asian" - the book title by the bestselling author Parag Khanna sums up what has been emerging for several years, but is only slowly being penetrated at the political, economic and social levels in Germany and Europe.

The "Asian century" is more far-reaching than one would initially assume. The new Asia-Pacific momentum is not being generated by China alone. It feeds on political and social developments from Saudi Arabia to Japan and from Russia to Australia. The region connects five billion people through trade, finance and infrastructure networks, which together make up 40 percent of global GDP. China has played a pioneering role in the construction of the new silk roads in Asia, but it will not fill them alone. Asia is returning to the multipolar order that existed long before European colonialism and American supremacy.

India and Southeast Asia appear on the world stage as economic and strategic hubs. Young and entrepreneurial companies are developing from Iran to Indonesia, while privatization trends from the Middle East to Vietnam are triggering new growth spurts. Asia is crucial for equality or inequality in the world. Today there are more than five million millionaires in the world in this region; at the same time, around a third of Asians live in poverty. Asia's middle class is growing: in 10 years there will be more than three billion "new consumers" there. How these people consume will also affect Germany. This growing, young population offers opportunities and risks for all of us.

Germany's political actors are slowly beginning to understand that the future of globalization will be decided in Asia - with all the consequences: the economy will grow by an average of six percent. This creates opportunities: for poverty reduction or education. But that also means: air pollution, deforested rainforests, environmental damage. Today Asia is an innovation center for industrial products and data-based

services. At the same time, half a billion people in Asia still need access to electricity. As a political and economic partner, Germany must deal with this fundamental contradiction again and again and provide targeted, country-specific answers. These answers and cooperation offers look very different for Japan than for Vietnam, Cambodia or even China. We have to take the trouble to look closely to understand historical and societal lines of conflict and to create real partnerships that cannot be reduced to economic benefits or geopolitical considerations.

German companies can be the engine for sustainable development. Especially since there are enormous market opportunities in the global development goals of the 2030 Agenda: renewable energies, sustainable cities, mobility, health, nutrition, resource-saving agriculture. For this we need the economy, we need jobs and we need sustainable solutions. Modern development policy is therefore based on a triad: state resources, fair trade and partnership with the private sector. Foreign trade and development cooperation can mesh even better. In particular, medium-sized companies need to be taken into account: they create most jobs, they are often at the forefront of innovation, and they stand for responsible treatment of people and the environment.

As an export-oriented nation, Germany and its partners rely on trade and competition. But markets need global rules. The Economy needs values. Germany stands for a market economy that wants to reconcile social and ecological aspects. Our experience is that free trade creates winners, but without ecological and social rules these profits are often at the expense of people and nature. We have to take sustainability seriously. Social, environmental and human rights standards must finally become standard - in the WTO, in EU trade agreements. Because only then will there be fair competition.

Above everything is the planet and its finite resources. The achievement of the 2-degree goal and the goals for sustainable development is ultimately decided in Asian countries on the basis of future-proof, sustainable technologies for the energy industry. This is one of the most important fields for cooperation - for the future of the whole planet. Asia and Europe are strong partners. The cooperation between Asia and Germany brings opportunities for German companies and opportunities for sustainable development that should be seized together.

David GREGOSZ coordinates the international economic policy work of the Konrad-Adenauer- Stiftung with a strong focus on trade, multilateral institutions (WTO, Worldbank, IMF), Eurozone and G20. Prior to that he headed the economic office of KAS in Latin America (2014-2017, based in Santiago de Chile).



**Prospects on
revitalizing the
multilateral trade system:
Proposals on WTO reform**

Ralph WROBEL

1. Introduction

In March 2018 the United States imposed tariffs on steel (25%) and aluminum (10%), especially from China. Only a few days later, in April 2018 China started countermeasures and imposed tariffs on 128 products it imports from America (including aluminum, airplanes, cars, pork, and soybeans (25% tariff)). Since then we can observe a rising trade war between both nations. (Mildner et al. 2018, 4) The triggers for the US measures were a rising US trade deficit with China as well as rising Chinese dominance on the international steel and iron markets. Since the 1990s China's exports to the US are larger than imports but from 2001 (the year of China's accession to the WTO) on, the rise of trade imbalances became tremendous. It reached a peak of USD 419 bn. in 2018 while it fell to less than USD 346 bn. in 2019. (Johnson 2020) A dependence of the US from China on the international financial markets may originate as a side effect of this trade imbalance. China holds about 16% of US public debt to foreign countries holding rank 2 after Japan. (Amadeo 2020) The subsidies to and other advantages of Chinese State-Owned-Enterprises (SOEs) in the steel sector allow the country to export more steel and iron products on the international markets than the US. This is a strong threat to the industries in the US' "rust belt", a region well known for supporting Donald Trump as president of the US. (McQuarrie 2017, 121)

These distortions on the international export markets also touched the World Trade Organization (WTO). US president Trump prefers bilateral deals instead of the multilateral mechanism of the WTO dispute settlement. The US is also so disappointed with the WTO that they are blocking the Appellate Body (AB). Under the name "*Economic and Trade Agreement between the United States of America and the People's Republic of China*" a US-China Phase One Trade Agreement was signed on 15 January 2020, taking effect from 14 February 2020. In this bilateral agreement the US and China found first solutions for problems in the fields of intellectual property rights, technology transfer, food and agricultural products, financial services, exchange rate matters and transparency, expanding trade, and the bilateral evaluation and dispute resolution procedures. (Government of the US 2020)

By this way, the multilateral dispute settlement of the WTO became useless for the US. As a result, there is no more reliance on arbitration through intergovernmental organizations like the WTO but rather arbitration through a bilateral mechanism.

Actually, the AB is the core element of dispute settlement in the WTO. After requests for panel by WTO members a Dispute Settlement Body (DSB) was formed by the General Council, previously. After at least nine months, the panel had to report its dispute results. (Ronchetti/Purnhagen 2019, 3) But between 1995 and 2014, 67% of all panel reports were appealed by one side of the dispute. (von Daniels et al. 2019, 1) Then the AB had additional 90 days for a final decision. The AB consists of seven part-time employed members who have recognized authority and expertise in international trade law and are unaffiliated with any government. Their reports "*may uphold, modify or reverse the legal findings and conclusions of the panel*" [Art. 17.13 DSU] (WTO n.d. a). There is a quorum of 3 judges per case. But the reappointment process of AB members has been blocked by the US since 2018. (von Daniels 2019, 1) Therefore, it must be asked if the multilateral trade system is at its end!

To answer this question, I will analyze briefly the change in political-economic circumstances of the last decade. I notice a new trilateral economic world order of the US, EU and China. In this trilaterally dominated world exist three very different views on free or fair trade as well as on competition. This results in three different viewpoints on the WTO as well as different interests in reforming this international organization. As I will show there are hopes for a fruitful reform process of the WTO but a negative scenario is also possible.

2. New political-economic circumstances of international trade

The world order has changed dramatically in the last decades. In 1990 Western ideas like democracy, market economy and human rights were the winners of the Cold War. Indeed, Francis Fukuyama proposed the "End of History". (Fukuyama 1992) But in 2020 we face a new picture. Because of the rise of China – not only in economic but also in political and military terms – we can talk about a new competitor for the West, the US and the EU. In economic terms, these three are the dominating power houses of the world. For instance, the US accounted for 14.9% of worldwide GDP (2019), 10.9% of its exports (2018) and 16.6% of its imports (2018). The European Union created 14.6% of world GDP (2019), 15.4% of its exports (2015) and 15.9% of its imports (2015) without Intra-EU-Trade. In contrast, the "developing" China with its 1.4 bn. inhabitants were responsible for 21.4% of world GDP (2019), 16.2% of its exports (2018) and 13.6% of its imports (2018) – with a rising tendency. (IMF 2020, WTO 2019, 101)

The situation seems to be equal to that in 1914 when the only superpower, the British Empire, was challenged by a new super power, the German Empire. Today the People's Republic of China is challenging the US as the last remaining superpower of the Cold War accompanied by its ally, the European Union, which is rich but politically unimportant. Sometimes the EU is called "*The real sick man of Europe*", even. (Kaufmann et al. 2011) Broadly speaking, these three centers of trade are very different in their economic systems. As Hall and Soskice (2001) pointed out in their introduction into the Varieties-of-Capitalism approach the US can be called a *Liberal Market Economy* characterized by strong price competition, service-orientation and radical innovations. Most of the EU countries can be described as *Coordinated Market Economies*, dominated by inter-company cooperation, the production of high-quality goods and incremental innovation. In contrast, the *State-Led Capitalism* in China is characterized by monopolized markets and a development from the

world's workbench to an innovator by technology adaptation. (Xing/Shaw 2013)

From these different economic systems result also different points of view on free trade and fair competition. Competition in the US is mostly seen as a "*the winner takes it all*" process, following the ideas of the Chicago School. (Bork 1978, 406) Also, US president Trump is a former businessman. Therefore, it is not surprising that he prefers "*deals*". In contrast, Continental Europeans believe more in the rules of the game. The main model for this approach is the Social Market Economy in Germany which also influenced the European competition law. (Wrobel 2012, 49) Once again, China's view on competition is different. For Chinese politicians as well as businessmen, competition is a strategic game which must be won within or without the system of rules. (Pan 2016) The result is a different point of view on the WTO, too. While the US is simply blocking the multilateral mechanism and shifting to bilateral agreements, China uses the existing rules to utilize the WTO for its own interests. In contrast, the EU is proposing reforms of the WTO mechanism.

3. Conflicting interests and proposals on WTO reforms

3.1 US – blocking WTO mechanisms!

Already in 1995, the US proposed the TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement as part of the newly established WTO to curtail intellectual property theft by (Chinese) SOEs and to secure US patent rights abroad. In 2001, the US supported the WTO-membership of China expecting large gains from entering Chinese service markets like telecommunications, finance, and insurance. But these expectations turned into disappointments. China kept its markets closed and maintained a system of SOEs. Therefore, since more than a decade the US are criticizing the claiming of “*Developing Country Status*” by emerging countries like China as well as the WTO's inability to constrain market distorting practices like subsidies and dumping, intellectual property theft and forced technology transfer mainly by China. (von Daniels et al. 2019, 2-3) Additionally, the US was disappointed by an unfavorable “*persistent overreach of the AB*” as well as its failure to meet the 90 days deadline for completing appeals. (Ronchetti/Purnhagen 2019, 2-3)

As a result, the Obama administration blocked the reappointment of AB members for 6 months in 2016. President Trump followed this line. Since June 2017, the US blocked appointments of Appellate Body members. This year the terms of three AB members expired while one member resigned, leaving the AB with only 3 members. On 11 December 2019, the AB was left with only one judge. (von Daniels et al. 2019, 1) This fully incapacitated the AB because the minimum requirement for any decision is three judges. (Ronchetti/Purnhagen 2019, 2) At the same time, the US government started a trade war with China and is negotiating for bilateral agreements. Following their ideas of free competition market distortions shall be solved by a game of power between both economic hubs instead of by a multilateral, time-taking process which follows old-fashioned rules of the 1990s.

3.2 China – utilizing WTO rules?

Since China became a member of the WTO in 2001, its exports increased about tenfold in 2018. US president Trump sees this rise critically: “*While the United States and many other nations played by the rules, these countries [i.e. China] use government-run industrial planning and state-owned enterprises to rig the system in their favor. They engaged in relentless product dumping, forced technology transfer, and the theft of intellectual property. The United States lost over three million manufacturing jobs, nearly a quarter of all steel jobs, and 60,000 factories after China joined the WTO.*” (Wemer 2019) The same, if the numbers are correct. It is obvious that China claims the special provisions in WTO agreements given to developing countries. For example, more time to implement tariff reductions, increased asymmetrical access to foreign markets, and protections that safeguard their trading interests. (WTO n.d. b) While countries can decide themselves about this status in the WTO, it is surprising that China as the second largest economy of the world can maintain this status, too.

Additionally, Beijing uses the rules of the WTO for its strategic interests. China has no interest in creating a “*level playing field*”, but the country challenged successfully the US use of “*Zeroing*”, the technique to calculate dumping margins for imports that are taken as basis for remedies, and appealed successfully against the US's use of “*Double Remedy*”, the simultaneous placement of anti-dumping and countervailing measures in Chinese imports in the last years. (von Daniels et al. 2019, 4) This strategic approach also becomes clear in the current “*China's position paper on WTO reform*” from 20 December 2018. Here China described its three basic principles of WTO reforms. First, “*the core values of the multilateral trading system*” like non-discrimination and openness must be preserved. Second, the “*development interests of developing members*” must be safeguarded. Third, WTO reform shall follow decision making by consensus. (MOFCOM 2018) This approach shows clearly the Chinese view on international trade rules and fair competition. Rules are only maintained when they are advantageous for their own industries and the political rise of the country's power.

3.3 EU – reform proposals?

Unfortunately, the third largest player in the WTO reform game – the European Union – is quite weak in political terms because of its inner tensions. But – following the idea of the necessity of well working rules of the game – the EU Commission is working actively with different partners on WTO reform proposals. However, the EU is trapped among three possible approaches: first, aiming for a broader WTO reform; second, striving for an alternative appeals mechanism; or third seeking dispute settlements outside of the WTO. In all three cases, there is a risk of failure because of the uncertainty of US reactions. At the moment, the EU decided for the second strategy. (von Daniels et al. 2019, 1)

The basic approach of the EU became obvious in a speech of former EU Commissioner for Trade Cecilia Malmström (2014 – 2019) in January 2019 when she said: *“International trade without the WTO would be anarchic. [...] there would be no reliability, no stability. So we need to repair and stand up for the system [...] some suggest that closing is a good option—to redirect investment and wealth back towards their own countries. That will not work. Even if it did, they would sacrifice two things: First, their values... Second, their connection to the world.”* (Wemer 2019) But can the EU reform approach be successful in a world characterized by power games, trade war, and bilateral solutions?

In 2018, the EU published several papers on WTO reforms. First was the Concept Paper *“WTO Modernisation: Introduction into future EU proposals”* of 20 September 2018. (European Commission 2018) This was followed by *“Procedures to Enhance Transparency and Strengthen Notification Requirements under the WTO Agreement: Communication From Argentina, Costa Rica, EU, Japan and U.S.”* on 1 November 2018 (WTO 2018a) as well as a *“Communication from the European Union, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic of Korea, Iceland, Singapore and Mexico to the General Council”* on 23 November 2018. (WTO 2018b) Of highest interest is the *“Communication from the European Union, China and India to the General Council”* published on 23 November 2018. (WTO 2018c)

The paper *“WTO Modernisation: Introduction into future EU proposals”* from September 2018 was quite broad. It focused first on rulemaking in the WTO, including levelling the playing field, better capture of SOEs, the capture of most trade-distorting subsidies, new rules to barriers to services, investment and forced technology transfer, reform of treatment of *“developing countries”* as well as institutional reforms of the WTO. Second, regular work & transparency requesting more transparency and solutions for market access problems were also outlined. And lastly, dispute settlement reforms discussing the independence of AB members, transitional rules and reforms of the 90-days-rule of the AB. (European Commission 2018) But in the proposals of 23 Nov. 2018 which were submitted together with China and India, only dispute settlement reforms remained. As transitional rules for AB, the EU demands possibilities for outgoing AB members to continue the disposition of a pending appeal and an introduction of the possibility to exceed the 90-days time-frame of the AB. (WTO 2018c, 2) But this is only an adjustment of the law to reality. As long-term reforms, the EU proposes nine AB members instead of seven, a single but 6 to 8 years term for AB members and a full-time job instead of part time employment of them. (WTO 2018c, 1) That would improve the independence of the AB, following rules of the ECB or Deutsche Bundesbank. But the US-criticised *“overreach”* is not addressed in the proposal. (Ronchetti/Purnhagen 2019, 7) Therefore, it was rejected by the US in December 2018.

Therefore, on 12 December 2019 the EU Commission implemented new tools to *“Enforce Europe's Rights in International Trade”*. Following this paper, the EU must be able to respond resolutely in cases where trade partners hinder dispute settlement resolution. It is an amendment which will permit the Commission to trigger countermeasures if the WTO is not delivering a final ruling at the Appellate level. At the same time there will be an interim appeal arrangement which was submitted with Canada and Norway. (European Commission 2019) So in the end, the EU decided to protect its own interests but not to provide more reform proposals. It showed that the EU is the *“real sick man in Europe”*.

4. Future Prospects

The future is not only unknown but it still doesn't exist. But two scenarios can be shown. The positive scenario is characterised by fundamental WTO reforms including more independence of AB members, further domestic reforms in China and a resulting abandoning of the blockade of AB by the US. But this requires a stronger EU as well as changes in the system of world power. The negative scenario includes the expansion of trade war from the US – China conflict to an additional conflict between the US and the EU. If such a development will be accompanied by a lack of reforms in China, the US will maintain the blockade of AB. Then, the multilateral trade system is finally dead, soon. Which scenario will be more probable can't be said at the moment. It depends on further developments influencing the power of the main players, China and the US. A weakening of the Chinese President Xi by the coronavirus spread as well as the results of the US presidency elections in the end of 2020 may be of highest importance for the future of the WTO, its AB and the multilateral order of world trade. Only if the US and China can agree to cooperate within the WTO again, European reform proposals may be discussed and can lead to common sense solutions.

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2

Challenges to the WTO dispute settlement reform

Yuka FUKUNAGA

1. Introduction

The WTO is in crisis.

More precisely, the WTO has been in crisis for more than a decade since the WTO members failed to agree on the so-called "July 2008 package," which was intended to advance the Doha Development Agenda toward its final conclusion. Since then, the WTO's rulemaking branch keeps failing to produce tangible results, aside from a few exceptions and the center of trade rulemaking has shifted from the WTO to bilateral and regional trade agreements.

In the meantime, the WTO dispute settlement has had outstanding achievements in resolving disputes and providing security and predictability to the multilateral trading system. The success of the WTO dispute settlement was proof that the WTO was essential to the rule-based global trading order, despite the stalled Doha negotiations.

However, the WTO dispute settlement currently faces existential challenges, which could plunge the WTO into a deeper crisis.

This brief analyzes first the challenges that the WTO dispute settlement faces and then solutions proposed by WTO members. It concludes with some prospects for the future.

2. Challenges

The two-level quasi-judicial process of panels and the Appellate Body is an essential component of the WTO dispute settlement. Particularly, the Appellate Body, as a standing appeal body, has made an enormous contribution to providing security and predictability to the multilateral trading system by clarifying the meaning of the WTO agreements.

However, the WTO dispute settlement has been partially paralyzed since December 11, 2019, when two of the then three remaining Appellate Body members left upon completing their eight-year mandate without their successors being appointed. Currently, Ms. Hong Zhao, from China, is the only Appellate Body member and six vacant Appellate Body seats, out of the total seven, remain unfilled due to the US blocking of the appointment of new Appellate Body members. This means that the Appellate Body is unable to hear any appeals filed on or after December 11, 2019, as Article 17.1 of the Dispute Settlement Understanding (DSU) requires that a division of three Appellate Body members shall serve on any one appeal.

Moreover, although the Appellate Body was able, at least technically, to review the appeals that had been filed on or before December 10, 2019, it decided to issue a report only in three of them, for which oral proceedings had already been completed before this date.

The incapacitation of the Appellate Body could also have an impact on panel reviews because, if a panel report is appealed, it cannot be adopted by the Dispute Settlement Body (DSB) until the Appellate Body completes a review. With the Appellate Body paralyzed, an appealed panel report will remain unadopted and will therefore have no legal effect.

This impasse will not be broken unless at least two of the six vacant Appellate Body seats are filled. The EU and around two-thirds of the WTO members, which do not include the US and Japan, have proposed that the DSB launch selection processes to nominate new members to fill these vacancies.

However, the US insists that it cannot support the appointment of new members, unless the WTO members address the question of why the Appellate Body overreached its mandate provided under the DSU. In the view of the US, the instances of the Appellate Body's "overreach" include the following:

1. The Appellate Body repeatedly fails to issue a report by the 90-day deadline prescribed by Article 17.5 of the DSU;
2. The Appellate Body members' practice of continuing to hear appeals after their terms have expired undermines the DSB's authority to appoint Appellate Body members under Article 17.2 of the DSU;
3. The Appellate Body reviews panel findings of fact, despite the scope of the Appellate Body review being limited to legal issues under Article 17.6 of the DSU;
4. The Appellate Body exceeds its limited mandate under Article 3.7 of the DSU of securing a positive solution to a dispute by rendering advisory opinions on issues not necessary to resolve a dispute;
5. The Appellate Body wrongly treats its reports as binding precedent that must be followed by panels, absent "cogent reasons"; and
6. The Appellate Body does not respect the obligation under Article 3.2 of the DSU not to add to or diminish WTO members' rights and obligations in the WTO agreements.¹

¹ United States Trade Representative, Report on the Appellate Body of the World Trade Organization (February 2020), https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf.

3. Solutions?

While very few WTO members support the US blocking of the appointment, some WTO members share the US concerns regarding the Appellate Body's practice, at least to some extent. Moreover, many members do recognize the need to improve the Appellate Body and have proposed solutions that would respond to the US concerns.

Most notably, the so-called "Walker process" was launched at an informal meeting of the WTO General Council on January 17, 2019 to seek workable and agreeable solutions to improve the functioning of the Appellate Body. Ambassador Walker of New Zealand, who led the process, had informal exchanges with WTO members and put forward a draft General Council decision, based on a set of areas and issues where he detected convergence among them. The draft decision was intended to ensure that the Appellate Body would work within its mandate prescribed by the DSU, in view of the US concerns. It was expected that the draft decision would be adopted by the General Council before December 11, 2019, i.e. the date that two of the then three remaining Appellate Body members completed their mandate. However, without support from the US, the General Council failed to adopt it.

Another temporary solution led by the EU is to resort to arbitration under Article 25 of the DSU as an interim appeal arbitration procedure, while the Appellate Body is not able to hear appeals due to an insufficient number of its members. For the EU, it is imperative to maintain the two-level review procedure of panels and an appeal. The EU has already reached an agreement with Canada and Norway, respectively, to use the procedure in any future dispute between them. Moreover, the EU, Canada, Norway, and 14 more WTO members, not including the US and Japan, have agreed to work to make a multi-party interim appeal arrangement based on arbitration under Article 25 of the DSU. The interim appeal arrangement is expected to replicate the substantive and procedural aspects, as well as the practice of the Appellate Body review. While this could serve to maintain the two-level review procedure, it does not resolve the US concerns, if not exacerbating them.

4. Prospects

It is too optimistic to consider that this crisis will be resolved in the foreseeable future. Rather, given the critical difference between the US and the EU, the WTO dispute settlement without the Appellate Body is likely to be a new normal for the time being.

Under such circumstances, the most important thing for WTO members is to make every effort to ensure that the WTO dispute settlement continues to work, even without the Appellate Body. For this purpose, WTO members should refrain from appealing panel reports and ensure that they will be adopted by the DSB. While it is desirable that the disputing parties agree not to appeal before a dispute goes to the panel review stage, a decision not to appeal can also be made unilaterally, even after a panel report is issued. Appealing a panel report to the incapacitated Appellate Body for the purpose of blocking the adoption of the panel report should be blamed for undermining the proper functioning of the WTO dispute settlement.

