

Chapter 2

WTO in crisis: *déjà vu all over again*¹ or terminal agony?

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This book appears as WTO faces what is probably its most dangerous crisis ever. It is not the first time that difficulties in concluding rounds of GATT negotiations inspired prophecies of doom. In one of those occasions, the late MIT professor Lester C. Thurow wrote a famous essay titled “*GATT is dead; the world economy as we know it is coming to an end, taking the General Agreement on Tariffs and Trade with it* (Thurow 1990)”. That was in September 1990. Four years later the Uruguay Round was brought to a successful conclusion, GATT as an organization gave way to WTO, a much stronger institution, but the General Agreement on Tariffs and Trade in its renewed 1994 version continued to provide the fundamental legal framework for the world trading system to this day.

Are we witnessing a repetition of the endless cycle of pessimist disillusionment, followed by unpredictable upturns? Or should we claim that “*This time is different*”, to borrow just the name, not the meaning, of Kenneth S. Rogoff and Carmen M. Reinhart’s famous book on “eight centuries of financial folly (Reinhart and Rogoff 2009)”²?

There are weighty arguments in favor of the latter hypothesis. The most obvious comes from the unprecedented duration of the negotiation paralysis in the Doha Round. In the past, periods of deadlock or of slow progress during the Tokyo or the Uruguay rounds lasted for months or for a couple of years at most. Never before in the history of trade negotiations was there a round that would sluggishly drag for more than a decade and a half with no end in sight. Actually, the last time the Doha Round came near to a successful conclusion was at the WTO Ministerial meeting of July 2008, ten years ago!

At least three additional arguments, each of them of grave implications, seem to indicate that the current crisis is not a mere repetition of previous impasses. First, the disappearance of alternatives. Since the Uruguay Round, frustration with the tiresome complexity of multilateral negotiations had found an effective alternative outlet: the proliferation of bilateral or regional so-called “free trade agreements”. Now the American withdrawal from TPP

¹ One of the memorable quotes attributed to Yogi Berra, who would later state: “I never said most of the things I said”.

² Of course, the book claims that “*this time is not different*”.

and the threat to terminate the NAFTA agreement show that disillusion is undermining this approach as well, with no second-best rules-based option left.

In second place, attacks against the foundations of multilateralism in trade are no longer restricted to the failure of negotiations to produce meaningful results but extend to the dispute settlement system, arguably the “jewel of the crown” of the multilateral trade system. Until yesterday, WTO capacity to settle trade disputes used to be singled out as the very characteristic that made it the only multilateral economic organization “with teeth”, that is, with the power to sanction violations of rules and agreements.

Some degree of criticism of the Appellate Body judges’ broad interpretation of norms had not been rare, in a way not very dissimilar to the debate in the USA about the contending modalities of constitutional interpretation by Supreme Court judges. What is startlingly unprecedented is the American government’s determination to block the reappointment of an Appellate Body judge on such grounds. To make matters worse, the United States is now opposing any further renovation of the court, in practice threatening to bring it to a halt.

Thirdly, the emergence of China and the changes in the geo-strategic correlation of forces render a satisfactory solution of these complications harder to achieve. In the early 1990s, the USA and the European Commission reached the Blair House agreement (November 1992) to open the way, months later, to the conclusion of the Uruguay Round. The situation we face today is much more complex and challenging, requiring agreement by many influential parties.

A quarter of century ago, the main obstacle came from the Europeans. The Blair House accord settled the basic differences on agricultural trade between the USA and the European Commission, basically on reducing export subsidies and domestic subsidies, among other issues. Nowadays most of the problems in negotiations and in dispute settlement procedures originate in the United States, which used to be the principal proponent and defender of the multilateral trading order.

American objections appear almost systemic in nature, stemming from a philosophical approach that deviates from the theoretical/ideological assumptions about globalization that have been driving commercial and economic liberalization in the last 30 years. The temptation to exclusively blame all these problems on Trump’s accession to power is overly simplistic, missing the underlying tendency in American society over the last decades.