Additionally, to facilitate dispute resolution based on panel reports without appeals, efforts should be made to enhance the legitimacy of panel reports in the eyes of the disputing parties. For example, the disputing parties may be more convinced to respect the conclusions of a panel if their views are somehow reflected in the selection of members of the panel. Moreover, panels may find it useful to revisit interpretations of the WTO agreements developed by the Appellate Body, if they consider that the interpretations do not reflect the common intent of the WTO members.

Needless to say, the WTO members should also endeavor to resolve the crisis of the Appellate Body in the long run. Such an endeavor should not only seek solutions to the specific concerns raised by the US but also review the *raison d'être* of the Appellate Body.

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3

Revitalizing multilateralism: A new world order?

Saon RAY

1. Introduction

The COVID-19 pandemic sweeping across the world has put the world to a standstill. Airline travel has stopped as countries enforce lockdowns and supply chains are disrupted. The pandemic has revealed certain features of the global world order – its interconnections and hence its fragility. Now more than before, countries need to collaborate and restore order once the pandemic is over. But how can it be done? Multilateralism is the key. However, when the world emerges from this catastrophe, we may see a new world order emerging. This paper examines how multilateralism is at stake even before the current pandemic and why the pandemic could bring back multilateralism to the fore.

2. Role of multilateral organizations

After the end of the Cold War, multilateralism was the core of a “new world order”. This meant the creation of institutions like the United Nations, of NATO and the WTO (Benner, 2019). The Bretton Woods institutions which were created after the Second World War included the World Bank and the International Monetary Fund (IMF), and the aim was to help rebuild the postwar economy and to promote international economic cooperation. The objective of these institutions was to create an economic order based on notions of consensual decision-making and cooperation in the realm of trade and economic relations. It was felt that a multilateral framework was needed to combat the destabilising effects of the global economic depression and trade battles.

The original Bretton Woods agreement also included plans for an International Trade Organisation (ITO) but these lay dormant until the World Trade Organisation (WTO) was created in the early 1990s. The role of the IMF was to create a stable climate for international trade by harmonising its members' monetary policies, and maintaining exchange stability. It would be able to provide temporary financial assistance to countries encountering difficulties with their balance of payments. The World Bank would serve to improve the capacity of countries to trade by lending money to war-ravaged and impoverished countries for reconstruction and development projects. The WTO was created on 1 January 1995 marked the biggest reform of international trade since the end of the Second World War.

Rodrik (2012) observes that The Bretton Woods regime was a ‘shallow multilateralism’ which enabled global trade to recover and allowed policy makers to focus on domestic social issues and employment. This system also helped to achieve a balance between multiple objectives. Some of the most onerous restrictions on trade flows were removed, and hence governments were free to run their own independent economic policies. Developing countries were allowed to pursue their particular growth strategies with limited external restraint. International capital

flows remained tightly restricted. The Bretton Woods compromise was successful since the industrial countries recovered and became prosperous while most developing nations experienced unprecedented levels of economic growth.

However, some of it has unraveled in the last few years, possibly since the great financial crisis of 2008. The WTO dispute settlement process has been derailed since July 2008. Global negotiations of the "Doha Round," organized under the auspices of the World Trade Organization and ongoing since 2001, aimed at reducing barriers to international trade collapsed. Since the great financial crisis, global finance has collapsed. What does this portend for the future of globalization?

3. Globalization redux?

The process of globalization is thought to lead to the convergence of incomes, prices, products, wages, rates of interest and profit. It leads to convergence of production patterns and consumption patterns around the world and leads to greater global connectivity, and integration in several spheres of economic activity. Globalization is achieved by lowering external barriers and liberalizing trade.

The debate on globalization centers around whether it is good or bad. The view that globalization is good argues that globalization is good as it brings convergence of incomes around the world through the exchange of goods, capital and people and hence is desirable. However, has the greater flow of goods or services achieved all this? And has globalization led to a convergence in incomes, and a decrease in poverty and inequality?

At the heart of the debate on globalization is the formulation of the Washington Consensus (Williamson, 1990) which contained ten elements: fiscal discipline, public expenditure priorities in health and education, tax reform, positive and moderate market-determined interest rates, competitive exchange rate, import liberalization, openness to foreign direct investment, privatization, deregulation and the protection of property rights. However, reforms in Latin America and sub-Saharan Africa based on the Washington Consensus, showed that these did not often have the intended effect on growth. As Rodrik (2006) discusses, the role of institutions is particularly important in achieving reforms and how the Washington Consensus was modified to accommodate the experiences from the failure of the standard prescriptions of the original Washington consensus.

Multilateralism has been the cornerstone of the international order since the Second World War (Benner, 2019). Today, some contend that great power conflicts (especially between the US and China) are the central framework for multilateralism. Two points need to be noted here. First, till recently the United States was the main guarantor of the multilateral institutions. Without America's support, the creation of the United

Nations, of NATO, the WTO or the EU would have been inconceivable. Second, although China was a late entrant to economic globalization, it has since its joining of the WTO embraced multilateralism. Recently, China supported some of the proposals of the European Union and other WTO members to improve the efficiency of the Appellate Body, to increase its transparency of the Appellate Body and to address the concerns shared by European countries and the United States.

Other developing countries have often protested against globalization arguing that the system is biased against their interests since it is the 'big boys' that make the rules (Rodrik, 2012). Rodrik says, in recent years, rich countries are no longer too happy with the rules either and the decline in support for economic globalization in major countries like the United States reflects this new trend. Unsurprisingly, this has also led to a surge in protectionism in many countries with the US-China trade war seeing an escalation of such sentiments.

Green and Gill (2009) have shown that Asia, was a region that was based on and influenced by bilateral alliances, has become a multilateral region. However, multilateralism has itself undergone changes since the great financial crisis. Kwakwa (2017) argues that while multilateralism has delivered on several fronts, there are many more challenges in today's world including lackluster growth, climate change, pandemics and refugees. These are putting enormous demands on the multilateral system. How will it respond?

4. Multilateralism in times of COVID-19

In his book 'Guns, germs, steel', Jared Diamond (2005) argues that world trade also led to the spread of diseases. However, infectious diseases can also affect world trade as we are witnessing in the case of COVID-19. The COVID-19 pandemic sweeping the world has had an impact not only on the lives of people, but has impacted the global trading system.

Baldwin (2020) contends that this trade collapse is both a demand and a supply shock. The WTO (2020) estimates that world merchandise trade is set to plummet by between 13 and 32% in 2020 due to the COVID-19 pandemic. Nearly all regions will suffer double-digit declines in trade volumes in 2020, but exports from North America and Asia will be hit hardest. While recovery in trade is expected in 2021, it is dependent on the duration of the outbreak and the effectiveness of the policy responses. Services trade may be most directly affected by COVID-19 through transport and travel restrictions. The outcome of this will be increased protectionism as medical supplies and food runs short in most countries (Crabtree, 2020). It has been suggested that the impact of Covid-19 will be most felt in North America and Asia. Most Asian countries will see a decline in their GDP growth and a shrinking manufacturing sector (Evans and Acosta, 2020).

The G20 in its statement, said that it will 'do whatever it takes to overcome the pandemic, along with the World Health Organization (WHO), International Monetary Fund (IMF), World Bank Group (WBG), United Nations (UN).' This includes efforts to protect lives, jobs and incomes, preserve financial stability, revive growth, coordinate on public health and financial measures and minimize disruptions to trade and global supply chains. It will also provide help to all countries in need of assistance.

The World Bank Group is providing \$6 billion in loans and assistance to developing country governments to strengthen public health care, as part of a broader \$14 billion assistance package (World Bank 2020). As many as 80 countries have already requested help (IMF 2020). International

financial institutions can also help central banks of developing countries by providing foreign currency liquidity in their domestic markets through dollar swaps, and the IMF is considering its own swap facility (IMF 2020).

The COVID-19 pandemic is a truly global shock that necessitates a coordinated global response. As before, the first priority should be boosting health systems. Unlike a global financial crisis, the COVID-19 pandemic carries unique epidemiological and containment-related cross-country spillovers: there are positive externalities across countries in reducing the number of infections through coordinated action, and second-wave infections are likely. Second, measures to contain the virus like travel bans and quarantine measures, also hurt other countries connected through trade and migration linkages. Coordination and financial support to affected developing countries are needed so that they take account of both the positive and negative externalities of their actions as they tackle the disease.

Krueger (2020) argues that only multilateralism can save us. But remains to be seen if this pandemic will help bring back multilateralism (Times of India, 2020).

5. A new green deal? A new world order?

According to Mehta (2020) even before the crisis hit, the global order was under two kinds of strain: depletion of power and authority of the institutions like G7, WTO and WHO and de-globalization. Over the last few years, so many of the global coordinating mechanisms, G-7, G-20, the WHO and the WTO, have been severely depleted in power and authority. The second strain was the push towards de-globalization led by the US, largely in response to China. This resulted in tariffs going up, investment barriers being raised, knowledge flows regulated and immigration being curtailed. In this crisis where global effectiveness could have been enhanced by more effective coordination, can the multilateral institutions elicit any effective forms of global cooperation? What role can multilateralism play in this unprecedented situation?

Since the pandemic occurred, global leaders are speaking in one voice. The United Nations General Assembly (UNGA) adopted a resolution backed by 188 countries and released the 'Global solidarity to fight the coronavirus disease 2019 (COVID-19)' which was the first such document on the global pandemic to be adopted by the world organization. The resolution said the 193-member General Assembly notes "with great concern" the threat to human health, safety and well-being caused by the coronavirus disease 2019 pandemic, and recognizes the *"unprecedented effects of the pandemic, including the severe disruption to societies and economies, as well as to global travel and commerce, and the devastating impact on the livelihood of people."* (UNGA, 2020)

Several new multilateral instruments have sprung up in recent times: the Green Climate Fund to support the UNFCCC's Paris climate agreement, the World Bank's pandemic facility to disburse resources in case of a pandemic and the Global Crisis Facility to address the refugee crisis (Kwakwa, 2017).

However, as PM Lee Hsien Loong of Singapore puts it *“the US has lost faith in the WTO. It often acts unilaterally, imposing tariffs and trade sanctions outside WTO rules. It prefers negotiating bilateral deals one on one against smaller countries in tests of strength. ...US- China relations will define the tenor of international relations for years to come. It is natural that the two powers will vie for power and influence, but competition should not inevitably lead to conflict. We hope the US and China find a constructive way forward, competing certainly, but at the same time cooperating on major issues of mutual interest.”*

International cooperation has been lacking whether it is G7, G20 or the United Nations (Patrick, 2020). However, interdependence between countries are functions of conscious choices in favor of economic and technological interconnectedness. But does interdependence really always promote cooperation? In addition, interdependence is rarely perfectly symmetrical (Benner, 2019).

Now more than ever before, it is incumbent upon the two countries to embark on a path of mutual cooperation (and not competition), and strengthen the multilateral framework. A coordinated response will not be possible without a supportive multilateral system (Pezzini, 2020).

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4

China's role in WTO reforms

Matthias SCHAEFER

1. Preface – The meaning and state of globalisation in our time

The current era is characterised by a high level of globalisation. Before the corona crisis hit the global world and its economic interconnection, the openness of the world economy was nearly at its maximum of almost 50 % of GDP. That means the sum of global export and import accounted for the half of global GDP. The meaning of global trade has become the main pillar for global growth and wealth creation and therefore, the international framework for trade and services and its fundamental institution, the WTO, have outstanding relevance for the stability and the security of our economies worldwide. On the contrary, the increased disagreement over trade rules, currency movements and technological flows threaten to further deteriorate the state of the global economy, and the contrary is absolutely crucial for the economic and social recovery after the corona crisis.

2. The necessity of global governance in trade and services

Open trade and open markets do not exist out of themselves. They are created by political institutions and governance. The principles of a workable capitalism, open markets, private property, stable currency, private autonomy and liability require the public regulation and a rule of law that helps to establish and supervise these principles. In a nutshell, this model of a Social Market Economy is reflected in the WTO, that *“shall provide the common institutional framework for the conduct of trade relations among its members.”*

Especially in the new era of digitalisation and the stronger relevance of services in trade relations, the WTO and its member states have a key interest in adjusting the framework of its regulation away from tariffs on goods and taking into account the intellectual property and the meaning of non tangible products and digital services and applications.

3. The role of China

China has long been a member of major international organizations: China has been one of the five permanent members of the Security Councils of United Nations since 1971 and has been a member of the World Bank and International Monetary Fund since 1980.

Joining the WTO in 2001 was a prolonged and challenging process. After its accession, China reviewed and revised 2,300 laws, regulations and departmental rules at central government level, and 190,000 policies and regulations at sub-central government levels, covering trade, investment, IPR protection, etc.

China experienced explosive trade growth after joining the WTO. Driven in part by tariff reductions, China's trade in goods jumped from \$516.4 billion in 2001 to \$4.1 trillion in 2017. China's **imports** of goods and services counted far less than 20% before 2001. However after the entry of the WTO, the following three years witnessed a rapid increase of the percentage of imports of goods and services in the GDP.

China's **export** of goods and services made up less than 20% of GDP before 20th Century. The percentage grew slowly from 13.6% in 1990 to 18.16% in 1999 and continued to increase slightly in the following two years before entry to the WTO. The exports of goods and services increased significantly since 2001 after the entry of the WTO and soon reached its peak at 36.035% of GDP in 2006.

In 1992, China's average weighted **tariff rate** of 32.2 percent far surpassed the global average of 7.2 percent. The year after accession to the WTO witnessed the sharpest decrease of the tariff rate in Chinese history. By 2002, this rate dropped to 7.7 percent. Since then, however, Chinese tariffs have remained largely unchanged, averaging 4.8 percent between 2003 and 2017. Amid ongoing trade tensions, China began ramping up tariffs on the US in 2018.

In May 2019, China submitted its own **WTO reform** proposal that (among other points) criticized the US for blocking appointments to the WTO's Appellate Body. For years, the US has challenged the Appellate Body due to concerns that it has at times overstepped its authority. The US has also complained that the body has ignored rules mandating the completion of cases within a specified time period.

Under President Donald Trump, the US has strengthened its efforts to limit the Appellate Body by blocking the appointment of new judges to the body. When the terms of two judges ended on December 11, 2019, without any re-appointments, the Appellate Body was left with only one sitting judge. Since WTO rules require a quorum of at least three judges on the Appellate Body, it now stands unable to issue rulings, effectively bringing WTO dispute settlement to a standstill.

Issues with the Appellate Body are part of broader disagreements among WTO members, not only with the US, over how to address underlying problems within the organization. These divisions, coupled with ongoing US-China trade tensions, offer Beijing an opportunity to cast itself as a defender of global trade and elevate its role within the WTO. Given China's mixed record of compliance with WTO dispute rulings, Beijing's role in addressing these issues will significantly shape the organization's future, in case other countries from Europe, the US or Asia will not take over a constructive role in the process of reforming the WTO and the Appellate Body institution.

4. Guiding principles of a WTO reform

The strategic objective of reforming the WTO within a common European, US and Asian economic engagement should be inspired by some key perspectives and objectives that should guide the future WTO member- and relationship:

1. Underline Asia's positive contributions to the global economies all over the world. Asia and especially China are simply too big, dynamic and young and too strongly embedded in the economic future of the world, that a failure of a reformed global framework within the WTO should not be accepted. The future of WTO in this context shall be as well inspired by the positive role that Asian economies play in the era of digitalisation and environmental as well as sustainable global wealth creation.
2. Balance the needs of global value chains and consumers with the necessity for a strong and clear regulation and governance that allows a level playing field based on considerations of efficiency and effectiveness of WTO interference. Global trade and open markets are not necessarily counter-aspects of efficient governance and strong and sound administration. Nevertheless: Cutting red tape and efficient and appropriate WTO bureaucracy will not only enhance global trade, but as well the acceptance of a positive and strong role of the WTO as multinational institution.
3. Account for differences in the Asian, especially Chinese and Western governance models. The role of state-owned companies is a very special issue that has to be treated with high sensibility as it reflects the core aspect within the different economic models. The US and Europe have differences in the way their governments interact with the private sector. The differences in these approaches raise important issues of fairness and reciprocity that the WTO until now could not answer or cope with in an appropriate manner. These differences have to be taken into account in WTO reform.

4. Caution with security aspects interfering in WTO reform perspectives. Because the trend of state intervention in investment decisions has already been on the rise before the corona crisis, the aspects of security concerns, approaches of dismantling global value chains up to strategies of decoupling global embedded economies will influence the current debate of WTO reform. This is compounded by a foreign policy that appears to establish a dominance in the Indo-Pacific and deference to political/security interests in Asia. And with a special look to China: Not every investment decision might be politically and security motivated, but there is no stronger investment without the political backing by the Communist Party of China (CPC).

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Global trade developments and India's response

Sharmila KANTHA

1. Introduction

The global trade governance regime has been under considerable stress in practical terms since the Uruguay Round resulted in the launch of the World Trade Organization (WTO) in 1995. Over the last few years, geopolitical developments have further exacerbated the incapacity of the multilateral trade system to respond to development imperatives as well as to multidimensional changes across diverse domains of technology advance, globalisation, protectionist actions, plurilateral trade agreements, shifting of standards goalposts, and so on. These are visible in the collapse of the Doha Development Round initiated in 2001 without definitive outcomes, rendering the WTO helpless as a global trade body. A body blow has been further dealt to world trade with the Coronavirus health disaster which has crippled manufacturing and closed borders across the world.

The impact of the trade regime developments along with its ripple effect on second- round and lower-round national responses is vitiating the development agenda of emerging economies still grappling with issues of poverty, human development and economic capacity. India's response to these trade developments cuts across several areas. This note captures recent global trade developments, the current state of India's trade, recent policy actions, and stance on WTO reforms.

2. Global trade developments

The entire context of globalisation stands at a moment of significant churn. There are geopolitical, technological, and pure economic factors that are at play in the global trading environment.¹ In the first quarter of 2020, the Coronavirus pandemic underscored the vulnerability of global trade to external shocks as country after country was forced to lock down factories, businesses, transport and external engagement to prevent the spread of the infectious disease. The aftershocks of the pandemic are likely to accelerate the ongoing shift of global supply chains, yet the direction of the movement and its extent are currently in unknown territory.

Some of the developments in global trade have been underway and were expected, while others have been unexpected jolts to the system.

1 S&P Global, Panjiva, 2020 Outlook: It is about Time – The Future for Global Supply Chains, 27 Jan 2020, <https://www.spglobal.com/en/research-insights/articles/2020-outlook-it-s-about-time-the-future-for-global-supply-chains> accessed on 28 March 2020

3. White swan developments

Expected trends consolidating over the previous years include i) technology change, ii) emergence of new trading nations, iii) regional trading arrangements, and iv) rise of wages as economies experience growing incomes. All of these have had substantial impact on trade models.

1. Technology change is transforming manufacturing as well as services that are traded. Artificial intelligence, 3D printing, machine learning, big data, and many other digital technologies which are often collectively termed as Industry 4.0 have made it possible to customize products. They also require much higher infusion of services such as design, R&D, marketing, maintenance and so on than was earlier the case.

As a result, manufacturers today wish to be closer to their customers in order to be able to meet specific and niche demand. There is a visible trend of reshoring or nearshoring of manufacturing.

2. The emergence of China as the world's largest manufacturer and exporter has been one of the major trade phenomena of the last two decades. Since its entry into WTO, China has been able to capture a huge share of global trade, including exports and imports. This has led to restructuring of global value chains in a much more segmented and micro manner.
3. This trend is further driven by the rise of wages in China, which is following the traditional trade-led growth model of low value-added production moving up to higher value addition. China's average annual manufacturing wages have been steadily rising, multiplying by three times between 2008 and 2018².

² Statista, Average yearly wages in the manufacturing sector in China from 2008 to 2018, <https://www.statista.com/statistics/743509/china-average-yearly-wages-in-manufacturing/> accessed on 28 March 2020

4. Regional trading agreements (RTAs) have now become the preferred trading system. The last few years have seen such RTAs fructifying in ASEAN and its trading partners, in North America, RCEP and the Comprehensive and Progressive Agreement on Trans-Pacific Partnership. Today, these are an alternative for preferential global trade at a time when the WTO is unable to come to consensus on key issues.

While major trade players could have been expected to redraw the framework of global trade strategically in the light of these white swan changes, such expectations have been proven misplaced since 2016 with trade talks now stalled. In fact, the situation has been exacerbated due to black swan disruptions of the last 2-3 years.

4. Black swan events

Such events are characterized by a roll-back of globalisation owing to geopolitical developments. The referendum on Britain's exit from the European Union (Brexit, as it is known) was one such development and the flip-flops in this were finally laid to rest only in January when the exit of the UK from the EU took place. With the nature of trade flows and investment agreements between the UK and the EU not clarified, it will take some more months before the contours of this exit take shape.

The second development was the US withdrawal from free trade policy which was reflected in multiple policy announcements. Import tariffs were hiked. A trade war with China erupted. Ongoing free trade agreements in the region were renegotiated. The US also pulled out from the Trans-Pacific Partnership which converted to the CPTPP in its absence.

The hardening stance of the US is still evolving. While a trade deal has been signed between the US and China, its negotiations on the Trans-Atlantic Trade and Investment Partnership (TTIP) are on the back burner.

The most unexpected shock to global trade is the Coronavirus pandemic, a global health emergency that has resulted in stoppage of production hubs, domestic and cross-border logistics, shipping and ports, and sharp fall in trade. At the time of writing at the end of March 2020, most nations had seen Coronavirus-positive cases and were taking stringent measures to restrict movement. In India, the Government initiated lockdown of all movement except for essential items. All railways, domestic and international flights, and public transportation in the form of metros, buses, and taxis were shut down and citizens were advised to confine themselves indoors except for critical service workers. The global economy is widely expected to be in recession³.

³ IMF press release 23 March 2020, <https://www.imf.org/en/News/Articles/2020/03/23/pr2098-imf-managing-director-statement-following-a-g20-ministerial-call-on-the-coronavirus-emergency> accessed on 27 March 2020

5. India's trade response

India's trade policy response arises from the fact that its export performance since 2011-12 has been subdued. Within a growing global uncertainty, India's exports have been underperforming since 2011-12. The April to January data for the financial year 2019-20 shows exports declining by 2% over the previous year, while imports fell by as much as 8% over the previous year. Some of this is attributable to declining crude oil prices on which India is heavily dependent both for exports and imports. However, its trade sector has been a matter of concern for economic analysts.

	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020 Apr-Jan
Total Export	310.34	262.29	275.85	303.53	330.08	264.91
Total Import	448.03	381.01	384.36	465.58	514.08	405.33
Total Trade	758.37	643.30	660.21	769.11	844.16	670.24
Trade Balance	-137.69	-118.72	-108.50	-162.05	-184.00	-140.42

Source: Department of Commerce, Ministry of Commerce and Industry, India

The Indian government brought out a five-year foreign trade policy 2015-2020 providing incentives for exports of merchandise and services. The policy is not fully compatible with WTO regulations and the outline of a new policy has been announced. However, its implementation has been deferred for another year amid the ongoing Coronavirus crisis. In addition, the government has been working on trade related infrastructure particularly in provincial regions and has greatly improved the trade facilitation framework with electronic approvals, inspections and processes.

On the other hand, the Indian response to shifting global trade developments also covers the measure of raising tariffs to protect domestic industries, a step that has been taken consistently over the last three years. The intention is to provide relief to small and medium enterprises under the government's Make in India program. Another measure taken to lower imports of sub-standard goods that is underway is to institute quality norms for specific products. These are being done for machinery, toys and other items, but has been a slow process.

The government has also stepped back from the policy of free trade agreements. The first FTA was inked by India with Sri Lanka in 1998 and since then, FTAs including investments and services were also signed with many other countries including Japan, Korea and so on. India has also upgraded its FTA with ASEAN to include investments and services. However, the outcomes of the FTAs are widely perceived to be not positive for Indian industry which has not leveraged them to their full potential. The government has hence mentioned several times that it would be reviewing FTAs, although this has not yet been carried out⁴.

A key response to global trade developments was the government's decision not to be part of the Regional Comprehensive Economic Partnership which included ten ASEAN members and six other countries, Australia, China, Japan, Republic of Korea, India, and New Zealand. India already enjoys trade partnership agreements with ASEAN, Japan and South Korea. Its position was that the RCEP discussions failed to take into account India's interests in services trade and also protect its defensive interests in rules of origin and sudden surges in imports with a trigger mechanism.

The government has also instituted a raft of policies that would boost domestic manufacturing and drive competitiveness.

Ease of doing business: Digital tools and procedural issues are high on the agenda to enable businesses to lower their transaction costs. Since 2014, India has improved its position in the World Bank Doing Business

4 Business Standard, 31 December 2019, https://www.business-standard.com/article/economy-policy/commerce-ministry-to-review-existing-free-trade-agreements-piyush-goyal-119123100063_1.html

ranking from 142 to 63, emerging as one of the top reforming economies for three years.

Liberalisation of FDI: Recognizing that foreign direct investments can play a larger role in India's engagement in global value chains, India has systematically removed barriers to FDI flows. It eased local sourcing norms in single brand retail, contingent upon export of 20% of products, permitted 100% FDI under automatic route for contract manufacturing, and opening of coal and lignite mining as well as an intent to offer special incentives for large overseas manufacturing investments are positive steps in this direction.

Financial sector: Consolidation of public sector banks and their recapitalisation, strengthening of corporate bond markets, institution of investment funds, and other measures have been taken to expand business access to funds for investments. Interest rate subvention is available for small enterprises and exporters. However, much more needs to be done in this area.

Taxation: The institution of the Goods and Services Tax in 2017 was a landmark reform which helped make India a single market as provincial indirect duties were largely eliminated. The government in its latest budget in July 2019 reduced direct tax rates for new manufacturing investments to 15%, comparable to competitor nations with a view to attracting investments into manufacturing and exports.

Logistics: The government has recently established a special cell in the Ministry of Commerce and Industry to boost logistics, including for exports, by bringing together various transport segments and regulatory agencies on a single platform. A national logistics policy is also proposed. Logistics cost is estimated at 13-14% of GDP as compared to developed economies and is also seen to be skewed towards road transport as compared to other countries⁵.

5 Draft Discussion Document on National Logistics Policy, Ministry of Commerce (Logistics Division), 5 February 2019 https://commerce.gov.in/writereaddata/UploadedFile/MOC_636850457336854610_Notification-Draft-05022019.pdf

Sectoral policies: India has identified several sectors such as textiles and garments, electronics, digital technologies, food processing, renewable energy, and so on, where several policies have been brought out to boost capacity. For example, in the textiles sector, the government offers rebate on provincial levies. In the electronics hardware sector, promotional policies were announced on 1 April for electronics manufacturing clusters, large scale manufacturing and manufacturing of components and semiconductors.

While reform policies are underway, India's manufacturing sector continues to underperform and a slowdown in the GDP growth rate indicates that more promotional policies are required to enable its better integration into evolving global value chains. As countries seek to diversify their import sources following the Coronavirus-led disruption, India stands a chance to improve its economic environment for export-led growth.

6. WTO issues

The Bali Ministerial Declaration of 2013 saw substantive outcomes in the trade facilitation agreement and agreement on public procurement of food. India's position in the matter of public procurement of food was clear, that poor and marginal farmers of developing countries require government support and that public stockholdings are an imperative for food security and livelihoods of farmers.

For India, a key issue of concern is agriculture viz. public stock holding of food by the government and procurement of food at Minimum Support Prices which are fixed by the government as a support for farmers, often at higher than market prices. It opposes the WTO formula of calculating prices at 1986-88 values and contends that subsidies by developed countries to their farmers are distorting prices. India has asked for a permanent solution to this to protect its small and marginal farmers but little progress has been made at the WTO.

Issues under consideration at WTO cover numerous areas including agricultural subsidies and procurement, sanitary and phytosanitary measures, anti-dumping dispute resolution, labour standards, government procurement, environmental issues, and so on. Services trade which is of particular interest to India, is at a standstill with no meetings scheduled for 2020. The 12th Ministerial Conference of WTO scheduled in June has been postponed owing to Covid-19.

In recent years, additional issues have bedevilled the WTO system. Decisions by some countries to bypass the dialogue platforms and resolution mechanisms provided by the WTO to institute unilateral protectionist measures and the non-functioning of the Appellate Tribunal due to lack of adequate number of judges being appointed have further detracted from trust in the system.

7. WTO reforms

The WTO is seen as largely falling behind the needs of trade in services, cross border flows and digitization and is widely perceived as being in need of reform. US President Trump has criticized its China policy which according to him has been highly detrimental to US interests. Tariff impositions by the US are also not as per WTO rules. The US has prevented appointment of new judges to the WTO Appellate Body, which has resulted in its standstill. It is also contemplating leaving the WTO's government procurement agreement.

These are unilateral decisions that are conflicting the global trading system and leading to retaliatory measures. They are also encouraging other countries to follow suit. In essence, it appears to be a divergence between China's non-market government-led socialist/dirigiste economy and the US ideology of capitalism. Neither of these works for a mixed economy like India which is still working on better market capabilities.

India has asked for development centric reforms to WTO. It has maintained a position on consensus-based decision-making, non-discrimination and Special and Differential Treatment. India represents the interests of developing countries and supports an open, inclusive, transparent, non-discriminatory and rule-based international multilateral trading system.

It has stated that discussions on WTO reform should be based on principles of inclusivity and equity and should not widen existing asymmetries in WTO agreements. It has taken a stance against unilateral actions that are not consistent with WTO rules.

Following a slowdown in talks at the WTO, India in 2018 took the initiative of hosting an informal WTO Ministerial Gathering which was attended by 53 WTO members. The then Indian minister summed up the discussions although there was no formal statement. The gathering expressed disappointment at the pace of outcomes and the lack of convergence. They also emphasized the need to improve the rules-based multilateral trading system through the WTO. The issues of non-discrimination,

unilateral trade measures and counter-measures taken by some WTO members against the spirit of the trade body came up while the issue of Special and Differential Treatment (S&DT) for LDCs could not be agreed upon.

In 2019, at the World Economic Forum Annual Meeting informal gathering, India offered a concept paper calling for development-centric reforms to strengthen the WTO in accordance with the recognition that trade is an essential requirement for development. The paper called for WTO reform based on the principles of inclusivity without widening existing asymmetries⁶. This was supported by a majority of countries but opposed by the US.

Some positions taken by India consistently include the below:

- › Related to its concerns on agricultural subsidies, India has submitted that imbalances in the Agreement on Agriculture should be the starting point for WTO reforms, which have been an ask of developing countries troubled by trade-distorting subsidies for 20 years. It also called for clarifications on the intent to create permanent solutions for public stockholding for food security by developing countries.
- › India believes that S&DT is the way forward for developing nations to build an equitable share in world trade and address their development needs. It has stated that any reform of the WTO body should not curtail the available flexibilities and policy space for developing countries⁷.
- › As the US blocked the appointment of members of the WTO Appellate Body, India expressed its concerns and submitted a communication to the WTO General Council along with EU and 12 other countries for taking up the operations of the Dispute Settlement Body. Of the

6 D Ravi Kanth, 'India's proposal for WTO reforms supported by a large majority of countries' Mint, 26 July 2019 <https://www.livemint.com/news/india/india-s-proposal-for-wto-reforms-supported-by-a-large-majority-of-countries-1564144186373.html>

7 Statement of Commerce and Industry Minister of India at the Informal WTO Ministerial Gathering at Davos, 24 January 2020, https://www.pmindiaun.gov.in/pdf/CIMStatementatDavosconverted_27jan.pdf

seven disputes where India is involved at the WTO, it is the complainant for four against the US⁸.

- › India has raised procedural guidelines at the General Council meeting such as caution about the direct role of the chairperson of WTO bodies and its secretariat in resolving trade disputes. It has emphasized the importance of S&DT as an entitlement for developing nations, stating that divergences in economic development make it imperative for them to have time and flexibility to integrate into the rules-based system⁹.

8 Issues at WTO, Press Information Bureau, Government of India, 7 January 2019, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=187276>

9 Statement by India at the WTO General Council Meeting, 3 March 2020 <https://www.pmindiaun.gov.in/pageinfo/MjJwNg>

8. Conclusion

Global trade is at a crossroads and the Coronavirus pandemic has emphasized the need for going beyond national confines to tackle global issues. The looming massive disruption in trade will redraw development paradigms for developing nations, offering both huge challenges and new growth avenues. However, strategic and systematic management of the evolving dimensions of the disruptive force of Coronavirus at the global level is an imperative for orderly, quick and sustained progress of all countries and of global trade. The world must find solutions through multilateral routes and the WTO needs to be revived by the global community as a viable platform for dialogue and effective outcomes.

Recently, India took the innovative initiative to organise a video conference of leaders of countries in its neighbourhood for coordinated response to a pandemic that knows no borders, pledging \$10 million to the regional effort to combat the virus at the South Asian Association of Regional Cooperation (SAARC) interaction. It also participated in the G20 discussions on Coronavirus held on 26 March 2020.

As a key emerging economy with high potential for leading global growth and becoming a cornerstone for global trade, India can position itself as a key player in the multilateral trade governance body. Aiming to be a significant global power, the country can only achieve its objectives if its domestic economy is sufficiently strengthened to be part of the emerging global trade commons.

In this scenario, India must work towards much higher levels of competitiveness to improve its comparative advantage in the global markets. This will work inside the factory for smaller enterprises and outside-the-fence for a better environment for doing business as a whole. The reform process for strengthening markets and encouraging enterprise would need to continue at an intensified pace for an effective response to global trade developments.

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6

Singapore's pursuit of free trade

Lurong CHEN

1. Background

Open and competitive economy governed by rules-based free trading system plays a determinant role in the growth and prosperity of Singapore, a small city-state without much natural resource except its blessed geographic advantage in conducting international trade and ocean transportation. The country is a founding member of the World Trade Organisation (WTO), and since then it has been vibrantly pushing forward the process of international trade and investment liberalization.

Economically, Singapore has been a vital link of the global economy and a *de facto* regional hub for the Association of Southeast Asian Nations (ASEAN) in terms of trade and investment. (Chen and Intal 2017) Singapore-ASEAN trade accounts for nearly one-third of Singapore's total global trade. As for the trade in parts and components¹, Singapore accounts for almost half of regional total exports and over one-third of imports. As the largest FDI host country in the region, Singapore had cumulatively absorbed around 44% of the region's total inward FDI from the world between 2012 and 2016.² The majority of these inward FDI flows are from the European Union (EU) and the United States (US)³. On the other side, a large amount of Singapore's investment had been allocated to ASEAN. Although Indonesia is the largest regional market and probably the final destination of foreign investment, almost 60% of FDIs comes via/from Singapore, highlighting the country as a functioning regional financial centre. (Table 1)

1 In ASEAN and East Asia, production sharing is evident in various industries, particularly in the machinery and transportation equipment sectors which are characterized by multi-layered vertical production or distribution. Accordingly, cross-border exchange of parts and components takes a much larger share of regional trade, especially in machinery trade, in ASEAN than any other regions.

2 The figure tends to increase in recent years. (Chen and Intal 2017)

3 Respectively, four-fifths of FDI from the EU in ASEAN and three-quarters of that from the US are concentrated in Singapore.

Table 1: Singapore in regional trade and investment

	Share of regional total exports (%)	Share of regional total imports (%)	Share of regional total inward FDI (%)	Share of FDI from Singapore as a share of the country's total inward FDI (%)
Brunei	0.0	0.1	0.3	1.9
Cambodia	0.1	0.2	1.1	5.1
Indonesia	3.5	8.7	10.6	58.2
Lao PDR	0.0	0.2	0.5	0.2
Malaysia	19.8	18.9	7.2	17.7
Myanmar	0.0	0.4	1.4	41.5
Philippines	8.6	6.8	3.5	2.8
Singapore	47.6	36.8	44.0	
Thailand	14.0	15.6	6.2	0.5
Viet Nam	6.3	12.3	6.8	11.6

Sources: Author. Raw data the United Nations' COMTRADE database and ASEAN Secretariat.

It is evident that a market economy with a high degree of openness, resulting from the country's continuous pursuit of free trade, plays a vital role in sustaining Singapore's social-economic development. For many years, the country has been ranked as the world's most liberalized and most globalized economy. (Chen and De Lombaerde 2019) The total value of its international trade in goods and services is almost triple to its GDP

2. Singapore as a free trade promoter

Singapore has actively participated in multilateral trade talks and proved to be a pioneer from Southeast Asia to join new trade agreements. For instance, Singapore is a party of the Colorado Group⁴ who put on the agenda of the WTO in 1996 the issue of setting multilateral rules on trade facilitation, and since then, kept pushing forward the progress of the related negotiations. Singapore is the first ASEAN member state which ratified the Trade Facilitation Agreement (TFA) (on 8 January 2015, 6 months after the conclusion of TFA) and fully implemented its commitments notified in category A at the time when TFA officially entered into force on 22 February 2017.⁵ Among ASEAN, Singapore is the only one that has access to the Government Procurement Agreement (GPA) and agreed to liberalise basic telecommunications services and financial services beyond the level achieved during the Uruguay Round in the General Agreement on Trade in Services (GATS).

Regionally, Singapore is one of the five original signatories of the ASEAN Declaration in Bangkok for the establishment of ASEAN in 1967⁶, and the first one who ratified the ASEAN Charter in 2008 and the ASEAN Economic Community Blueprint (AEC) in 2015. Perceiving that an integrated ASEAN community would provide wider and deeper opportunities to increase the country's global competitiveness and international influence, Singapore has been playing a leading role in pushing for regional integration, especially economic integration, which, as Lim (2017) summarizes, are motivated by:

4 Other WTO members that joined the Colorado Group were Australia, Canada, Chile, Colombia, Costa Rica, EEC (later EC), Hong Kong China, Hungary, Japan, Korea, Morocco, New Zealand, Norway, Paraguay, Singapore, Switzerland, and the United States.

5 TFA started at the WTO Ministerial Conference in Singapore in 1996 and got effective in 2017 when the WTO obtained the two-thirds acceptance of the Agreement from its 164 Members. Source: tfadatabase.org

6 Although ASEAN was established primarily as a political entity, the Singapore Government sees ASEAN membership as a means to enhance its security, political stature, economic development and competitiveness. (Lim 2017)

1. Ensuring regional political stability via closer neighbourhood and therefore Singapore's survival and security;
2. "Leverag[ing] on ASEAN to build an external wing for its economy" (Lim 2017:209); and
3. Maintaining its position as the regional entrepot and strengthening its role as a base in Southeast Asia for MNCs.

Singapore has been actively pursuing bilateral or plurilateral FTAs with non-ASEAN countries as well. By the end of 2019, Singapore has signed 24 such agreements. (Table 2) This has not only increased Singapore's openness and strengthened its link with trade partners in other regions, but also spurred other ASEAN economies to de-regulate their economies to the global marketplace. In this regard, Singapore's actions in regional integration and FTA arrangements shall be seen as the supplementary to its effort on promoting globalization and the multilateral trading system.

Table 2: Singapore FTAs involving non-ASEAN partner(s)

TA	Entry into Force
China-Singapore Free Trade Agreement (CSFTA)	<ul style="list-style-type: none"> › 1 January 2009 › 25 October 2011 (Amendment) › 16 October 2019 (Protocol upgrade)
European Union-Singapore Free Trade Agreement (EUSFTA)	› 21 November 2019
India-Singapore Comprehensive Economic Cooperation Agreement (CECA)	› 1 August 2005
Japan-Singapore Economic Partnership Agreement (JSEPA)	› 30 November 2002
Korea-Singapore Free Trade Agreement (KSFTA)	› 2 March 2006

7 During the Brexit transition period (1 Feb 2020 to 31 Dec 2020), the United Kingdom will be treated functionally as an EU Member State and remain a party to EU international agreements.

TA	Entry into Force
New Zealand-Singapore Comprehensive Economic Partnership (ANZSCEP)	<ul style="list-style-type: none"> › 1 January 2001 › 1 January 2020 (Protocol upgrade)
Panama-Singapore Free Trade Agreement (PSFTA)	› 24 July 2006
Peru-Singapore Free Trade Agreement (PeSFTA)	› 1 August 2009
Singapore-Australia Free Trade Agreement (SAFTA)	<ul style="list-style-type: none"> › 28 July 2003 › 1 December 2017 (Amendment)
Singapore-Costa Rica Free Trade Agreement (SCRFTA)	› 1 July 2013
Singapore-Jordan Free Trade Agreement (SJFTA)	› 22 August 2005
Sri Lanka - Singapore Free Trade Agreement (SLSFTA)	› 1 May 2018
Turkey-Singapore Free Trade Agreement (TRSFTA)	› 1 October 2017
United States-Singapore Free Trade Agreement (USSFTA)	› 1 January 2004
ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)	› 1 January 2010
ASEAN-China Free Trade Area (ACFTA)	<ul style="list-style-type: none"> › 20 July 2005 (Trade in Goods) › 1 July 2007 (Trade in Services) › 15 February 2010 (Investment) › 1 July 2016 (Protocol upgrade) › 15 August 2019 (Protocol upgrade)
ASEAN-Hong Kong, China Free Trade Area (AHKFTA)	<ul style="list-style-type: none"> › 11 June 2019 (Viet Nam) › 17 June 2019 (Lao PDR)
ASEAN-India Free Trade Area (AIFTA)	› 1 January 2010
ASEAN-Japan Comprehensive Economic Partnership (AJCEP)	› 1 January 2009

TA	Entry into Force
ASEAN-Korea Free Trade Area (AKFTA)	<ul style="list-style-type: none"> › 1 June 2007 (Trade in Goods, except Thailand) › 1 October 2009 (Trade in Goods, with Thailand) › 1 May 2009 (Trade in Services) › 1 September 2009 (Investment)
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	<ul style="list-style-type: none"> › 30 December 2018 (Mexico, Japan, Singapore, New Zealand, Canada, Australia) › 14 January 2019 (Vietnam)
EFTA-Singapore Free Trade Agreement (ESFTA)	› 1 January 2003
GCC-Singapore Free Trade Agreement (GSFTA)	› 1 September 2013
Trans-Pacific Strategic Economic Partnership (TPSEP)	<ul style="list-style-type: none"> › 1 May 2006 (New Zealand, Singapore) › 8 November 2006 (Chile) › 29 July 2009 (Brunei)

Source: Author. Raw data from <https://www.enterprisesg.gov.sg>

3. Singapore in promoting WTO 2.0

At the time when the global economy is facing uncertain climate and rising protectionism, Singapore has clearly declared its firm position against the backdrop of rising trade tensions to strengthen the function of the WTO by supporting the related reforms in the multilateral trade system (i.e. that of the WTO dispute settlement mechanism and the Appellate Body) and exploring areas of global rule setting/updating (i.e. that on digital trade and e-commerce).

In January 2020, Singapore joined a group of WTO members⁸ agreeing to collaboratively work on a temporary solution to preserve the WTO dispute settlement mechanism. The WTO seven-member Appellate Body was established to rule on international trade disputes. It has been seen as an important feature of the WTO. However, the court was running under the overload conditions since 2001 when the US started to impede the appointment of new judge(s) to replace the one(s) whose terms are set to be terminated. By the end of 2019, the court's function was totally halted because the panel needs to consist of at least three judges in order to be operational, but there was only one remaining on duty. Given that it is indeed the United States of America's intention to have the Appellate Body to eventually lockout, the actions taken by Singapore and the other 16 WTO members shall be seen as a decision to provide countermeasures.

It is worth noting that Singapore holds deep and sound relations with the US. It tolerates the US's adoption of unilateral measures and keeps neutral when the US and China got into trade tension.⁹ But when there were critical rifts between the US and the WTO, and the former's

⁸ The 17 WTO members that agreed to create a temporary mechanism are Australia, Brazil, Canada, China, Chile, Colombia, Costa Rica, EU, Guatemala, Republic of Korea, Mexico, New Zealand, Norway, Panama, Singapore, Switzerland, and Uruguay.

⁹ In various occasions, Singapore declares its general position that is in favour of international cooperation that mutually benefit parties and against unilateral measures and trade wars that may have repercussions on global economy.

behaviour challenged multilateralism, Singapore took a clear-cut stand to defend the latter, showing it a top priority of its foreign policy to ensure the continuous function of the WTO.

One of Singapore's very notable contributions to the multilateral trading system in recent years comes from its proactivity in pushing forward the WTO talks on rules on digital trade and e-commerce.

Singapore has joined the Information Technology Agreement (ITA)¹⁰ to eliminate tariffs for information and communication technology (ICT) products. In 2017, Singapore, Australia and Japan, with the support of 68 other WTO Members, are the main driving force behind the launch of the E-Commerce Joint Statement Initiative (JSI) at the 11th WTO Ministerial Conference (MC-11) in Buenos Aires, Argentina. In January 2019, 49 WTO members signed the WTO Joint Statement on E-commerce, announcing their intention to begin negotiations on trade-related aspects of e-commerce. (WTO 2019) At the time when the 2nd Joint Statement was released in January 2020, six negotiating rounds had been completed, and the total number of proponents for the negotiations increased to 83. (Australia, Japan and Singapore 2020)

As S. Iswaran, Singapore's Minister for Communications and Information and Minister-in-charge of Trade Relations stated in a trilateral Joint Media Release after the Davos meeting in 2020, *"Singapore is committed to leading negotiations on electronic commerce, alongside Japan and Australia, [...] Singapore will work with other JSI Members to create a forward-looking and enabling environment that will unlock the potential of the digital economy."* (Australia, Japan and Singapore 2020: 2)

In parallel, Singapore is also a main driver of rule setting on E-commerce in ASEAN. The 2018 ASEAN Agreement on E-Commerce was signed under the Singapore's chairmanship¹¹ of the ASEAN Coordinating Committee on Electronic Commerce (ACCEC), the coordinating body of ASEAN to oversee the progress in establishing the legal infrastructure for e-commerce in the region. In May 2019, Singapore's Minister of Trade and Industry,

¹⁰ Among all the WTO agreements, GATs and The Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) are considered to be most relevant to e-commerce. ITA also plays a role since ICT products are the hardware that enables e-commerce.