The truth of the matter is that U.S. public opinion has been increasingly drifting away from the liberal cosmopolitanism that drove the creation of the liberal world order immediately after the Second World War. Isolationist trends and an almost absolute concept of national sovereignty have always been present in American society. However, these reservations were subordinated to meeting the tangible dangers of the Cold War, which made alliances and multilateral cooperation necessary. That conviction began to waver as soon as the end of communism and of the Soviet Union gave rise to America's brief "unipolar moment", fostering the illusion of unilateral solutions to international problems. Trump's "America First" rhetoric is simply the most extreme and explicit outgrowth of that trend.

George W. Bush's government rejected the compromise that would have successfully ended the Doha Round at the July 2008 ministerial meeting of WTO, a position not changed either by Obama or by Trump. In addition, the decision to block the reelection of a South Korean judge at the Appellate Body dates back from the Obama Administration and is sustained by the current government.

The same is true of the USA tendency to stay away from many of the United Nations conventions and treaties that have been shaping international regimes in areas as diverse as the environment, human rights, disarmament and development aid. The list of treaties rejected or *unsigned*³ by the United States includes the UN Convention on the Law of the Sea (1991), the Convention on Biological Diversity (1992), the Comprehensive [Nuclear] Test Ban Treaty (1997), the Ottawa Land Mine Treaty (1997), the International Criminal Court (1998). Obstructionist American policy hampered world efforts against global warming, in the rejection of the Kyoto Protocol and in the recent repudiation of the Paris climate agreement.

Among the conventions that form the core of the international human rights agenda, the USA refused to participate in the Convention on the Rights of the Child (1990), ratified by every single member of the United Nations. Another glaring example of abstention is the Convention on the Rights of Persons with Disabilities, signed by Obama in 2009. Despite being inspired by the US Americans with Disabilities Act (1990), the convention failed to get the necessary two thirds majority in the Senate. There were 38 votes

³ A neologism to describe situations when the USA had first signed and then retracted from a treaty as in the cases of the Rome UN Treaty establishing an International Criminal Court and the Paris Agreement on Climate.

against it. Republicans argued that the treaty “would surrender US sovereignty to unelected UN bureaucrats”.

Suspensions against any kind of international commitment that would impose limits to US sovereignty reached such extremes that only once in the last 15 years was the American Senate capable of gathering the two thirds majority required to approve a treaty, the Budapest Convention on Cybercrime, concluded in 2001 and ratified by the USA in 2006. After that, no international treaty has been approved in twelve years.

It is useful to keep those facts in mind to understand that American reservations to the multilateral order and to the world trade system did not start with the Trump administration and will not end with it. They have been growing for more than 25 years as can be seen by the dates of conventions of almost universal membership rejected by the USA. They will not just disappear when Trump is gone because they express a widespread tendency supported by a meaningful social base, though hopefully not a prevalent one.

Donald Trump’s electoral victory in the Rust Belt industrial States is seen as the result of his intuitive ability to tap that previously ignored and neglected social basis. The jobless white blue-collar workers, allegedly impoverished by Chinese imports and industries’ relocation, represent a coalition of political forces that underpin the current White House hostility to globalization and trade liberalization.

The Trump administration’s attitude towards multilateralism was clearly defined in a series of statements by David Malpass, Undersecretary of the Treasury for International Affairs. In several opportunities he stated, at times in writing, that “globalism and multilateralism have gone substantially too far - to the point where they are hurting the US and global growth”⁴.

As regards world trade, the best statement of Trump’s position is to be found on the official document, The President’s Trade Policy Agenda, IV - Conclusion:

“For more than 20 years, the United States government has been committed to trade policies that emphasized multilateral and other agreements designed to promote incremental changes in foreign trade policies, as well as deference to international dispute settlement mechanisms. The hope was that such a system could obtain a better treatment for U.S. workers, farmers,

⁴ See David Malpass’ conversation with the Council on Foreign Relations, November 30, 2017 or Foreign Policy’s article “Treasury takes aim at Global Food Program”, mentioning a written statement submitted on November 8, 2017, to the House Financial Services Committee.