¹¹ The preliminary text was drafted when the Philippine was the chair country of ACCEC.

together with his counterparts in Chile and New Zealand, announced the start of negotiations towards a Digital Economy Partnership Agreement (DEPA), aiming for best practice to support and promote digital trade. The agreement was soon concluded in January 2020.

Yet there are different views to what extent the ASEAN Agreement on E-Commerce or DEFA could effectively facilitate digital trade, and it is out of the scope of this essay to join the related debates. However, one highlight here is that Singapore has played some remarkable roles in initiating, negotiating and concluding these agreements. These are consistent with what Singapore is trying to push forward in the WTO - modernising multilateral rules to meet the needs in digital transformation. This could even foreshadow the direction and the way(s) that Singapore is going to lead the WTO negotiations on trade-related e-commerce issues.¹²

12 For instance, DEPA is said to be intending to complement the WTO negotiations on e-commerce and built on the related work undertaken by other international forums, such as APEC and the OECD. (Source: www.nfat.govt.nz)

4. Concluding remarks

In general, as a small-open economy that is heavily trade reliant, Singapore has the clear strategic vision to support the function of the multilateral trading system, for which its approaches are shown to be pragmatic, multi-layered and forward-looking. Singapore's long-term development and prosperity shall be based on free trade and investment, of which the non-discriminate, rule-based WTO can provide an efficient safeguard mechanism for all.

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Taiwan's participation in the World Trade Organization – strategy, interests and prospects

Kristy HSU

ABSTRACT

Taiwan became the 144th Member of the WTO in January, 2002, after 12 years of accession negotiations. Due to Taiwan's unique and difficult political stance in the international community, the WTO is the most important international governmental organization Taiwan has full membership. The WTO membership has provided the export-dependent economy with MFN treatments in most export destinations. It also has significant political implications on Taiwan's pursuit of bilateral trade agreements, institutionalizing trade relations with China, and connecting with trade-related international organizations. Taiwan is an active participant in the WTO Doha Development Agenda (DDA) negotiations and plurilateral negotiations, including the ITA Expansion and Trade in Services Agreement (TiSA), both important for Taiwan's trade expansion. Taiwan supports a well-functioning and credible WTO and multilateralism. It shares with some WTO members that the global trading system has some major weakness and needs significant reforms, but supports reasonable and gradual approaches to address the reform issues. As of now, Taiwan has issued several proposals, individually or jointly with other WTO members, which particularly focus on improvement of the dispute settlement procedures, transparency and emerging issues, such as digital economy. In September 2018, at its 4th Trade Policy Review (TPR), Taiwan delegates announced to abandon Taiwan's rights as a developing economy member to seek Special and Differential Treatment in future rounds of multilateral trade negotiations. Being the first WTO member to make such an announcement, Taiwan's decision encouraged the Republic of Korea to follow suit in mid-2019. It may have global implications and thus may help address some of the "distortion" issues in the world trade system.

Key Words: World Trade Organization(WTO), Most Favored Nation (MFN), Doha Development Agenda (DDA), dispute settlement, Information Technology Agreement (ITA), One China policy

1. Introduction

Taiwan became the World Trade Organization's (WTO's) 144th member on January 1st, 2002, after 12 years of prolonged accession negotiations process. Taiwan, the formal name Republic of China (ROC), is officially referred to as the "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu", abbreviated as SCTPKM or Chinese Taipei, in the WTO.

Taiwan's participation in the WTO is a unique case. In the past 18 years since its accession, Taiwan has benefited significantly from its membership in the global trading system. It has participated in the multilateral as well as plurilateral trade negotiations initiated in the WTO. Based on the legal status under the WTO, Taiwan has also signed and implemented 9 Free Trade Agreements (FTAs), including the China-Taiwan Cross Straits Economic Cooperation Agreement (ECFA) and its follow-up agreement.

However, though the WTO membership provides Taiwan with a "window of opportunities" to further its participation in economic integration and trading relations with WTO members, Taiwan still faces and needs to cope with difficult political problems, including political interference and boycotts from China. Furthermore, though in most cases the Cross-Straits trade relations of China and Taiwan follow the WTO rules and practices, due to political considerations by two sides, disputes from time to time arise which have hampered economic exchanges and WTO's credibility.

Taiwan has faithfully implemented its accession commitments since its accession, has actively participated in the multilateral trade negotiations of the Doha Development Agenda (DDA), and becomes a party to some plurilateral agreements, including the Government Procurement Agreement, Informational Technology Agreement and its Expansion. Taiwan supports an effective and credible global trading system and is joining other WTO members in proposing a series of proposals on WTO reform issues, aiming to improve the global system instead of paralyzing it.

This paper will proceed in 5 parts. Following this part of introduction, part II will review Taiwan's accession procedures and discuss issues related to its application for GATT/WTO membership, including the interference of One China principle in the WTO. Part III will discuss Taiwan in the WTO, introducing its implementation, participation strategy and stance on WTO Reform issues. Part IV will then explore Taiwan's pursuit of FTAs and participation in economic integration. And part V will conclude. Though Taiwan's official name in the WTO is "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu" or sometimes called "Chinese Taipei", in this paper, Taiwan will be called "Taiwan" in principle, unless otherwise indicated or using quotes of GATT/WTO documents.

2. The Journey to the WTO and Political Implications of the WTO Membership

Since the 1970s, Taiwan has developed an export expansion policy as a core pillar of its grand national and economic development plans. Benefitting from an import substitution policy which helped develop labor intensive industries in the 1970s and 1980s, Taiwan had gradually established export-oriented light industries. However, growing dependence on international trade in these years had made Taiwan particularly vulnerable to rising trade protectionism in the world during the 1980s and 1990s.

For example, in 1990, Taiwan's exports to the U.S., its largest export destination for decades, amounted to USD 34,357 million, accounting for 28.18 percent of Taiwan's total exports. In 2000, exports to the U.S. increased to USD 59,940 million, though the share slightly decreased to 23.47 percent. During these years, Taiwan continued to enjoy huge trade surplus with the U.S. In 2000, the trade surplus with the U.S. expanded to USD 34,818 million from USD 21,746 million in 1990, among the top 10 countries of the U.S. trade deficits.

Taiwan's growing trade imbalance with the U.S. has put Taiwan in a difficult situation for many years. Since the late 1980s, Taiwan has been frequently targeted by U.S. investigations under the Section 301 of the U.S. Trade Act of 1974. Taiwan negotiated with the U.S. to avoid unilateral trade sanctions by making concessions to open up its domestic markets only to U.S. imports, such as automobiles and agricultural products.¹ Taiwan was also often on the top lists of anti-dumping investigations and measures initiated by the U.S., EC and other major importing countries. As a result, Taiwan government's trade policy during these years had only two priorities – first, to create a trading environment to ensure Taiwan exports could access equal and stable trade treatments (MFN tariffs)

1 The "US Only" market access later was severely challenged by the EU, Japan and Korea during Taiwan's GATT/WTO accession negotiations.

in major markets, and second, to seek or create a fair and rule-based mechanism to handle bilateral trade concerns or disputes, including reasonable use of trade remedies by major trading partners.

Taiwan submitted an application for the GATT on January 1st of 1990. In October 1992, the General Council of the GATT finally agreed to establish a working party to review Taiwan's request, and since then the GATT and subsequently the WTO began the 12-year negotiations process and finally approved Taiwan's membership in the global trading system.

1.1 The Background of Taiwan's Quest for GATT/WTO Membership

In the mid-1980s, out of trade policy priorities as aforementioned, the Taiwan government began to prepare for GATT membership. After intensive internal consultation, costs and benefits analysis and considering China had submitted accession application to the GATT in 1986 and its possible political implications,² the government decided to apply as a new contract party to GATT, rather than apply for "resumption of status as a contracting party to GATT".³ On January 1st, 1990, then Minister of Economic Affairs Chen Lu-An, on behalf of the Taiwan

2 When China applied for GATT in July 1986, China's application was based on its claim of One China Principle and thus was "to seek the resumption of its status as a Contracting Party to GATT". See Communication from the People's Republic of China, L/6017, GATT, 14 July 1986, at <https://docs.wto.org/gattdocs/q/GG/L6199/6017.PDF>, last visited on March 20, 2020.

3 When the Republic of China (ROC) was a permanent member of the UN Security Council in 1935, the government sent delegates to attend the preparatory meeting to establish the ITO and became one of the 23 original Contracting Parties to the GATT in 1936. In May 1948, ROC became a signatory to the GATT, but withdrew in May 1950, after the government relocated from Mainland China to Taiwan in 1949. Since March 1965, ROC was invited to attend GATT activities as an observer, but then was expelled of the observer status upon Taiwan's withdrawal of UN membership in October, 1971. See Chinese document entitled Background and Notes of Taiwan's Application for GATT/WTO (我國申請加入GATT/WTO歷史紀要), Bureau of Foreign Trade, MOEA, Taiwan, at http://wto.trade.gov.tw/cwto/Pages/Detail.aspx?nodeID=354&pid=312950&dl_DateRange=all&txt_SD=&txt_ED=&txt_Keyword=&Pageid=0, last visited on March 20, 2020.

government, submitted a letter of application to the GATT Secretariat in Geneva. In the letter, Chen clearly stated that Taiwan will seek accession as a separate customs territory under the name of "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu" (referred to as "Chinese Taipei") in future Terms of Reference.⁴

However, according to Taiwan's internal documents (in Chinese), the GATT Secretariat, out of pressure from China, had not taken any action nor rejected the letter after receiving the application. Then the U.S. and EC began to help coordinate among the Secretariat and main Contracting Parties. The General Council finally reached an agreement by consensus of Contracting Parties to GATT to put Taiwan's application on the General Council's meetings' agenda for formal discussion.⁵ On September 29th, 1992, the General Council approved a Working Party to be established to review Taiwan's application. On November 6th, the first meeting of the Working Party was held, 55 Contracting Parties and Observers participated in the meeting to examine and comment on Taiwan's application. In December 1995, the Working Party on the Accession of Chinese Taipei to the General Agreement on Tariffs and Trade 1947 was transformed into a WTO Accession Working Party.⁶

Between September of 1992 and July of 2001, the Working Party held 11 Working Party meetings. In March 1998, the Working Party mandated the WTO Secretariat to prepare a Draft Report of the Working Party, meaning the accession negotiations had reached consensus among the participating members. The Draft Report would spell out the specific commitments Taiwan agreed to undertake after its accession.⁷

However, it took almost 4 more years for the WTO to solve some technical issues and the intertwining relations between the accessions of the "Two Chinas". In September 2001, at the conclusion of the 11th meeting of the Working Party, then Director-General of the WTO Mike Moore welcomed the successful conclusion of the Working Party of the 12 years of negotiations with Chinese Taipei. He praised that "with Chinese Taipei's

4 Id. And See C/M/259, October 27 1992.

5 Supra note 3.

6 See WT/ACC/TPKM/1, December 7th, 1995.

7 WT/ACC/SPEC/TPKM/21, March 3rd, 1998.

membership, the WTO is taking yet another step toward achieving universal membership.”⁸ The documents were then adopted formally at the WTO's 4th Ministerial Conference in Doha, Qatar on November 11th, 2001. The adopted accession documents include the report of the Working Party for the Accession of Chinese Taipei, the Protocol of accession, which includes the terms of membership, and the schedule of Chinese Taipei's commitments on market access for goods and services.⁹ Taiwan became the 144th Member of the WTO on January 1st, 2002.

The membership encompasses the islands of Taiwan, Penghu, Kinmen and Matsu. It is so far the only WTO member which is approved as a separate customs territory member under GATT Article XXXIII after the WTO was established in 1995.¹⁰

1.2 The One China Principle Issues in the WTO

The China factor has been restricting Taiwan's international space for decades. From an international law perspective, Taiwan was able to join the GATT/WTO because of two reasons. First, the GATT and WTO are not a part of the United Nations system.¹¹ Second, its membership is open to not only sovereign states but also separate customs territories. However, when the GATT approved the Terms of Reference of Taiwan's application in 1992, it was stated that the General Council of the GATT

8 Press/244, WTO Press Release, September 18th, 2001,

9 For principle accession documents, see Accession Protocols, WTO website, at: https://www.wto.org/english/thewto_e/acc_e/completeacc_e.htm#tpkm

10 Hong Kong gained GATT membership as a separate customs territory under Article XXVI(5) through the United Kingdom's sponsorship. Taiwan's membership as separate customs territory and a new member was based on Article XXXIII, not under China's sponsorship. See Hsieh, Pasha L. (2005), Facing China: Taiwan's Status as a Separate Customs Territory in the World Trade Organization, 39(6): Journal of World Trade, 2005.

11 The Resolution 2758 states "... restore all its rights to the People's Republic of China and to Recognize the Representative of its Government as the only legitimate representative of China to the United Nations, and to expel forthwith the representative of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it." See U.N. GAOR, 26th Sess., U.N. Doc. A/8429 (1971).

and its Contracting Parties, through consensus, recognized there is only one China in the world and that Taiwan, under the status and name of "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu", will conduct its separate application procedures from that of China. Most of all, as indicated by the adopted accession documents of Taiwan and China, it was clearly stated that Taiwan's application should not be considered as challenging or changing the status quo of the One China principle of all Contracting Parties.¹²

Though being separate procedures, during the long process of Taiwan's accession, Taiwan's application was always tied with that of China. The One China policy or China factor deeply influenced the General Council, Accession Working Party and GATT/WTO Secretariat when they considered and approved Taiwan's accession negotiations. Even after the accession, the China factor and One China principle in the WTO still from time to time arise to influence Taiwan.

China submitted an application to GATT on July 10th, 1986. To be consistent with its claim that the People's Republic of China (PRC) is the only one China, China's request was to "resume its status as a contracting party to the GATT",¹³ instead of applying as a new member. China's accession negotiations went smoothly before the Chinese Communist Party's crackdown on the pro-democracy demonstrations by Chinese students in Tiananmen Square, Beijing, in June 1989. After the incident, the negotiations in Geneva were interrupted as a protest against China.¹⁴ In addition, from an economic perspective, China was already a huge economy and the world's top exporter in the early 1990s, how China would open up its huge markets to foreign competitors through its proposals of concessions would have deep effects on the Contracting Parties. The negotiations went on but were particularly time-consuming for issues such as market access, services and intellectual property rights.

12 C/M/259, October 27 1992.

13 Communication from the People's Republic of China, L/6017, 14 July 1986.

14 Joseph Fewsmith, China and the WTO: The Politics Behind the Agreement, the National Bureau of Asian Research, November 1999, https://www.iatp.org/sites/default/files/China_and_the_WTO_The_Politics_Behind_the_Agre.htm

In December 2000, WTO announced breakthroughs have been made to the negotiations.¹⁵ On September 17th, 2001, Mike Moore, WTO Director-General, announced the conclusion of China's negotiations, "With China's membership, the WTO will take a major step towards becoming a truly world organization. The near-universal acceptance of its rules-based system will serve a pivotal role in underpinning global economic cooperation."¹⁶ The documents were then adopted at the WTO's 4th Ministerial Conference on November 10th, 2001, just one day before Taiwan's application was adopted. China became the 143rd member of the WTO on December 11th, 2001. From submission of application to adoption of accession documents, it took China 15 years to go through the whole journey (1986-2001).¹⁷ China signed bilateral agreements on market access with 44 Members, including a bilateral agreement with the U.S., which marked a major watershed in U.S.-China relations.¹⁸

China's accession had direct impacts on Taiwan. It is stated in the meeting minutes of the Working Party meeting that "All contracting parties had acknowledged the view that there was only one China, as expressed in the United Nations General Assembly Resolution 2758 of 25 October 1971.¹⁹ Many contracting parties had agreed with the view of the People's Republic of China (PRC) that Chinese Taipei, as a separate customs territory, should not accede to the GATT before the PRC itself."²⁰

15 China Working Party formal meeting, 2000 WTO NEWS ITEMS, 8 December 2000, https://www.wto.org/english/news_e/news00_e/wpchina_chairmannot_e.htm

16 Press/243, WTO Press Release, 17 September 2001, https://www.wto.org/english/news_e/pres01_e/pr243_e.htm

17 Elizabeth Economy and Michael Oksenberg, eds., *China Joins the World: Progress and Prospects*, New York: Council on Foreign Relations, 1999.

18 According to U.S. scholar Nicolas Lardy, China before entering the WTO remained in certain respects only shallowly integrated into the world economy. China's commitments to open its economy in order to gain membership in the WTO are sweeping. China's deeper integration in the global economy may make China more a constructive participant. See Lardy, *Issues in China's WTO Accession* May 9, 2001. It was generally believed in the U.S. then that the WTO agreement will give new momentum to reform in China, while politically it will help anchor U.S.-China relations.

19 *Supra* note 11, 12.

20 In the minutes, it is also written that "Some contracting parties had not shared this view." It was known that EU was among the parties that did not agree to the accession sequencing.

The accession sequencing issue ("Taiwan should not accede to the GATT before China") was later often referred to as the "WTO Model" when the international community or China discuss "Two Chinas" in participating certain international organizations or trade agreements. The "WTO Model" is different from the "APEC Model" under which "Three Chinas" - China, Taiwan, Hong Kong - were admitted to the Asia Pacific Economic Cooperation (APEC) at the same time in 1991.²¹ The sequencing issue of China and Taiwan often arises with regards to the accession sequence of "Two Chinas" in international organizations. Taiwan strongly objects to any linkage for Taiwan's membership in certain international mechanisms. On the other hand, China always refers to the WTO experiences and insists on the "WTO Model" to have "China first, Taiwan later" when it involves international participation of "Two Chinas". The most recent case is China's claims that Taiwan should not accede to the regional trade agreement Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) before China.

Though the GATT/WTO agreed there is only one China and then on the sequencing of two applications, it is important to note that the General Council of the GATT recognized Taiwan as a separate customs territory with economic autonomy when it adopted Terms of Reference for Taiwan's accession. According to internal documents, Taiwan in its application applied for GATT membership under GATT Article XXXIII. The proposal was later agreed to and adopted by the General Council and written into the Terms of Reference for Taiwan.²² GATT Article XXXIII reads that "..., or a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations ..., may accede to this Agreement, on its own

21 APEC was established in 1989. In 1991, Taiwan was admitted to APEC under the name of Chinese Taipei and as a Member Economy, at the same time with China and Hong Kong, China. The model set the first case that China and Taiwan joined an international organization. APEC has currently 21 Member Economies. Taiwan enjoys full membership in APEC except that no Ministerial Meetings and Leader's Meetings would be held in Taiwan, and that Taiwan can only designate its Director-level officials of Ministry of Foreign Affairs to attend APEC meetings, while all attendees from other Member Economies are Ministerial or Vice-Ministerial Officials.

22 *Supra* note 12. It states GATT will "examine the application of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (referred to as "Chinese Taipei") to accede to the General Agreement under Article XXXIII and to submit to the Council recommendations..."

behalf or on behalf of that territory,..”²³ Despite China's strong objection, by clearly referring to Article XXXIII instead of Article XXVI as the legal basis for Taiwan's application, the General Council recognized Taiwan as an independent and separate customs territory from China and has its own economic autonomy.

After the “Two Chinas” entered the WTO in December 2001 and January 2002, China continues to make political interferences in order to downgrade Taiwan's status in the global trading system, especially when cross-Straits relations were at a low point.²⁴ During the Democratic Progressive Party (DPP) administrations under two Presidents - Chen Shui Bian (2000-2008) and Tsai Ing Wen (2016-present), China took a stronger stance on Taiwan which often led to political disputes in the WTO. During President Ma Ying-jeou's administration (2008-2016), China in principle had abided by WTO obligations and practices in handling relations with Taiwan in the WTO.

23 Article XXXIII states, “A government not party to this Agreement, or a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, may accede to this Agreement, on its own behalf or on behalf of that territory, on terms to be agreed between such government and the CONTRACTING PARTIES. Decisions of the CONTRACTING PARTIES under this paragraph shall be taken by a two thirds majority.

24 For example, Taiwan's WTO Mission in Geneva is “Permanent Mission of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu”. In February 2003, WTO Director-General Supachai Panitchpakdi requested Taiwan Mission to change its name “Economic and Trade Office”, under China's objection claiming that Taiwan's current title has “sovereignty implications”. Because Taiwan rejected the proposal, the WTO Secretariat decided not to print and update the correspondence directory (often known as the “blue book”). See Taiwan-China Fight Delays Update of WTO Directory, Taiwan Headlines, 3 June 2004, available at <[http:// th.gio.gov.tw/list.cfm?class=Wto#>](http://th.gio.gov.tw/list.cfm?class=Wto#>).

1.3 Non-Application of GATT/WTO between Taiwan and China

Taiwan had adopted a policy prohibiting “Three Links” with China since the 1980s.²⁵ The prohibition of “Three Links” referred to no direct trade, direct shipping transportation and direct postal services with China. According to the Taiwan's Act Governing Relations Between Peoples of the Taiwan Area and the Mainland Area, usually referred to as Cross-Strait Relations Act, unless permitted by the competent authorities, no Mainland vessels, civil aircraft or other means of transportation may enter into the restricted or prohibited waters of the Taiwan Area or the controlled airspace of the Taipei Flight Information Region.²⁶ No direct trade meant all trade with China had to go through a third country or port, usually Hong Kong in the 1990s and early 2000s. Chinese people also were not allowed to visit Taiwan unless under an approved travel purpose.

It is important to note that during Taiwan's accession negotiations, neither Taiwan nor China invoked GATT Article XIII to request non-application between Taiwan and China under the GATT/WTO in the future.²⁷ From the WTO law perspective, as a result of both sides' decisions, Taiwan should be obligated to apply Most-Favored-Nation (MFN) treatment to China, and vice versa, in all WTO-related legal relations. However, considering the complicated nature of the cross-strait relations and national security concerns, Taiwan maintains certain restrictive measures against Chinese imports and Chinese investment into Taiwan. The main restrictive measures include an item-by-item review mechanism of

25 Since 1949 when the Kuomintang (KMT) government removed from Mainland China to Taiwan, it had adopted a “Three No's Policy”, meaning no contact, no negotiations and no compromise. Then the government gradually lifted restrictions on cross-Straits exchanges, for example, allowing Taiwan nationals to visit China. In the late 1980s, the government opened indirect trade with China, leaving exhibition of the “Three Links” core in its Mainland policy.

26 See Article 29 of the Act Governing Relations Between Peoples of the Taiwan Area and the Mainland Area.

27 Article XIII states that “This Agreement and the Multilateral Trade Agreements in Annexes 1 and 2 shall not apply as between any Member and any other Member if either of the Members, at the time either becomes a Member, does not consent to such application.”

approving Chinese products importing into Taiwan, and a negative list approach and review mechanism of approving Chinese investment by sectors and projects. These China-specific measures are different from Taiwan's general treatments to other WTO members and only apply for China. Thus, they are considered not consistent with Taiwan's obligations under the WTO, and from time to time are complained by China as "discriminations against China".²⁸

So far, China has not made formal complaints to the Dispute Settlement Body (DSB) of the WTO yet against this non-compliance. The reason behind China's reluctance to resort to WTO jurisdiction is again the One China principle. China always claims that Taiwan is a part of China. Therefore, filing complaints against Taiwan in the WTO may have political implications that Taiwan-China relations in the WTO are member-to-member relations. This indicates that China considers Cross-Straits relations even in the context of the WTO as internal and domestic affairs and hence will refrain as much as possible from "internationalizing" the relations in the WTO.

In 2008, while preparing for bilateral negotiations of a Cross-Strait trade agreement, President Ma's administration announced to lift the trade bans and allow the "Three Links" across the Straits. Following that, Taiwan and China further negotiated a bilateral trade agreement with an aim to gradually "normalize" Cross-Straits economic exchanges which should have been in place since both sides entered the WTO. Under the government's plans, the restrictive measures against China will be removed gradually and along with the negotiations progress. However, as the trade negotiations did not move smoothly, Ma's plans were thus postponed. As a result, some of the China-specific restrictive measures are still in place today. Therefore, the status of Taiwan-China relations today is not yet full application of WTO laws, and neither are they in full compliance with Taiwan's obligations under the WTO.

28 Taiwan has adopted a trade management regulation of Chinese imports since 1986, which applied a negative list for manufactured goods and a positive list for agricultural goods importing from China. The regulation was revised after Taiwan became a WTO member but not removed. According to Bureau of Foreign Trade, Ministry of Economic Affairs, Taiwan, as of March 2020, allows 80.40% of tariff lines imported from China, still maintaining bans of up to 2,378 tariff lines. See BOFT, MOEA, Taiwan, at: https://www.trade.gov.tw/Pages/Detail.aspx?nodeID=744&pid=405450&dl_DateRange=all&txt_SD=&txt_ED=&txt_Keyword=&Pageid=0, last visited on March 15, 2020.

3. Taiwan in the WTO: Implementation, Participation Strategy and Stance on WTO Reform Issues

3.1 Implementation of WTO Commitments

In Taiwan's concessions in the adopted accession documents, Taiwan commits to largely reduce MFN tariff rates of around 4,500 tariff lines,²⁹ and liberalized domestic services markets and reformed its foreign direct investment (FDI) regime.

Taiwan also agreed to participate in the plurilateral agreement of Trade in Civil Aircraft and to seek accession to the Agreement on Government Procurement (GPA) after its accession. In July 2009, Taiwan became a member of the GPA and since then has opened up its domestic government procurement markets to other GPA member.³⁰

Being among the world's top 20 largest trading countries, Taiwan has participated in 4 WTO Trade Policy Reviews respectively conducted in 2006, 2010, 2014 and 2018. At the 4th Review held in August, 2018, Taiwan was applauded of its "relatively strong fundamentals and well developed outward-looking economy which have helped maintain macro-financial stability and ensure the resilience of its export-led economy," and that "despite some innovation- and labour-related concerns, Chinese Taipei has maintained its position among the world's most competitive economies."³¹ During the review period (2014-2018), Taiwan's simple

29 The simple averages of nominal duty rates in 2001 for industrial and agricultural products in Taiwan were 6.03% and 20.02% respectively. These rates would be reduced to 5.78 % and 14.01% on the day of Chinese Taipei's accession to the WTO. Rates for some products will be further reduced after 2002. The final average rates are 4.15% for industrial products and 12.86% for agricultural products respectively, total reduction percentage as high as - 31.2% and - 35.6%.

30 Taiwan became a party to the GPA on July 15th, 2009.

31 See WT/TPR/S/377, Trade Policy Review Report by the WTO Secretariat, 18 July 2018.

average applied MFN tariff rate was further reduced to 7.2% in 2018 from 7.8% in 2013. The MFN tariff rates for agricultural products is 17.8%. The MFN tariff rates for non-agricultural products is 5.1%. Among these the duty-free tariff lines is 29.3%, which means around 30% of all tariff lines in Taiwan is zero tariff.

Taiwan's overall performance in implementing its accession commitments is well received by WTO members. However, in the past TPRs, questions were raised regarding a number of non-tariff measures (NTMs) by Taiwan. One of the frequently challenged issues relate to some of Taiwan's current regulations and practices for importing agricultural and food products. For example, Taiwan has been repeatedly complained against by the U.S. and other WTO members to have slow processes for establishing Maximum Residue Levels (MRLs) for pesticides and low number of approved MRLs, which have hindered foreign enterprises' efforts in exploring Taiwan market. There are also expressed concerns that some Sanitary and Phytosanitary (SPS) measures are not consistent with international standards, such as Codex standards, or science-based.³²

Besides implementing obligations under the WTO, Taiwan tries to play a constructive role as a WTO member by providing preference programs to the Least Developed Country (LDC) Members and contribute to strengthen WTO functions. As of January 2020, Taiwan has already donated more than CHF 2 million to the various WTO trust funds since it joined the WTO in 2002.³³

32 The MRLs issue is constantly complained by the U.S. and is frequently referred to as a non-tariff barrier (NTB). See 2018 TPR Report by WTO Secretariat, and USTR's 2017 National Trade Estimate Report on Foreign Trade Barriers, at: <https://ustr.gov/sites/default/files/files/reports/2017/NTE/2017%20NTE.pdf>.

33 Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu gives TWD 4.5 million for LDCs at Ministerial Conference, PRESS/848: TECHNICAL ASSISTANCE, 22 January 2020, https://www.wto.org/english/news_e/pres20_e/pr848_e.htm

3.2 Participation Strategy in the DDA and Other Plurilateral Negotiations

Taiwan is a participant in the multilateral trade negotiations of the Doha Development Agenda (DDA). Taiwan has a competitive industrial sector but a comparably vulnerable farming sector that is still protected by tariffs and non-tariff measures (NTMs) from international competition. Therefore, during the DDA negotiations, Taiwan adopts a mixed negotiation strategy – taking an aggressive negotiation approach towards NAMA (Non-Agricultural Market Access) market access while a more defensive negotiation approach towards the agricultural sector.

Disappointed at the slow progress of the DDA negotiations, Taiwan chose to actively participate in WTO's plurilateral agreements and negotiations. In 2016, Taiwan ratified the WTO Trade Facilitation Agreement (TFA), and in 2017, the Information Technology Agreement (ITA) Expansion Agreement. Both agreements are estimated to contribute to Taiwan's trade expansion. Currently Taiwan is also participating actively in the plurilateral negotiations on the Trade in Services Agreement (TiSA) and on environmental goods (EGA).

Taiwan made commitments, in the capacity as an APEC Member Economy, to reduce tariffs of its Information Technology products in 1996 before it became a WTO member.³⁴ The ITA has contributed significantly to the development and exports of Information and Communications Technology products in Taiwan. It is estimated that between 2013 and 2015, Taiwan's exports of these products averaged approximately USD 90 billion per year. The net profit from tariff reductions was estimated to reach USD 820 million.³⁵

34 At the 1996 Summit, APEC Leaders manifested their express support for signing the ITA, aiming to eliminate tariffs on a wide range of information technology products among APEC Member Economies. Taiwan as an APEC Member Economy participated in the joint efforts.

35 Estimated by BOFT, MOEA, Taiwan, BOFT (2016). See The Development of International Trade 2016-2017, November, at: <https://www.trade.gov.tw/english/Pages/List.aspx?nodeID=83>.

Taiwan then participated in the ITA Expansion (ITA II), concluded in December 2015. Under the new Agreement, Taiwan commits to further eliminate import duties of more than 200 high-tech products.³⁶ Taiwan commits that elimination of these products under ITA Expansion will be fully implemented by 2021.

Taiwan supports the WTO as it is the most important international governmental organization which Taiwan has full membership. In its 18 years of participation in the WTO, Taiwan regards the most important functions of the WTO that have brought significant benefits to Taiwan are the multilateral system's trade negotiations functions, rule-making abilities and its dispute settlement mechanism.

In order to contribute and improve WTO laws and practices, the Government of Taiwan tries to be a constructive participant in the trade negotiations by issuing proposals that could enhance WTO functions or address Taiwan's trade concerns. For example, in 2003, Taiwan put forward a proposal during the negotiations on improvement of the Understanding on Rules and Procedures Governing the Dispute Settlement (the Dispute Settlement Understanding or DSU).³⁷ Taiwan proposed to improve transparency of the current dispute settlement procedures by giving greater access by Third Parties to submissions of the disputing parties in the panel and Appellate Body levels. Taiwan also proposed to facilitate Third Party intervention of dispute proceedings.³⁸

In 2005, Taiwan submitted a proposal on the Regional Trade Agreements (RTAs) issue. Taiwan proposed to create a new mechanism in the RTAs which will contain an accession clause that would allow other interested

36 For details of the ITA Expansion, see Briefing note: the Expansion of Trade in Information Technology Products (ITA Expansion), 16 December 2015, at: https://www.wto.org/english/news_e/news15_e/itabriefingnotes161215_e.pdf.

37 The Understanding is the Annex 2 of the WTO Agreement which governs the procedures of dispute settlements in the WTO.

38 Article 10 of the DSU provides that "Any Member having a substantial interest in a matter before a panel and having notified its interest to the DSB (referred to in this Understanding as a "third party") shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report." For Taiwan's proposal, see WTO Doc., TN/DS/W/36 (Jan. 22, 2003).

WTO members to join the agreement based on consensus of the existing signatories or parties and the negotiations results.³⁹

These proposals reflect Taiwan's and other WTO member's concerns. For example, by improving transparency of the dispute settlement procedures, WTO members can better use their Third Parties' rights to collect information and respond in the dispute settlement procedures to protect their trade interests. The proposal to create an accession clause in RTAs or FTAs would encourage RTAs and FTAs to expand to other WTO members that agree on the terms decided by existing signatories or parties. It could also prevent WTO members, in particular in Taiwan's case, from being excluded or "marginalized" in the proliferation of FTAs. Though the RTA proposal failed to get support by all WTO members when it was raised, in later years there seems to be an increasing number of newly signed RTAs that contain in the text an accession clause. For example, both the agreements of the Comprehensive Progressive Trans-Pacific Partnership (CPTPP) and Regional Comprehensive Economic Partnership (RCEP) have such an accession clause. The emerging trend proves that Taiwan's proposal not only addresses its own trade interests, but is also in the interests of many other WTO members.

As is WTO's second most important function, WTO conducts its rule-making functions through either making and revising WTO agreements or through discussion of emerging trade issues. As a WTO member, Taiwan is able to access and participate in the process of important rule-making, rather than being a follower of decided trade rules before it joined the WTO. E-commerce, for example, is an emerging area in the WTO that will create business opportunities for many WTO members. Taiwan and 77 members, including the U.S., Japan, EU and China, issued a joint statement to call for action by the WTO to commence negotiations on trade-related aspects of electronic commerce.

Last but not least, the dispute settlement function of the WTO provides Taiwan a fair procedure to defend its rights under the WTO by challenging any WTO members which may adopt trade measures against Taiwan that violates WTO rules. Given Taiwan's difficult stance in joining international organizations, this function is particularly significant as it is the only

39 See WTO Doc., TN/RL/W/182 (June 9, 2005).

“international trade court” Taiwan can resort to jurisdiction. Since 2002, Taiwan has participated in 7 dispute settlement cases as a complainant. 4 of them have proceeded to the post-consultation stage and issued panel reports or Appellate Body reports in favor of Taiwan.⁴⁰ Most of these cases concern tariff treatments, such as the dispute challenging EU's trade measures on certain information technology products, or trade remedy, such as 3 disputes against India on its use of anti-dumping measures and related procedures. As of now, Taiwan has not been challenged as a defendant in any disputes yet. In addition, Taiwan has reserved its Third Party's rights in 124 cases.⁴¹

3.3 Support and Stance for WTO Reform

Taiwan supports an effective and credible global trading system and is joining other WTO members in proposing a series of proposals on WTO reform issues aiming to strengthen the global system.

Being a highly trade dependent economy, Taiwan regards certain WTO reform issues crucial to re-build WTO's viability and credibility and to strengthen its functions. Among the discussion of WTO reforms, Taiwan has expressed its stance or issued proposals on several key issues, including supporting an update to WTO rules to address unfair trade practices, co-sponsoring a joint proposal by the U.S., Japan, and the EU to increase transparency in the WTO (including penalties).

At the 4th TPR conducted in September 2018, Wang Mei Hua, head of Taiwan delegation and Deputy Minister of Economic Affairs, reiterated Taiwan's full support for a strong WTO and free trade. In her opening remarks, she said, “being a free and open economy, our prosperity relies on the well-functioning of an open and inclusive multilateral trading

40 The 7 cases include 1 case against Canada (DS482), EU(DS377), Indonesia(DS490), and United States (DS274), and 3 cases against India (DS318, DS498, DS588).

41 Taiwan has won several disputes, including The EU's increase in tariffs on ITA products, Canada's anti-dumping measures on steel, and Indonesia's safeguard measures on iron and steel. See Disputes by member, WTO website at https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm, last visited on March 15, 2020.

system. It is crucial for us that the WTO remains the central pillar to the global trading system.” In order to revitalize the WTO, Taiwan “should ensure that the dispute settlement mechanism continues to function properly. We also support the call for more effective WTO supervision of members in implementing their agreement obligations,” and that “we stand ready to work with all WTO members to promote necessary reforms, and make concrete contributions towards strengthening WTO functions.”⁴²

Wang's remarks reflect Taiwan government's stance on the WTO reform issues. A well-functioning WTO that promotes open and inclusive trade is in the core interests of Taiwan. In particular, Taiwan regards the function of dispute settlement procedures a critical part of the WTO as it is the “teeth” to keep obligations by WTO members enforced.⁴³

Furthermore, on the closing day of the TPR, Wang made an announcement in her closing remarks that Taiwan government “would not claim the Special and Differential treatment granted to developing country Members in the future rounds of WTO negotiations”.⁴⁴ Wang's announcement is a direct response to U.S. President Donald Trump's calls for rich developing countries to give up their developing country status. In 2017 Taiwan's nominal per-capita gross domestic product (GDP) came near USD 25,000, far above those of many developing countries. According to the Ministry of Economic Affairs of Taiwan, Taiwan has hardly invoked any Special and Differential treatments in the

42 Opening Statement by the Representative of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, RD/TPR/981, 12 September 2018.

43 WTO's dispute settlement mechanism has a function for retaliation. If the country that is the target of the complaint loses, it must follow the recommendations of the panel report or the appeals report. If complying with the recommendation proves impractical, and no satisfactory compensation is agreed, the complaining member may ask the Dispute Settlement Body for permission to retaliate (to “suspend concessions or other obligations”). See Technical explanation of the DSU, at: https://www.wto.org/english/docs_e/legal_e/ursum_e.htm#Understanding

44 The WTO has no definition for developing or developed countries. The WTO members use self-declaration to define their status. When Taiwan negotiated its accession to the WTO, it self-declared as a developing economy member. See Closing Statement by the Representative of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu., RD/TPR/983, 14 September 2018.

past negotiations. To abandon the developing economy status will have no practical implications for Taiwan's economy.⁴⁵

The announcement of abandoning Taiwan's rights as a developing country member marks Taiwan as the first WTO developing member to explicitly give up its rights and potential benefits granted to developing and least developed country members. The decision of the Taiwan government also shows that it is ready to make more contributions to international trade.

The announcement was soon acknowledged and praised by the U.S..⁴⁶ In October 2019, Republic of Korea followed suit and announced it will also abandon its rights to use Special and Differential Treatments in future trade negotiations.⁴⁷ Taiwan and Korea's decisions to restrain their rights will very likely have implications in the global community, but whether they will add more pressure on China, the second largest economy and largest developing country in the world, remains to be observed. China's developing country status has become one of the most sensitive issues in the China-U.S. relations in the past 2 years.⁴⁸

Taiwan shares with some WTO members that the current WTO has some weakness and needs to take significant reforms to meet expectations by its members. Taiwan shares the views that the WTO needs to reform to adequately address and respond to the challenges arising from a new

45 Taiwan quits 'developing economy' status in WTO with eye on China, Nikkei Asian Review, October 17th, 2018, at <https://asia.nikkei.com/Politics/Taiwan-quits-developing-economy-status-in-WTO-with-eye-on-China>

46 The American ambassador to the WTO, Dennis Shea, welcomed Taiwan's decision to change its status, saying "we hope to see more of that" from other members of the trade body. See Taiwan quits 'developing economy' status in WTO with eye on China, Nikkei Asian Review, October 17th, 2018, at <https://asia.nikkei.com/Politics/Taiwan-quits-developing-economy-status-in-WTO-with-eye-on-China>

47 South Korea abandons developing country status in win for Donald Trump, putting pressure on China to do likewise, South China Morning Post, Oct 25, 2019, at <https://www.scmp.com/news/asia/east-asia/article/3034505/south-korea-abandons-developing-nation-status-win-donald-trump>

48 U.S. president Donald Trump complained for many times that China is the world's second-largest economy but still gets "tremendous perks and advantages, especially over the U.S.," in the WTO due to its label as a developing economy. Trump calls this situation "unfair" and has called many times that WTO should take action.

international environment today. However, Taiwan supports a gradual and practical approach to address the concerns.

For example, though Taiwan is not a frequent user of WTO's dispute settlement procedures, a well-functioning dispute settlement mechanism in the global trading system is in the core interests of Taiwan in ensuring its rights will not be undermined. With regards to the disagreement on the vacancies in the Appellate Body Members which currently is putting the dispute settlement system into an unprecedented crisis, Taiwan joins other WTO members in supporting immediate selection of panelists to fill the vacancies in the Appellate Body in order to keep the system in operation.⁴⁹

49 The Appellate Body is a standing body of 7 members that hears appeals from reports issued by panels in disputes brought by WTO Members. The 7 Members are appointed by the DSB to serve for 4-year terms. As the U.S. would not agree on the nominations of new members, currently there is only 1 member from China whose term will expire on 30 November 2020. See Taiwan's Foreign Trade Status and Policies, Bureau of Foreign Trade, Ministry of Economic Affairs 18 July 2019.

4. Pursuit of FTAs and Participation in Economic Integration

4.1 Taiwan's FTA Strategy and Progress

The slow progress of the multilateral trade negotiations of the Doha Development Agenda (DDA) since it was launched in December 2001 has encouraged WTO members to pursue bilateral and Regional Trade Agreements (RTAs) with their trading partners. According to WTO statistics, the total number of RTAs enforced when WTO launched the DDA Negotiations in 2001 was 100. The number grew to 301 as of January 2020,⁵⁰ reflecting the rising trends of developing preferential trade agreements in order to create business opportunities by removing tariffs and non-tariff barriers (NTBs).

The WTO is the foundation for all bilateral and regional trade agreements. After Taiwan became a WTO member in 2002 and amidst the growing interests in the international trade community, the DPP government announced an FTA strategy based on Taiwan's WTO membership as the legal status to develop bilateral FTAs. The strategy targeted the U.S., Japan and certain Southeast Asian countries. The DPP government then began its pursuit of FTAs but did not receive a positive response. For example, in 2003 the Taiwan government sent high ranking officials to approach the Singapore government to try to discuss a possible bilateral FTA. The efforts did not progress further, because two governments failed to agree on the nomenclature of Taiwan in the agreement. It was reported but never confirmed by the government that the Chen's administration wished to use "Taiwan" as the signatory of the agreement while Singapore insisted on the "APEC model" to use Chinese Taipei. The Trade Minister of the Philippines was also reported to decline Taiwan's proposal to negotiate a trade agreement with Taiwan as it was against the Philippines' One China policy.

⁵⁰ See RTA Database, WTO, at <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>

The reason why Singapore was targeted as the first FTA partner was the country has a very aggressive FTA strategy and close relations with China, which would allow Singaporean government to help "communicate" with Beijing. However, Singapore declined out of its One China policy. As Taiwan's quests for FTAs with these countries failed, the government then turned to the diplomatic allies in Latin America. During President Chen Shui Bian's 8 years of presidency, the government concluded bilateral FTAs with Panama, Guatemala, Nicaragua, El Salvador, and Honduras.⁵¹ All of them were then Taiwan's diplomatic allies.⁵²

In May 2008, the Presidential Candidate of the KMT Party, Ma Ying-jeou took office, ending DPP's 8 years in power (2000-2008). In his inauguration remarks, Ma announced his vision to develop a bilateral trade agreement with China. After months of negotiations, in June, 2010, Taiwan and China signed an Economic Cooperation Framework Agreement (ECFA), the first bilateral agreement signed between the two sides after 1949. The ECFA opened a window for Taiwan. Taiwan then began to see significant breakthroughs for its quest for FTAs. In 2013 Taiwan concluded and signed an Economic Cooperation Agreement (ECA) with New Zealand (ANZTEC) and in 2014 with Singapore (ASTEP).⁵³

These 2 agreements have several special features. First, when Taiwan signed FTAs with Latin American diplomatic allies in the early 2000s, Taiwan used the Republic of China as the name of the signatory. While in these 2 new agreements, Taiwan used legal status and nomenclature in the WTO, namely a separate customs territory with the name "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu", abbreviated as "Chinese Taipei". Second, instead of FTAs used with the diplomatic allies,

⁵¹ The FTAs with Panama, Guatemala, and Nicaragua entered into force in 2004, 2006 and 2008, respectively. The FTA with El Salvador was first signed in May 2007 with El Salvador, and then expanded with Honduras in July 2008.

⁵² Panama and El Salvador ended diplomatic ties with Taiwan in 2017 and 2018 respectively.

⁵³ The full names of the agreements are The Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation (ANZTEC) and The Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership (ASTEP).

the 2 agreements carry the names of Economic Cooperation Agreements (ECAs).⁵⁴

The WTO membership provides Taiwan with a legal status in its pursuit of FTAs with other WTO members. After the ECFA was signed, as President Ma put it, “the ECFA provided a window of opportunities” to Taiwan’s efforts to develop FTAs. The “WTO model” respects the current fact that Taiwan and China are both members of the WTO so trade agreement signed between 2 WTO members do not contradict or violate the One China principle by creating “Two Chinas” or changing Taiwan’s status to a sovereign state. Unless there is significant change on Cross-Strait relations, this “WTO Model” could be used in Taiwan’s future FTAs and membership in regional trade arrangements, such as CPTPP and RCEP.

As of March 2020, Taiwan has signed and enforced 9 Free Trade Agreements (some in the name of ECAs), all being notified to the WTO Secretariat.⁵⁵ Most of these agreements are consistent with GATT Article XXIV and GATS Article V, meaning they are comprehensive and cover substantially all trade and services. Furthermore, all these FTAs are WTO+ obligations-based. The only exception is the ECFA with China which combines both WTO- and WTO+ obligations.

4.2 The ECFA and Changing Cross-Straits Relations

To implement the commitments at the presidential campaign to improve the Cross-Strait economic exchanges, President Ma announced his vision to develop an ECFA in order to “normalize” Cross-Strait economic relations and gradually develop into a full-fledged FTA in the future.

54 The reason for using ECAs is because China considered FTAs have sovereignty implications while ECAs do not.

55 The date of entry into force of these FTAs are: Singapore–Chinese Taipei (19/04/2014); New Zealand–Chinese Taipei (01/07/2013); China–Chinese Taipei (01/09/2010); Nicaragua–Chinese Taipei (01/01/2008); Guatemala–Chinese Taipei (01/07/2006); Panama–Chinese Taipei (01/01/2004). See Taiwan’s Trade Policy Review by WTO Secretariat, WT/TPR/S/377, 18 July 2018.

As analyzed in Part II, Taiwan maintained certain trade restrictive measures against China even after both became WTO members. During the ECFA negotiations, Chinese trade negotiators demanded that Taiwan should first provide equal treatments to China before both sides further negotiate for WTO-Plus liberalizations. Taiwan, on the other hand, wished for a more selective approach in order to maintain existing protection for “sensitive products”, namely agricultural products and products or services of national security concerns. As results of the negotiations appear, the ECFA is a compromising agreement which contains Taiwan’s “discriminatory” measures as well as some WTO+ preferential treatments in its Early Harvest Programs.⁵⁶

On July 29th, 2010, the Cross Strait Economic Cooperation Framework Agreement (ECFA) was signed by two authorized quasi-official entities - the Straits Exchange Foundation (SEF) of Taiwan and the Association for Relations Across the Taiwan Straits (ARATS) of China. According to Ma’s plan, the ECFA will serve as the first step towards a full package of trade agreements leading to comprehensive economic integration across the Straits. The package will include 4 subsequent agreements, which will respectively regulate and improve investment protection, trade in goods, trade in services, and dispute settlement with China.

The ECFA entered into force in September 2010, followed by the Investment Agreement, signed in August, 2012, and entered in force in February, 2013. However, the Service Trade Agreement, though was signed in September 2013 by SEF and ARATS, was never reviewed and ratified by the legislature in Taiwan due to strong opposition by DPP and lack of general support in society.

In January 2016, KMP lost the presidential election to DPP. In May 2016, President Tsai Ing Wen took office. She then announced the New Southbound Policy (NSP) and some other economic and industrial grand policies. Taiwan and China did not resume trade negotiations of the

56 The WTO- and WTO+ issues were heatedly debated in Taiwan during the negotiations. Strong voices from the opposition party, farmers, and small companies claimed the need of a safety valve for agricultural and consumer products, while trade law scholars urged the government to “normalize” cross-strait relations and make it WTO consistent.

Goods Agreement and the Dispute Settlement Agreement.⁵⁷ This means as of now only 2 out of the 5 trade agreements of the China-Taiwan FTA package were signed and implemented. Since 2016, Cross-Straits relations in the WTO also has come to a low point.

The ECFA revealed several important implications of the application of the WTO laws between Taiwan and China. On the one hand, as neither Taiwan nor China invoked the non-application clause with the other, Taiwan and China should grant MFN treatments to the other side. However, Taiwan still has some reservations to provide MFN treatments to China. China, on the other hand, still from time to time politicizes WTO issues relating to Taiwan and continues to force the One China principle in the WTO forum. For example, China refused to allow Taiwan to send representatives to China to undertake a pricing investigation when Taiwan initiated Anti-Dumping investigations against Chinese imports into Taiwan. China also forces the WTO Secretariat in Geneva to ask Taiwan Mission to the WTO to change its directory.⁵⁸ A more recent case is China boycotting Taiwan's nomination of Constitutional Court Judge Lo Chun Fa as a new Appellate Body member. China claimed that Taiwan is not a sovereign state and demanded Taiwan to change Lo's title of the "Constitutional" Court Judge.⁵⁹ China's behaviors further impacted Cross-Straits relations and the WTO.

57 The Investment Agreement entered into force in Feb 2013, but the Services Agreement was not yet ratified by the legislature.

58 See Charnovitz, Steve (2006), Taiwan's WTO Membership and its International Implications, *Asian Journal of WTO & International Health Law and Policy*, Vol. 1, No. 2, pp. 401-432.

59 See interviews with Dr. Chu Chin I, Former Permanent Representative of the Permanent Mission of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to the WTO, Central News Agency, January 30th, 2020, at: <https://www.setn.com/News.aspx?NewsID=680403>

5. Conclusions

Taiwan has walked a long way to achieve its membership in the global trading system. The 12-year journey to the WTO membership has significant economic and political implications for Taiwan. Economically, Taiwan has benefitted from the WTO membership in participating in multilateral and plurilateral trade negotiations, receiving MFN treatments from its trading partners, and developing FTAs with WTO members, though the number of FTAs is still very small. The status as a full WTO member has ensured Taiwan of its equal treatments and rights to benefit from free and open trade and has prevented Taiwan from arbitrary discrimination or unfair protectionist measures.

Politically, due to Taiwan's unique and difficult political stance in international community, the only important international governmental organization Taiwan holds full membership is the Asia Pacific Economic Cooperation (APEC). Joining the WTO provides Taiwan an important platform to negotiate, exchange and connect with more than 150 countries in the world.

Participation in the WTO also has helped Taiwan to proceed with further domestic reforms to improve its economic and trade structure and WTO compliance. Before joining the WTO, Taiwan had completed legislation or revision of around 55 trade related laws or acts. Taiwan has also gradually lowered its average tariff rates and removed non-tariff barriers, all of which has helped improve Taiwan's competitiveness when it opens up to the world.

Taiwan has several objectives in the WTO. First, as an export-oriented economy, Taiwan's policy priority is to eliminate all discriminations which create unfair competition to Taiwan. In the broader implications of the WTO to Taiwan, the multilateral and plurilateral trade liberalization through trade negotiations has critical importance to Taiwan in that they eliminate tariffs and non-tariffs barriers in the international trading environment. Taiwan strongly supports an effective and creditable global trading system.

However, in the 18 years of participation in the WTO, Taiwan still faced difficulties and barriers in fully benefiting from the rights granted to WTO members. For example, Taiwan still faces political resistance from its major trading partners to develop bilateral FTAs with Taiwan. The FTAs with Singapore and New Zealand demonstrate a "WTO Model" that Taiwan can sign FTAs with other WTO members in its capacity as a WTO member, but China's position still deeply affects WTO members' political decisions.

In the future prospects, there are several challenges for Taiwan in its participation in the WTO. First, the WTO has lost its credibility to move multilateral trade negotiations and failed to function as a driver to promote trade liberation. From a trade perspective, the potential benefits for Taiwan are undermined as the DDA negotiations are not progressing. The recent crisis of the WTO and the dispute settlement and appellate Body will lead to more frictions and controversies between WTO members. The increasing trade protectionism in international trade will also very likely encourage more WTO members to adopt protectionist trade measures or to "weaponize" trade for political considerations.⁶⁰ Taiwan always supports an open and free trade, rule-based trading system and multilateralism. If the WTO and multilateralism cannot effectively function, Taiwan and other WTO members need to consider possible alternatives, such as more plurilateral trading mechanisms. The WTO should also consider changing its decision-making practices by allowing a more flexible voting system to replace current consensus-based operation.

Second, the China factor and China's persistent political interference have hampered Taiwan not only in furthering Cross-Strait economic relations but also in restricting Taiwan from engaging with other WTO members. One significant example is that Taiwan still could not negotiate bilateral FTAs with most WTO members and continues to have problems in joining regional economic integration initiatives, such as CPTPP and RCEP.

Third, the WTO is the most important international governmental organization Taiwan has full membership, but Taiwan finds it difficult to

⁶⁰ See Kristy Hsu, *The Trade Frictions Between Japan and South Korea and Their Implications for Taiwan – An Economic Perspective*, 2019(4), *Prospect Journal*, November 2019.

move beyond the WTO to connect with other equally important economic and trade organizations. Taiwan has not gained more international space after it became a WTO member, meaning it is still excluded by many international economic and functional organizations due to China factor and One China principle in these international organizations. For example, though the WTO has developed working relations with or provide consultative status to many functional international institutions with an aim to achieve greater coherence in global economic policy-making,⁶¹ Taiwan, as a WTO member, is still denied access to these institutions.

One timely example is the World Health Organization (WHO). Over the decades, the WTO and WHO have been working closely together on trade and public health related issues.⁶² Given the importance of public health to world trade, all WTO members, including Taiwan, should be allowed to participate in the discussion, consultations, and collaboration of trade-related public health issues.⁶³

⁶¹ For example, WTO has mandated collaboration with Codex, FAO, ILO, IMF, ITC, ITU, OECD, OIE, UN, UNCTAD, UNEP, WB, WCO, WHO, WIPO. See Decision on achieving greater coherence in global economic policy-making, WTO, April 1994.

⁶² The WHO has observer status in the Committee on Sanitary and Phytosanitary (SPS) Measures and the Technical Barriers to Trade (TBT) Committee, and it has ad hoc observer status in the Council on Trade-related Aspects of Intellectual Property Rights (TRIPS) and the Council for Trade in Services. In August 2002, WHO and WTO Secretariat published a joint study "WTO Agreements and Public Health - A joint study by WHO and the WTO Secretariat". See Press/310, WTO, 20 August 2002.

⁶³ Taiwan government's efforts in participating in the WHO for decades have not made progress. Thought in Ma's administration, Taiwan was invited to attend the World Health Assembly (WHA) as an ad-hoc observer by the invitation of Secretary General of the WHO. WHO had not sent invitation after change of government in Taiwan in 2016. Since early 2020, there is increasing support from the world for Taiwan to be included in the world health system. For example, see U.S. and China Clash at WHO Over Taiwan Participation, U.S. News, Feb. 6, 2020, at: <https://www.usnews.com/news/world/articles/2020-02-06/us-and-china-clash-at-who-over-taiwan-participation>

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8

Vietnam's international trade and investment: opportunities and challenges

PHAM The Anh

1. Introduction

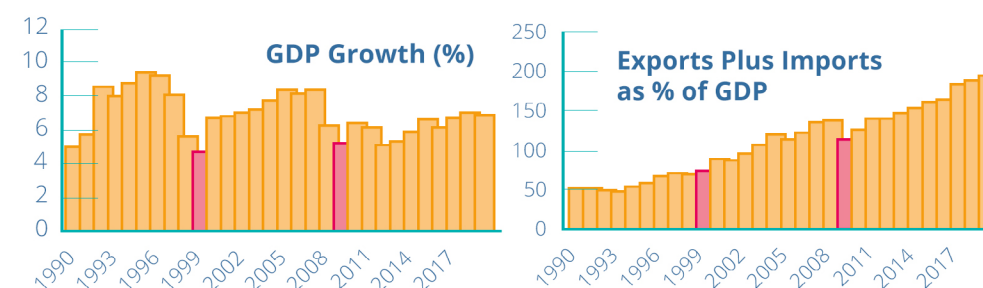
Since the implementation of reforms in the late 1980s, Vietnam has obtained remarkable economic achievements. A series of policies made important contributions to the country's economic growth in the 1990s, such as the removal of internal trade barriers, the establishment of private companies, the dissolution and merger of weak state-owned enterprises (SOE), demobilization and payroll reduction and the open-door policy to attract foreign investment and promote international trade. Throughout the 2000s, many more important reforms continued to maintain the momentum of economic growth: Enterprises were permitted to import and export directly, the 2000 Enterprise Law was enacted to remove barriers to the establishment of enterprises, SOE equitization was accelerated, a bilateral trade agreement was signed with the United States, a series of laws on trade, investment and land was formulated and amended and the country joined the World Trade Organization (WTO).

Over the past decade, Vietnam has continued to negotiate, sign and implement a series of free trade agreements (FTA) with important economic partners, such as Japan (VJEPA, 2009); the Association of Southeast Asian Nations (ASEAN) and India (AIFTA, 2010); ASEAN, Australia and New Zealand (AANZFTA, 2010); Chile (VCFTA, 2014); South Korea (VKFTA, 2015) and Russia, Belarus, Armenia, Kazakhstan and Kyrgyzstan (VN-EAEU FTA, 2016). The two most important new-generation FTAs—the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) and the Vietnam-EU Free Trade Agreement (EVFTA) (the latter of which will be effective soon)—are expected to radically change Vietnam's economy over the next decade.

Thanks to its open-door policy on foreign trade and investment, along with a series of other reforms, Vietnam has maintained a high growth rate over the past 30 years despite global economic recessions such as the Asian financial crisis in 1997–1998, the recession in 2000–2001 and the Great Recession in 2007–2009. Vietnam's average annual gross domestic product (GDP) growth rate was 7.4% in 1990–1999, 7.3% in

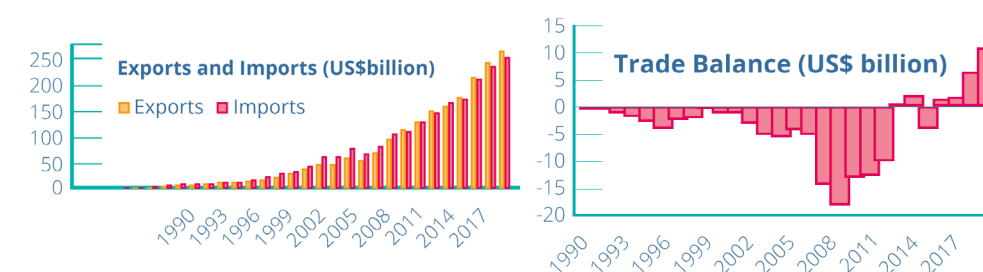
2000–2009 and 6.3% in 2010–2019. Per capita income increased from less than US\$100 in 1990 to nearly US\$3,000 in 2019. At the same time, the economy's openness (measured as a total trade–GDP ratio) has been increasing significantly, from 62% in 1990–1999, to 114.4% in 2000–2009 and 162.5% in 2010–2019 (Figure 1). The correlation coefficient between domestic savings and investment in the last decade has also dropped to about 0.18, reflecting the economy's very high level of openness. On average, in the last 10 years, Vietnam's exports have grown by about 17%, while imports have increased by nearly 14% per year.

Figure 1: Vietnam's GDP growth and the degree of openness during 1990-2019



Source: Asian Development Bank (ADB) Economic Indicators

Figure 2: Vietnam's exports and imports during 1990-2019



Source: Source: ADB Economic Indicators

2. Integration processes and opportunities for Vietnam

Starting with joining ASEAN and conducting bilateral trade agreement negotiations with many countries in the mid-1990s, Vietnam has so far entered into 12 FTAs; another has been signed and is about to take effect, and three more are under negotiation (Table 1). In addition, Vietnam has dozens of bilateral trade agreements with other countries around the world.

The CPTPP and the EVFTA are the most noteworthy of Vietnam's recent FTAs. These new-generation FTAs have a broader scope and require a higher level of commitment than conventional FTAs. While FTAs usually only cover areas governed by WTO agreements, such as trade in goods and services and rules of origin, the new-generation FTAs expand the scope of commitments to other new or 'non-traditional' areas, such as government procurement, SOEs, the environment, labour unions and e-commerce.

Regarding the level of commitment, traded goods in new-generation FTAs are exempted from tariffs up to nearly 100%, while ordinary FTAs have lower rates. However, these new-generation FTAs also allow member countries to postpone 20 groups of obligations involving matters such as intellectual property, investment, government procurement and financial services. In the case of the CPTPP, such allowances are made to ensure a balance between the rights and obligations of member countries, while the EVFTA allows these postponements to take into account the difference in the level of development between Vietnam and the EU. When put into effect, these agreements are more likely to create a huge boost for Vietnam's exports, helping to diversify markets and products, especially agricultural and aquatic products and other goods for which Vietnam holds a competitive advantage.

With the CPTPP, the import tax on Vietnamese goods entering big markets such as Japan and Canada will be reduced to 0%, creating a positive impact on export turnover. Taxes on exports that Vietnam is

good at producing, such as agricultural products, seafood, electricity and electronics, have all been eliminated since the agreement came into effect. The World Bank (2018) estimates that the CPTPP could help increase Vietnam's exports by 4.2% and its imports by 5.3% by 2030. Meanwhile, Vietnam's exports have currently reached less than 1.5% of the EU's total import turnover, and only about 42% of Vietnam's exports to the EU enjoy a 0% tax rate, including products under the Generalized System of Preferences (GSP). This is a very modest figure compared to Vietnam's export potential and the EU's market size. Given the commitments in the EVFTA, the EU (2018) estimates that Vietnam's exports to the EU will increase by about 18%, while imports will go up by about 29%. These figures are equivalent to an increase of €15 billion for exports and €8 billion for imports by 2035.

In addition, the CPTPP and EVFTA are also expected to allow Vietnam to participate in regional and global supply chains. This is an important condition for Vietnam to improve its economic development, increase labour productivity, gradually reduce reliance on the assembly of component parts and participate in higher value-added production stages. At the same time, Vietnam needs to make greater efforts to implement institutional reforms and improve its business environment, to which it has committed itself in the agreements. In the meantime, the Regional Comprehensive Economic Partnership (RCEP) and two other FTAs with northern European countries and Israel are also under negotiation. When these agreements come into effect, Vietnamese exports will be given access to many of the world's large markets, with few tariffs or restrictions.

Table 1: A Summary on FTAs of Vietnam by March 2020

	FTA	Status	Partners
1	AFTA	Effective since 1993	ASEAN
2	ACFTA	Effective since 2003	ASEAN, China
3	AKFTA	Effective since 2007	ASEAN, South Korea
4	AJCEP	Effective since 2008	ASEAN, Japan
5	VJEPA	Effective since 2009	Vietnam, Japan
6	AIFTA	Effective since 2010	ASEAN, India

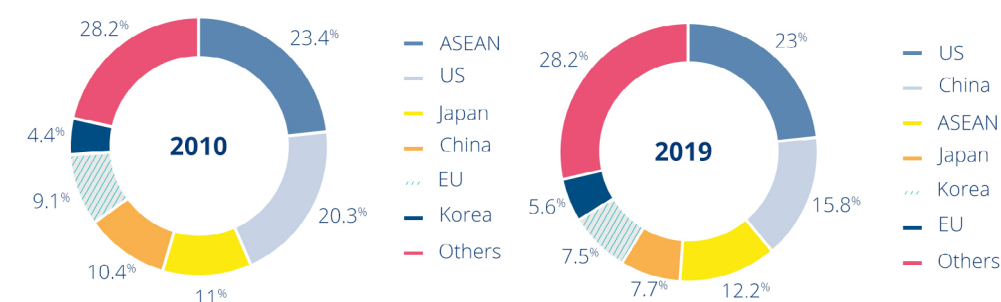
7	AANZFTA	Effective since 2010	ASEAN, Australia, New Zealand
8	VCFTA	Effective since 2014	Vietnam, Chile
9	VKFTA	Effective since 2015	Vietnam, South Korea
10	VN - EAEU FTA	Effective since 2016	Vietnam, Russia, Belarus, Armenia, Kazakhstan, Kyrgyzstan
11	CPTPP	Effective since 14/1/2019	Vietnam, Canada, Mexico, Peru, Chile, New Zealand, Australia, Japan, Singapore, Brunei, Malaysia
12	AHKFTA	Effective in Hong Kong, Laos, Myanmar, Thailand, Singapore and Vietnam since 11/6/2019	ASEAN, Hong Kong
13	EVFTA	Signed on 30/6/2019, Approved by European Commission (EC) on 30/3/2020. Expected to be effective in May 2020	Vietnam, EU (28 member states)
14	RCEP	Under negotiation since 3/2013	ASEAN, China, South Korea, Japan, India, Australia, New Zealand
15	Vietnam - EFTA FTA	Under negotiation since 5/2012	Vietnam, EFTA (Switzerland, Norway, Iceland, Liechtenstein)
16	Vietnam - Israel FTA	Under negotiation since 12/2015	Vietnam, Israel

3. Risks and challenges ahead

Participation in free trade agreements provides many opportunities for Vietnam to increase exports and improve domestic economic institutions, but it also opens the economy to both internal and external risks. Vietnam has a high degree of dependence on international trade, with its total exports equal to approximately 101% of its GDP. Three countries and territories, the United States, China and ASEAN, accounted for more than half of Vietnam's export value in 2019. Moreover, Vietnam's bilateral trade agreements with Japan and South Korea each account for 7.5–7.8% of its total export value. The EVFTA, which has been recently approved by the European Council, is also expected to create great growth momentum and make the EU one of the most important export markets for Vietnam within a short period of time.

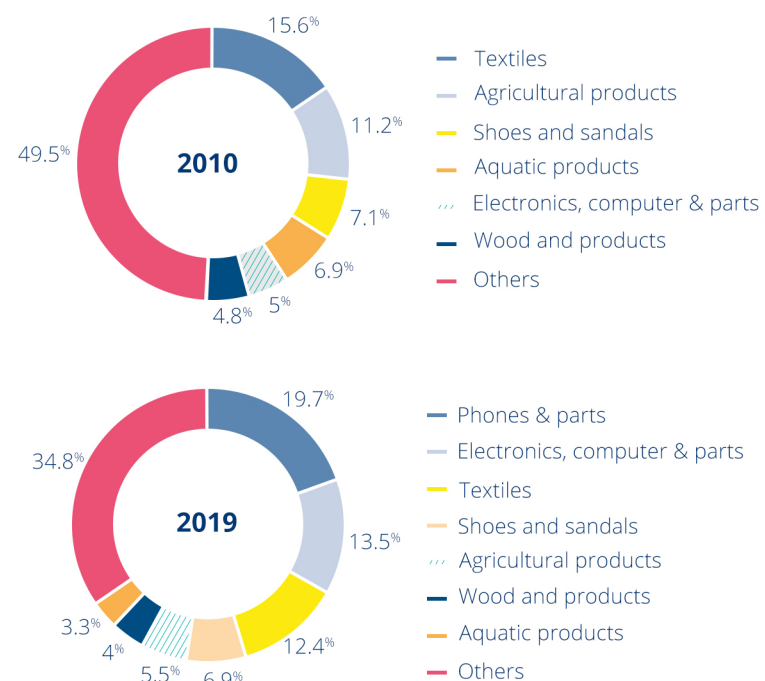
In terms of exports, 10 years ago, agricultural and aquatic products, textiles and leather accounted for more than 40% of Vietnam's total export value. Today, with much foreign direct investment (FDI) from South Korea, Japan and Taiwan, Vietnam's largest export items have become telephones and spare parts as well as computers and accessories (Figure 3). These items accounted for one-third of the country's total export value, with Samsung alone contributing about a quarter of Vietnam's exports in the last two years. This heavy dependence on certain markets and items makes Vietnam more vulnerable to external shocks.

Figure 3: Vietnam's exports by country 2010 and 2019



Source: General Statistics Office of Vietnam

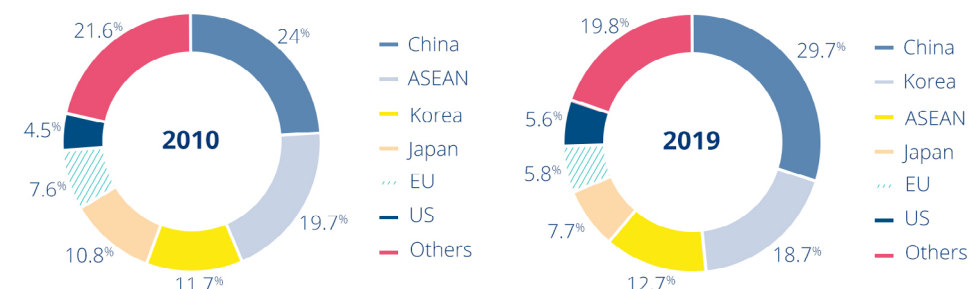
Figure 4: Vietnam's exports by industry 2010 and 2019



Source: General Statistics Office of Vietnam

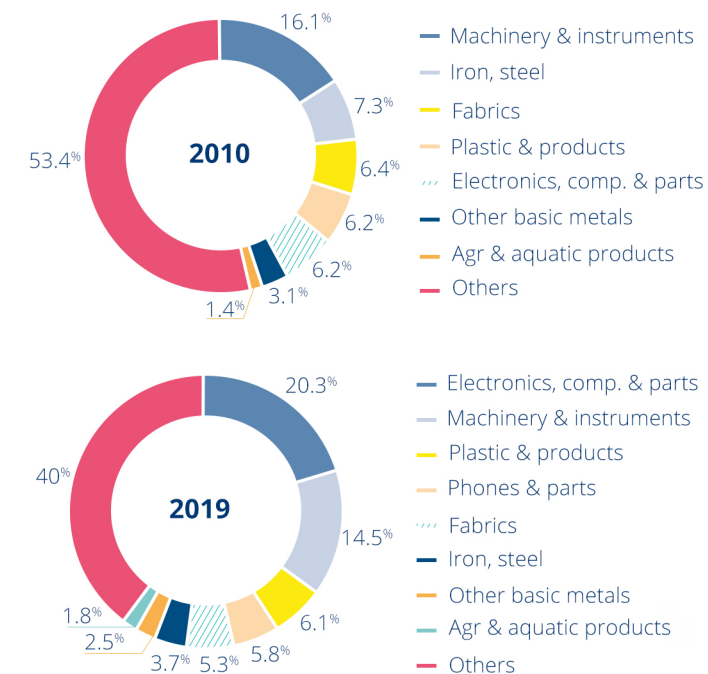
In terms of imports, Vietnam's industry has very deep integration with the industries of China and South Korea. Imports from the two countries account for nearly half of Vietnam's total import value (Figure 5). Therefore, supply disruptions from China and Korea would have strong impacts on domestic production. Exports have increased sharply over the years, but imports have also grown rapidly, and as a result, Vietnam has generally had a trade deficit. In the last four years, however, Vietnam's trade balance has started to show a slight surplus. However, it is worth mentioning that this surplus comes from the FDI sector, while the domestic sector maintains a high deficit (Figure 7). A large portion of the revenue from the FDI sector's trade surplus is transferred back to the owner country in the form of foreign factor income.

Figure 5: Vietnam's imports by country in 2010 and 2019



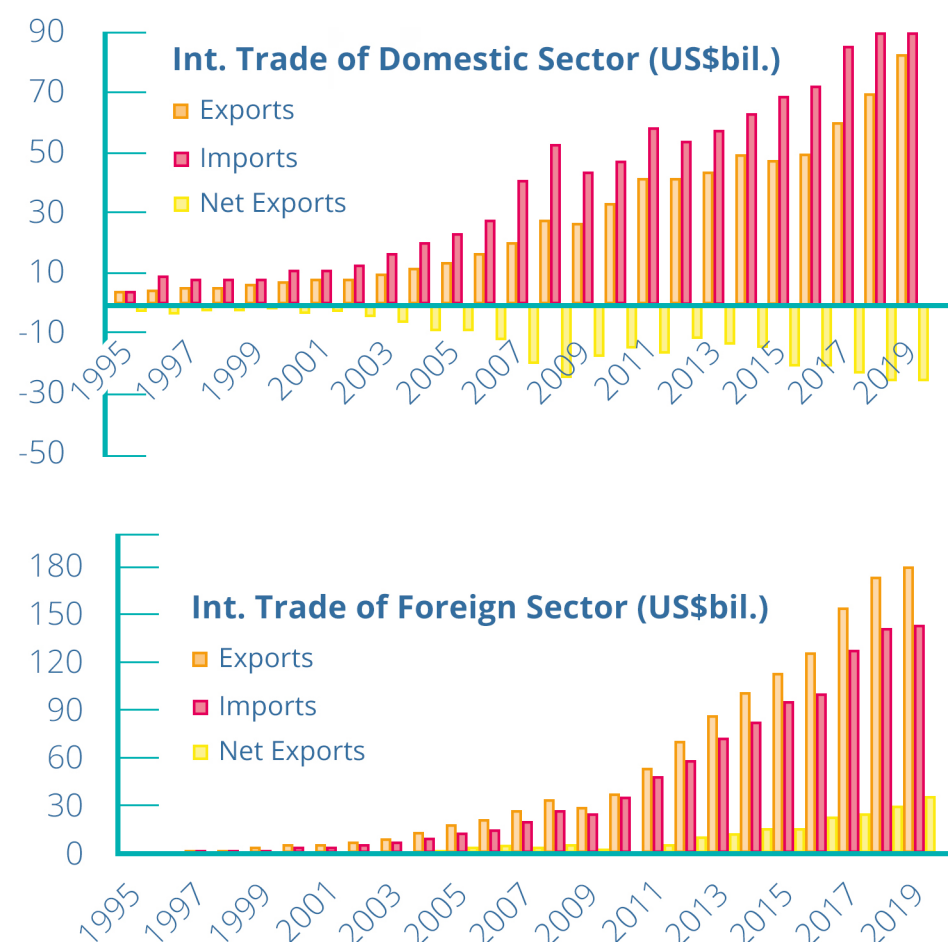
Source: General Statistics Office of Vietnam

Figure 6: Vietnam's imports by industry in 2010 and 2019



Source: General Statistics Office of Vietnam

Figure 7: Vietnam's net exports by sector during 1995 – 2019



Source: General Statistics Office of Vietnam

In the process of Vietnam's international integration, it is important to emphasize the role of FDI. Vietnam's Law on Foreign Investment in Vietnam was implemented in 1987 and underwent numerous revisions and reforms in 1992, 1996, 2000, 2005 and 2014, making important contributions to job creation, exports and economic growth over the past three decades. By the end of 2019, Vietnam had 3,883 projects amounting to US\$443.7 billion in registered capital and US\$210 billion in disbursements of FDI capital. Remarkably, this capital flow has increased steadily over the past 10 years. In 2019, FDI accounted for about 23% of Vietnam's total investments (Figure 8).

FDI inflows to Vietnam mainly come from countries in East and Southeast Asia. This trend has been rather stable in recent years. By the end of 2019, the top five countries and territories—South Korea, Japan, Singapore, Taiwan and Hong Kong—accounted for about 65% of the investment coming from active FDI projects in Vietnam. Moreover, China, Malaysia and Thailand are also big investors, each with a share of over 3%. The British Virgin Islands, the United States and the Netherlands are countries outside of Asia with relatively large FDI inflows to Vietnam (Figure 9).

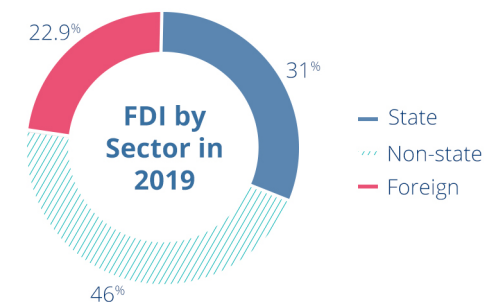
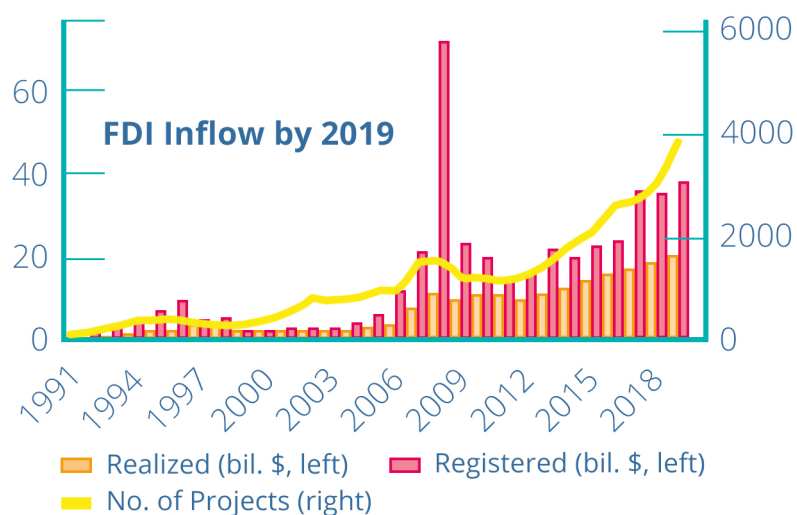
After 30 years of attracting FDI, Vietnam has many important FDI goals in addition to job creation, including technology transfer, improved research and development capabilities for domestic enterprises, better training for high-quality human resources and increased value for domestic products in the global value chain. These goals are not yet achieved. Meanwhile, estimates from a survey of Vietnam's enterprises show that although FDI enterprises account for less than 3% of total businesses in the economy, they make up a quarter of tax expenditures. For example, in 2016, the effective corporate income tax rate for the FDI sector was only 12.6%, much lower than the statutory tax rate (20%) and also lower than the effective tax rate of state-owned enterprises (16.1%) and the private sector (13.8%). Pham et al. (2020) also point out that FDI enterprises have shown many signs of tax avoidance and evasion by shifting profits to tax havens, causing great losses to state budget revenues.

In addition, according to data from the General Statistics Office of Vietnam, the proportion that the FDI sector has contributed to exports has increased consistently, from less than 30% in the mid-1990s to over 70% in recent years. However, the sector also relies heavily on imported inputs, and during this same period, the sector's share of imports increased from about 20% to more than 60%. Machines, equipment and raw materials are imported mainly to serve the production and exports of the FDI sector. Meanwhile, the production of many key export items, such as electronics, computers, phones and accessories, textiles and footwear, is heavily associated with assembly and processing with low value added, and therefore, it does not contribute much to national income. FDI exports can be considered the exports of the host country to other countries, and these FDI enterprises are utilizing the Vietnamese market as a stopover to take advantage of cheap labour, loose environmental regulations, cheap energy and rent and tax incentives.

Technology transfer has also been slow, with little progress over the years. Joint venture investment between domestic and foreign enterprises accounts for a very small proportion of total investments. The FDI sector is often expected to stimulate the domestic business sector using domestic inputs. However, the linkage between FDI and domestic firms is weak. The production cycle of the FDI sector seems to follow the formula 'import of raw materials + cheap energy and labour + low land rents and preferential tax = exports'. The closed supply chain includes only FDI enterprises. FDI does not often bring new technologies and innovation, but even when it does, domestic enterprises do not have the ability or opportunity for technology transfer.

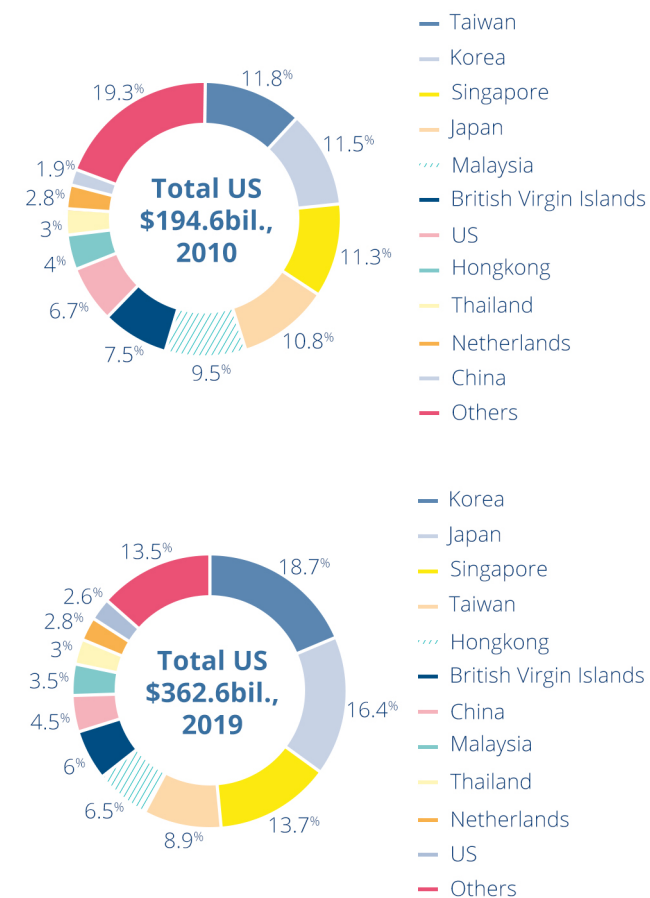
Finally, after becoming party to the new-generation FTAs, Vietnam has become an attractive destination for many multinational corporations and regional companies, especially from China. These companies tend to shift their production to Vietnam to meet the rules of origin of goods and thereby enjoy preferential tariffs from major markets such as the EU or Japan. As a result, production factor markets have become increasingly competitive, pushing labour prices and land rents to increase rapidly in recent years. This makes domestic manufacturing firms less competitive in the international product market.

Figure 8: Vietnam's foreign direct investment inflow 1990 - 2019



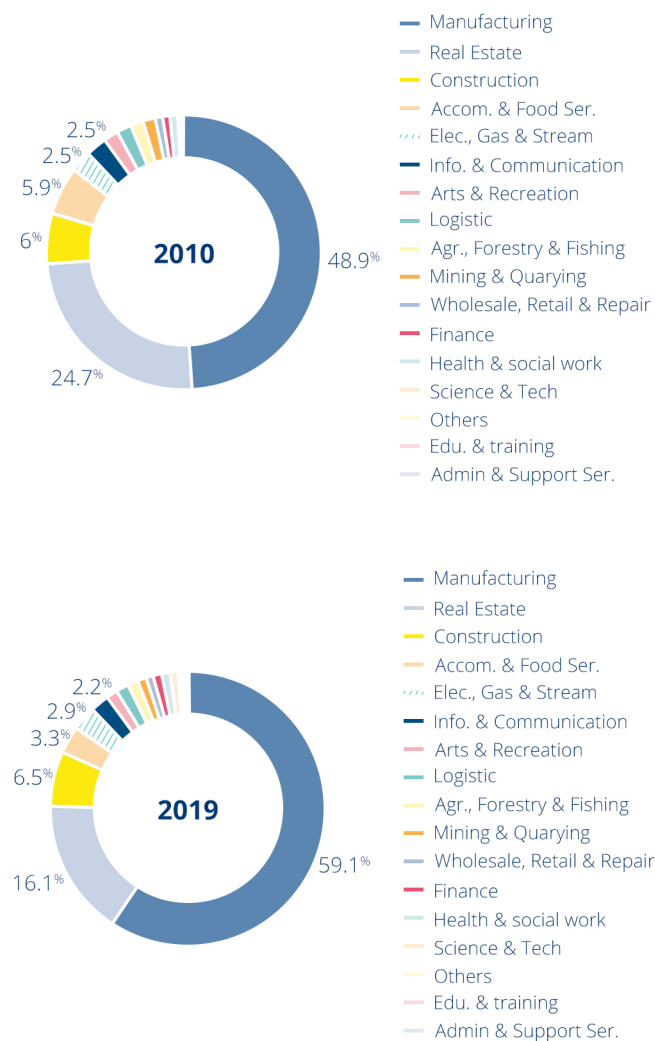
Source: General Statistics Office of Vietnam

Figure 9: Vietnam's FDI Inflow by Country by 2010 and 2019 (accumulated)



Source: General Statistics Office of Vietnam

Figure 10: Vietnam's FDI Inflow by Industry by 2010 and 2019 (accumulated)



Source: General Statistics Office of Vietnam

In general, international integration and FTAs have created both opportunities and challenges for Vietnam. These challenges include not only the need for reforms of the legal and institutional frameworks to meet the commitments laid out in the FTAs, but also the need to increase the country's capacity to join global value chains and boost economic growth as the economy becomes increasingly open to the world outside. Therefore, in the coming years, Vietnam must make greater efforts and

develop better solutions to make good use of the opportunities and minimize the risks that FTAs bring.

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Fostering regional growth and innovation in the midst of economic and regulatory uncertainty:

A case study of

Asia's Information and Communications Technology (ICT) sector

Juan Sebastian CORTES-SANCHEZ

1. Introduction

Recent macroeconomic, regulatory and pandemic shocks have increased uncertainty for countries around the world and put pressure on the global multilateral trade system. As a region dependent on economic growth underpinned by the rise in global trade and global value chains, Asia will continue to be deeply impacted by current economic and regulatory uncertainty. Therefore, it is imperative that Asian economies explore regional and multilateral economic and regulatory governance alternatives that can strengthen their continued growth in the midst of economic and regulatory uncertainty.

Unfortunately, the World Trade Organization's (WTO) role as a global rule setter and enforcer has been significantly diminished. To date, the WTO has been unable to effectively address complaints about its own dispute settlement mechanism or prevent the rise of trade restrictive measures affecting global trade in goods and services.

Conversely, Asia has been at the centre of (i) supply chain shocks created by the US-China Trade War and Covid-19 crisis and (ii) the development of new regional trade agreements that promote regulatory interoperability and freer trade that go beyond existing WTO commitments.

This paper will explore ways in which Asian economies can maintain and improve their regional and global comparative advantage in the midst of a declining global trade and increased economic and regulatory uncertainty. The author will examine this question through the lens of the Information and Communication Technologies (ICT) sector, which has been a key engine in the growth of developed and emerging economies in Asia and relies on complex GVC relationships affected by the Covid-19 crisis and rising geopolitical and trade tensions. Through a careful assessment of the evaluation of ICT GVCs in the midst of the current crisis, this paper explores ways in which Asian economies can maximize sustainable growth and innovation within the sector.

2. Asia in the midst of new economic and regulatory uncertainty

A decline in the world economy, rising trade protectionism and the Covid-19 crisis have all disrupted regional supply chains and increased risks and uncertainty for firms and economies in Asia.

The trade war between the U.S. and China has not only disrupted China's exports but disrupted and redirected many China-centric supply chains in Asia. To date, the U.S. has imposed tariffs on more than US\$ 360 billions of Chinese goods, and China has retaliated with tariffs on more than US\$ 110 billions of US products. As a result, China exports to the U.S. dropped by 25 percent—a US\$ 35 billion loss—in the first half of 2019, and many Asian economies like Singapore and Japan saw a share deceleration in the growth of their exports to China and the U.S. Conversely, 63 percent of China export losses have been diverted to countries like Taiwan, Mexico and Vietnam.¹

The Phase 1 Deal signed in January, has only provided nominal benefits. The deal does not address remaining tariffs on US\$ 250 billions of Chinese goods and contains a purchase agreement that is likely to further divert trade flows. Under the agreement, China needs to increase its purchases of \$560 billions of U.S. goods over two years—a 55% increase.² It is unclear whether China will be able to fulfil those requirements and it is likely it will have to discriminate against competing imports to meet them.

The Covid-19 global pandemic has affected regional economies at a time where other risk factors were already rising. Supply side shocks have affected supply chains throughout the region. China, the original epicentre of the coronavirus, saw trade drop by 56 percent in a single

1 <https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=2569>

2 <https://www.piie.com/blogs/trade-and-investment-policy-watch/phase-one-china-deal-steep-tariffs-are-new-normal>

week in February.³ Blank or cancelled sailings have increased in China and are becoming problematic elsewhere.⁴ Government measures to contain the virus have created specific demand shocks that include a decline in domestic consumption, investment, decline in tourism and spillovers of weaker demand into other sectors.⁵ As a whole, recent forecasts from the World Bank, the ADB and the IMF all have seen sharp declines in regional growth as a result of the economic shock of the pandemic.⁶

These regulatory and economic shocks have created supply and demand side shocks that exposed supply side risks in industries with highly global and rationalized supply chains. This has spurred a series of trade restrictive measures to curb exports of medical equipment and encourage the localization of import sensitive industries.⁷ These new trade restrictions fall within a trend of increasing trade restrictive measures.⁸ According to Global Trade Alert, states have imposed almost 18,000 trade policies that discriminate against foreign commercial interests since the 2008 financial crisis.⁹

While WTO rules have been paramount for the growth and development of trade dependent economies in regions like Asia, recent geopolitical pressures have not allowed WTO members to adapt to the changing nature of trade. US concerns with the system's inability to drive substantial commitments since the Uruguay Round, the nature of the appellate body, and the benefits afforded to economies like China under the "developing country" status, all have made it unequipped to blunt protectionist actions on goods. In this context, the WTO has not been able to create multilateral governance mechanisms that effectively address non-tariff

3 <https://www.businesswire.com/news/home/20200305005305/en/Tradeshift-Sees-Chinese-Trade-Activity-Drop-56>

4 <https://www.hellenicshippingnews.com/covid-19-and-supply-chain-implications-for-ocean-shipping/>

5 <https://www.adb.org/sites/default/files/publication/571536/adb-brief-128-economic-impact-covid19-developing-asia.pdf>

6 <https://www.csis.org/analysis/economic-toll-covid-19-southeast-asia-recession-looms-growth-prospects-dim>

7 <http://www.wcoomd.org/en/topics/facilitation/activities-and-programmes/natural-disaster/list-of-countries-coronavirus.aspx>

8 <file:///Users/presentation/Downloads/OVW13.pdf>

9 https://www.globaltradealert.org/global_dynamics

barriers limiting global goods and services trade nor created consensus on new trade rules that would guarantee more open trade in sectors like e-commerce.

In the midst of supply and demand disruptions, increasing protectionism, and weakened global trade system, the losers will be trade-dependent economies in regions like Asia, which has relied on an increasingly open, complex and interconnected global trade architecture to foster growth. In response, Asian economies must embrace social, economic and regulatory reforms that increase their ability to learn, adapt and build resilience in the midst of global economic and regulatory uncertainty.

The rest of this paper will examine in detail the development and structure of the global ICT sector. This sector has been a key for the export led growth of many Asian economies and is at the forefront of current global and regional economic and geopolitical tensions. The way in which Asian economies and governance structures choose to foster growth and innovation within the sector, will have an important impact in the stabilization of supply chains and markets and the creation of a more inclusive economic future.

3. Asia and the rise of ICT global value chains

More than two thirds of world trade occur through global value chains (GVCs), where different stages of the R&D, production, marketing and distribution processes are located across different countries. Recent empirical research conducted by the World Bank, the WTO and the OECD shows that the higher technology intensity of a sector, the more significant the increase of complex GVC activities.¹⁰ In Asia, the development of highly complex and interdependent Information Communication Technologies (ICT) GVCs have given economies like Japan, Korea and Taiwan the ability to develop globally competitive electronics and semiconductor industries and emerging economies like China and Vietnam the ability to assemble and export ICT goods without having to master the entire production of a product.

This section uses input-output evidence from the OECD to examine the ways in which regional ICT value chains have evolved since 2005.¹¹ The analysis shows that Asia ICT value chains have transformed into highly rationalized networks of value creation activities that meet most of the demand for intermediate and final ICT products around the world.

3.1 The rise of China and Asia as supply hubs

Over the past two decades, Asia has experienced a significant increase in cross-country production sharing activities, that have allowed countries like Japan, Taiwan and South Korea to develop globally competitive ICT sectors and countries lower middle-income countries like Vietnam and China to integrate into Asian production networks.

10 <http://documents.worldbank.org/curated/en/384161555079173489/Global-Value-Chain-Development-Report-2019-Technological-Innovation-Supply-Chain-Trade-and-Workers-in-a-Globalized-World>

11 https://stats.oecd.org/Index.aspx?DataSetCode=TIVA_2018_C2

In 2015, Asian economies represented 6 out of the 10 top exporters of ICT products in the world (Table 1). Between 2005 and 2015 ICT exports from China, Korea and Taiwan increased by 66, 41 and 34 percent respectively. Conversely, growth in ICT exports in the U.S. has declined by 5 percent over the same period of time. As a whole, China dominates the world's ICT exports.

Table 1: Top World Exporters of ICT Products - USD Million¹²

	2005	2015	Change (2005 - 2015)	%Change
CHN: China	238089.3	704116.1	466026.8	66%
KOR: Korea	103856.1	177421.4	73565.3	41%
TWN: Chinese Taipei	83514.2	126551.6	43037.4	34%
USA: United States	108136.9	103122.6	-5014.3	-5%
DEU: Germany	62482.2	102109.2	39627	39%
JPN: Japan	119811.8	100507.1	-19304.7	-19%
MEX: Mexico	53223.7	86404.9	33181.2	38%
MYS: Malaysia	64928.6	63010.8	-1917.8	-3%
SGP: Singapore	37061.3	54732.9	17671.6	32%
CHE: Switzerland	26096.9	46619.7	20522.8	44%

From a value chain perspective, China tops the world and experienced a whopping 201 percent increase between 2005 and 2015 in domestic value added in foreign final demand (Table 2). Over that period of time the majority of value-added activities in the ICT sector have moved to China, while value addition from past supply hubs like Japan have declined. This happened as Japan moved from a global supply hub and started investing in large scale FDI in China and Vietnam.¹³

This means that value added activities taking place in China have continued to be increasingly embedded in the sales of ICT products

12 https://stats.oecd.org/Index.aspx?DataSetCode=TIVA_2018_C2

13 <http://documents.worldbank.org/curated/en/384161555079173489/Global-Value-Chain-Development-Report-2019-Technological-Innovation-Supply-Chain-Trade-and-Workers-in-a-Globalized-World>

around the world. In the U.S. alone, China's value added to final demand of ICT products increased by 130 percent between 2005 and 2015, with a value added 4 times higher than Mexico's—US's second most important partner in terms of ICT value addition.¹⁴

Table 2: Domestic Value Added in Foreign Final Demand (World) – USD Million

	2005	2015	Change	%Change
CHN: China	70912.6	213780.3	142867.70	201%
KOR: Korea	47142.5	85734.2	38591.70	82%
USA: United States	57820.3	83724.3	25904.00	45%
TWN: Chinese Taipei	37877	66747.7	28870.70	76%
DEU: Germany	38086.3	59357.2	21270.90	56%
JPN: Japan	65146.5	53271	-11875.50	-18%
MEX: Mexico	10408.8	21635.2	11226.40	108%
CHE: Switzerland	12517.6	20608.8	8091.20	65%
MYS: Malaysia	13884.8	18365.7	4480.90	32%
FRA: France	19396.7	16607.7	-2789.00	-14%

Moreover, while U.S. gross exports of ICT goods have declined, its domestic value added has continued to increase and remains third in the world (Table 2). This is a reflection of R&D, advanced manufacturing and marketing related value-added services where the U.S. continues to be a global leader.¹⁵ Overall, while China is an absolute leader in gross exports and domestic value addition within the ICT sector, countries providing upstream value-added activities continue to make an important contribution to China's ICT development—in recent years more than half of China's ICT exports were produced by foreign-owned enterprises.¹⁶

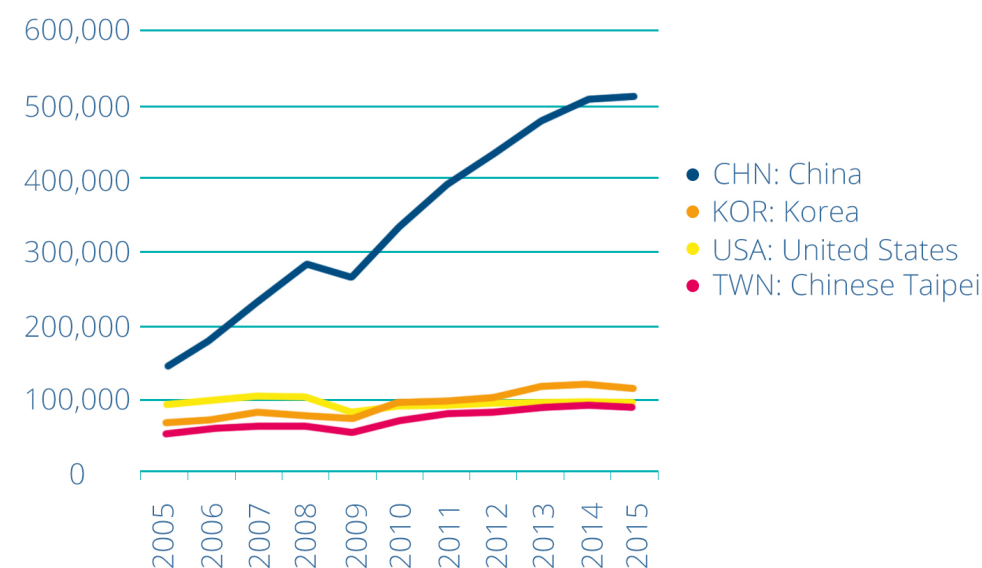
14 https://stats.oecd.org/Index.aspx?DataSetCode=TIVA_2018_C2

15 <https://www.nsf.gov/statistics/2018/nsb20181/report/sections/overview/knowledge--and-technology-intensive-economic-activity>

16 <http://documents.worldbank.org/curated/en/384161555079173489/Global-Value-Chain-Development-Report-2019-Technological-Innovation-Supply-Chain-Trade-and-Workers-in-a-Globalized-World>

While China has evolved from an assembly location for ICT products, it has been able to upgrade and significantly increase the domestic value added on its own ICT exports. This means that China has been able to increase the value of its GVC activities at a pace much faster than other countries like Korea, the US and Taiwan—a 260% increase over the time period (Graph 1). The rise of domestic value added in ICT exports provide evidence of the ongoing industrial upgrading in China's ICT industries, as more upstream value-added activities take place domestically.

Graph 1: Domestic Value Added in Gross ICT Exports – USD Million¹⁷



Overall, Asia plays an incredibly important role in the production of ICT products from the perspective of both gross exports and value-added activities. China has emerged as a key player for ICT production and value-added activities, all of which are deeply important for the assembly and distribution of final ICT products across the world.

17 https://stats.oecd.org/Index.aspx?DataSetCode=TIVA_2018_C2

3.2 China's transformation into an ICT demand hub

Over the past two decades China has also become the biggest demand hub for ICT products, surpassing the U.S. which was the biggest demand market in 2005 (Table 3). Between 2005 and 2015 China's imports of ICT products increased by 165 percent, while the U.S. only increased by 40 percent.

Table 3: World's Largest Importers – USD Millions¹⁸

	2005	2015	Change	%Change
CHN: China	143122.1	378983.1	235861	165%
USA: United States	234620.7	329277.6	94656.9	40%
MEX: Mexico	48197.9	87700.4	39502.5	82%
DEU: Germany	42232.9	86785.2	44552.3	105%
JPN: Japan	62787	81969.7	19182.7	31%
KOR: Korea	49505	75801.3	26296.3	53%
GBR: United Kingdom	59556	58839.7	-716.3	-1%
FRA: France	50932.5	53064.4	2131.9	4%
CAN: Canada	40349	43149.2	2800.2	7%
TWN: Chinese Taipei	44393.7	40880.5	-3513.2	-8%

China's importance as a demand hub includes both its position as a global assembly point and as a large final demand market. As a production and assembly hub for locally or internationally produced intermediate products, China's centrality has had a significant increase between 2005 and 2015. Table 4 shows changes in the origin of value-added activities embedded in China's ICT exports. The value of exports from key producers of intermediate ICT exports like Korea, Taiwan and the U.S. have embedded in China's exports has increased by 100 percent or more. As a whole, the table shows China's centrality as a demand hub for intermediate inputs used to produce China's ICT exports.

¹⁸ https://stats.oecd.org/Index.aspx?DataSetCode=TIVA_2018_C2

Table 4: Origin of Value Added in Gross Exports China – USD Million¹⁹

	2005	2015	Change	% Change
Domestic	142,680.6	514,118.6	371,438.01	260%
KOR: Korea	13,813.0	31,169.2	17,356.18	126%
TWN: Chinese Taipei	13,546.3	26,869.1	13,322.79	98%
JPN: Japan	18,950.1	20,657.0	1,706.96	9%
USA: United States	10,109.3	20,301.7	10,192.44	101%
DEU: Germany	3,014.1	9,168.9	6,154.84	204%
MYS: Malaysia	2,982.8	6,345.5	3,362.65	113%
AUS: Australia	1,884.9	5,966.3	4,081.37	217%
SGP: Singapore	3,029.9	5,767.1	2,737.14	90%
THA: Thailand	2,203.9	4,751.1	2,547.18	116%

Moreover, increased demand in China's ICT sector has not only been driven by intermediate inputs used for assembly of ICT exports. China has also become the world's biggest market for ICT products. Table 5 shows the domestic value added in ICT products with foreign final demand in China. For manufacturers of ICT products all over the world, China has increasingly become an incredibly important market. ICT value added exports from Asian countries like Korea, Taiwan, Japan, Malaysia and the Philippines and countries like the U.S. and Germany are sold to Chinese businesses and consumers.

Table 5. Domestic Value Added in Foreign Final Demand in China – USD Million

	2005	2015	Change	% Change
KOR: Korea	8,322.4	33,320.1	24,997.7	300%
TWN: Chinese Taipei	8,184.2	28,671.0	20,486.8	250%
JPN: Japan	9,566.5	16,567.5	7,001.0	73%
USA: United States	3,957.8	14,913.4	10,955.6	277%
DEU: Germany	1,481.8	7,752.9	6,271.1	423%

¹⁹ https://stats.oecd.org/Index.aspx?DataSetCode=TIVA_2018_C2

MYS: Malaysia	1,475.4	5,244.2	3,768.8	255%
PHL: Philippines	695.4	4,112.0	3,416.6	491%
THA: Thailand	911.6	3,743.4	2,831.8	311%
SGP: Singapore	1,301.2	3,463.3	2,162.1	166%
CHE: Switzerland	474.2	2,167.7	1,693.5	357%

As a whole, China has emerged as a new power that drives a large number of both imports and exports of ICT intermediate and final goods and services via GVC trade networks. This means that supply chain shocks and changes in bilateral trade policy can have a significant impact not only on China's exports but on the exports and GVC activities of economies across the region.

4. New disruptions to ICT GVCs

After three decades of the development of complex GVCs, recent supply chain shifts and regulatory uncertainty are forcing more fragmented and localized modes of trade. This is challenging export reliant economies like Taiwan, Singapore, Korea and Japan to find alternatives to best cope with increasing disruptions and geopolitical uncertainty.

Given the interdependencies in regional ICT value chains, U.S. tariffs on China ICT exports have increased costs for ICT exporters relying on China as an assembly hub. Covid-19 has exacerbated the impact by reducing production activities in China and limiting travel for multinational tech companies with production or R&D centres in China. In response to the virus, some of China's home-grown tech companies like ZTE, Huawei and Xiaomi, all of which rely on foreign components, reduce productivity in the manufacturing and R&D hubs.²⁰ As a whole, the virus has affected different parts of an intricate regional supply chain and will continue to impact manufacturing obligations and ICT product release roadmap.

Unfortunately, current supply chain shocks are not the only factors driving the fragmentation of regional ICT supply chains. The US and China are currently in the middle of a tech war that could decouple regional ICT supply chains. Over the past year, the U.S. has imposed restrictions on exports of ICT goods and services to China to halt China's ICT industries.²¹ These sanctions are not likely to be included in ongoing U.S. China trade negotiations.

In order to rescue its dependence on US technologies and advance its own technologies, China has rolled out ambitious strategies to promote and fund the development of China's technology in critical sectors. Beijing's Made in China 2025 plan aims to propel 10 key technology sectors which

²⁰ <https://www.telecomreviewasia.com/index.php/news/featured-articles/1887-covid-19-the-health-crisis-engulfing-tech-ict-and-the-global-economy>

²¹ <https://www.reuters.com/article/us-usa-china-exports/us-imposes-new-rules-on-exports-to-china-to-keep-them-from-its-military-idUSKCN2291SR>

comprise over 40 percent of China's value-added manufacturing base through \$300 billion over a ten-year period.²²

In response, the US is reviewing the addition of new emerging and foundational technologies into the US Department of Commerce's Controlled Commodity List, which requires export licenses for the transfer and sales of those technologies.²³ Similar measures include the restricted entity lists that prevent Chinese firms from buying US hi-tech components equipment and services, blocking M&As and increasing pressure on Asia ICT manufacturers.²⁴ For instance, White House officials have put in place measures that increase pressure on Taiwan, Japan and Korea manufacturers, to obtain export licenses to sell certain equipment to Chinese firms like Huawei.²⁵

However, nationalizing or controlling the ICT supply chain will be a complex and highly disruptive process. Given the degree of penetration into the China ICT industry and the integration within regional and global GVCs, decoupling US or US related ICT companies from China's market will have a disastrous impact on the entire ICT industry. Regardless, ICT global manufacturers are actively seeking to diversify their supply chains and reduce their dependence on a single country.²⁶

These restrictions are part of a larger trend that some have coined as "techno-nationalism" or mercantilist-like policies, that link a nation's tech innovation and enterprises directly to its economic prosperity, national security, and social stability.²⁷ The trend has proliferated as government concerns about data protection, taxation, cybersecurity and data sovereignty have led to the development of rules that limit the use and transfer of data and force the localization of certain industries.

22 <https://www.cfr.org/backgrounder/made-china-2025-threat-global-trade>

23 <https://hinrichfoundation.com/trade-research/global-trade-research/thought-leadership/semiconductors-at-the-heart-of-the-us-china-tech-war/>

24 <https://www.commerce.gov/news/press-releases/2019/10/us-department-commerce-adds-28-chinese-organizations-its-entity-list>

25 <https://asia.nikkei.com/Business/Technology/Exclusive-Washington-pressures-TSMC-to-make-chips-in-US>

26 <https://www.scmp.com/comment/opinion/article/3046791/us-china-tech-war-may-lead-global-decoupling-supply-chains-theres>

27 <https://technode.com/2020/04/24/export-controls-and-the-rise-of-us-china-techno-nationalism/>

Techno-nationalist concerns about the value and nature of data are turning the region into an increasingly inconsistent and complex regulatory environment composed of differing privacy, data localisation, cybersecurity and digital taxation requirements. For instance, cybersecurity laws in China and Vietnam restrict cross-border data flows and impose data localization requirements.²⁸ In the ICT industry, which increasingly relies on cross-border data exchanges and processes, these types of policies could further fragment existing GVC activities.

Under this reality, world's ICT manufacturers are actively seeking to diversify their value chains and reduce their dependence on a single country and circumvent potential regulatory restrictions on ICT exports or data. While these shifts may lead to strategies to shift manufacturing and other critical operations to new locations, given China's importance as a production centre and large demand market, there is no easy solution for global ICT manufacturers. The next section explores ways in which Asian economies could build a regional ICT sector that allows them to adapt, grow and build resilience in the midst of global economic and regulatory uncertainty.

28 <https://thediplomat.com/2019/12/vietnams-internet-control-following-in-chinas-footsteps/>

5. The way forward for Asian economies

Countries in Asia have recognized that participation in global value chains is an important prerequisite for economic development. And like China and Japan or Korea before, emerging markets like Vietnam or Malaysia aspire to move away from value addition activities at the end of the chain like labour intensive assembly parts produced elsewhere to activities that increase their value-added contribution to exports. However, in the current environment the mere use or participation in GVCs will not translate into a more favourable investment and innovation climate. As economic uncertainty increases and a potential technological decoupling between the US-China becomes more imminent, Asian economies need to adopt smart governance and economic policies that would best enable them to grow, adapt and strengthen their resilience in the face of rising uncertainty.

To maintain healthy levels of investment, trade and welfare in the ICT sector, Asian economies need to ensure they maintain a comparative advantage by creating factor conditions that enable increased investment, innovation and cross-collaboration in the ICT sector. Such conditions include wage costs, labour skills, infrastructure conditions, macroeconomic stability, institutional efficiencies, tax policies and trade policies.

Evidence to date shows that recent trends towards techno-nationalism and localization policies does not lead to the type GVC upgrading that would guarantee the continued comparative advantage of Asian economies.²⁹ The development of globally competitive industries and firms through GVCs has not only been a three-decade long journey that requires: (i) sustained reforms and adjustments over time and (ii) partnerships with global developers and suppliers across a global technology ecosystem. The following case study demonstrates this point.

29 <http://documents.worldbank.org/curated/en/384161555079173489/Global-Value-Chain-Development-Report-2019-Technological-Innovation-Supply-Chain-Trade-and-Workers-in-a-Globalized-World>

Building globally competitive phone brands in China

Over the past two decades Chinese mobile phone companies have successfully transitioned into China's mid and high-end phone markets and developed competitive international brands. The development of successful phone companies was the result of their strong connectivity to global technology ecosystems and the development of design and marketing capabilities that responded rapidly to changes in market demand and consumer taste.

In 2016, China accounted for more than 75 percent of global phone production.³⁰ Following the trends of the broader ICT industry, this is the result of both China's competitive advantage as an assembly location and local demand for mobile devices; China is the largest mobile phone market in the world.³¹

Since 2010 Chinese companies in the industry have achieved remarkable growth and international brand status in the global smartphone market. Triggered by changes in consumer preferences, to products of greater quality, functionality and better data transmissions, firms like Huawei, Xiaomi and Oppo have built better production, design and marketing capabilities; challenging market leaders like Apple and Samsung in China and other regional markets.³²

Deepening technological and GVC complexities require closer collaborations between platforms, vendors and mobile phone makers, and part suppliers. To increase their competitiveness, these brands have collaborated with global suppliers and relied on globally available technology to develop products that are interoperable

30 <http://documents.worldbank.org/curated/en/384161555079173489/Global-Value-Chain-Development-Report-2019-Technological-Innovation-Supply-Chain-Trade-and-Workers-in-a-Globalized-World>

31 <https://techcrunch.com/2019/08/02/a-closer-look-at-chinas-smartphone-market/>

32 <https://ideas.repec.org/p/ngi/dpaper/18-09.html>

and compatible with global markets.³³ The development of mutually beneficial relationships between foreign core tech providers and local manufacturers has been key to their ability to leverage global technology ecosystems.³⁴ Domestic firms gain access to technology inputs that improve their competitiveness, and the owners of core technology benefit from expanding their sales in growing markets.

Increased techno-nationalist policies are forcing Chinese firms to indigenize the production of some of their phones. For example, after U.S. export restrictions on Huawei, the company was forced to develop its own operation system and accelerated the vertical integration of micro-chip production.³⁵ While this trend could increase China's ability to vertically integrate production of phones, it would undercut the global technology ecosystem that has enabled increased cross-collaboration, standardization and innovation in the ICT market.

33 <http://documents.worldbank.org/curated/en/384161555079173489/Global-Value-Chain-Development-Report-2019-Technological-Innovation-Supply-Chain-Trade-and-Workers-in-a-Globalized-World>

34 <https://ideas.repec.org/p/ngi/dpaper/18-09.html>

35 <https://www.channelnewsasia.com/news/business/huawei-chip-unit-orders-up-more-domestic-production-as-us-restrictions-loom--sources-12648850>

6. Exploring sustainable governance solutions

The current situation calls for immediate action to understand what type of trade policies are needed to deliver high growth and quality for producers and consumers in the region and the types of governance structures to quickly adapt and hold parties accountable in such a shifting environment.

Domestic and regional governance plays a key role in enabling collaborative and innovative environments required to drive innovation in the ICT sector. However, the ability of governments to nurture such relationships depends on the consistency and interoperability of national and regional economic and regulatory environments. The diminishing importance of the WTO and the rise of techno-nationalism is threatening the developments of such environments in the region.

Even though the WTO has not been able to adequately address the proliferation of non-tariff barriers for goods trade, there is potential to address certain types of digital regulations under the current JSI talks. The WTO is currently engaged in negotiations with at least 82 members in the Joint Statement Initiative on Electronic Commerce (JSI). Talks started after the 11th WTO Ministerial Conference in Buenos Aires, Argentina in late 2017. The agenda includes digital trade facilitation and logistics, cross-border information flows, consumer protection, privacy and cybersecurity. However, the JSI talks are likely to be relatively shallow, as the deal will have to balance the perceived interests of the widest possible group of member governments and will likely not cover current techno-nationalist policies. Therefore, it seems that at this juncture, the WTO's ability to be a global rule setter will be eclipsed by events beyond members' control.

In the absence of the WTO, it is important then that Asian economies encourage the development of governance structures that can sustain increased growth and innovation within their own ICT industries. This could be most effectively addressed by developing a trade environment that enables the growth of regional GVCs by creating consistent application

of IP, technology-transfer, cross border trade in goods and services and digital trade related rules on cybersecurity, data privacy and cross border data transfers. This type of environment will ensure certainty and predictability in the midst of increasing regulatory uncertainty, and thus encourage firms to invest and develop a technology ecosystem that leverages key R&D, design, manufacturing, assembly, distribution and marketing capabilities across the region.

This trend is already taking place, as countries in the region are including digital trade rules into broader free trade agreement arrangements. For instance, the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) provides a chapter on e-commerce and includes various digital elements across the nearly 600 pages of legal commitments. In addition, some governments have started work on digital-only trade agreements. The first of its kind, the Digital Economy Partnership Agreement (DEPA), concluded earlier this year between Chile, New Zealand and Singapore. The modules in DEPA, as an example, include provisions ranging from personal information protection to data hosting requirements and cybersecurity cooperation.

As a whole, multilateral governance initiatives that promote interoperable rules across multiple countries, can create improved stability, lower risks and reduce trade compliance costs. In the ICT sector, consistent trade and data related rules will enable a regional technology that strengthens the interdependence, cross-collaboration, standardization and innovation that has underpinned GVC growth in the region. While such approaches may not entirely divert the impact of techno-nationalist policies in the U.S. and China can have ICT GVCs, they will strengthen the region's competitiveness to drive innovation and interoperability across the world's largest ICT markets. The construction of a healthy investment and innovation ecosystem would allow regional economies to learn, adapt and grow in the midst of global and economic uncertainty by enabling the stabilization of supply chains and markets.

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