*ranchers, and businesses. Instead, we find that in too many instances, Americans have been put at an unfair disadvantage in global markets [...]. it is time for a new trade policy that defends American sovereignty, enforces U.S. trade laws, uses American leverage to open markets abroad, and negotiates new trade agreements that are fairer and more effective both for the United States and for the world trading system, **particularly those countries committed to a market-based economy***" (emphasis added).

According to U.S. Trade Representative, Robert Lighthizer, President Trump's tough speech at the APEC meeting in Da Nang, Vietnam (November 10, 2017), heralded the start of a new era, declaring that the United States will not hesitate to use its huge "economic leverage" to force other countries to change their behavior. He added: "The era of trade compromised by massive state intervention, subsidies, closed markets, and mercantilism is ending".

Quoting *The New York Times*, trade analyst William Reinsch reminded readers that "the United States now accounts for only about 13 percent of world trade, down from almost a quarter in 1980". Consequently, he argued that Trump's speech tended to overestimate American "huge economic leverage" in a world where 95% of consumers live outside the U.S. And he warned that "As a result, threats to deny others access to our market if they don't shape up are increasingly hollow (Reinsch 2017)".

The same analyst reviewed in December 2017 the first year of the Trump administration trade policy to conclude, as many others did, that as far as trade was concerned, that year "consisted largely of bark rather than bite". He listed the following possible explanations for the lack of action: 1st) threats were merely negotiating tactics; 2nd) at key moments the president was talked out of acting by members of his staff; 3rd) despite all the bluster he is unwilling to actually pull the trigger. Finally, a minority believes that he is entirely capable of agreeing to modest compromise at the last minute and then declaring a great victory. The majority, though, thinks he is determined to launch trade retaliation at some point (Reinsch 2017).

That was before Washington announced tariff sanctions on imported solar panels and washing machines from China and South Korea (January 22, 2018) followed by measures against imported lumber from Canada. Solar panels and washers were already the targets of special tariffs in recent years. The new sanctions fell under Section 201 of the US Trade Act of 1974, a rarely used part of the legislation. Some trade specialists fear that its application could well open the floodgates of protectionism.

Whether this will be confirmed by further decisions remain to be seen. As things stand, they already add a new worrying complication to the near impossible goal of overhauling the world trading system in the ambitious form outlined in Trump's speech at Da Nang. In effect, no reform of some significance of the trading system can be reached without the active cooperation of China, at the same time the rising sun in the firmament of trade and the main source of many difficulties faced by the system.

In a manner very unusual for an official document, *The President's Trade Policy Agenda 2017* takes aim at the following "alarming results" mostly attributed directly or indirectly to China:

- Since 2000, when the Chinese joined GATT, the U.S. trade deficit in manufactured goods grew from \$ 317 billion to \$ 648 billion, an increase of 100 percent.
- U.S. trade deficit in goods and services with China soared from \$ 81,9 billion in 2000 to almost \$ 334 billion in 2015, an increase of more than 300 percent.
- In January 2000 there were 17,284,000 manufacturing jobs in the United States (more or less the same as in the early 1980s). In January 2017 there were only 12,341,000 manufacturing jobs left, a loss of almost 5 million jobs.
- In the 16 years before China joined GATT/WTO – from 1984 to 2000 – U.S. industrial production grew by almost 71 percent. In the period from 2000 to 2016, U.S. industrial production grew by less than 9 percent.

"Many factors contribute to this, notably the financial crisis of 2008/2009 and the broad impact of automation", the document acknowledges. Nevertheless, it insists that "the trade data are striking": "rather than showing that the results of this system (the trading system) have lived up to expectations, they portray a very different reality".

We touch here on the crux of the crisis. Despite exaggerated and utterly untrue allegations, Trump's administration is right to call attention to the challenges posed by China to the trade system. Never before was the system confronted with the need to accommodate a giant of 1,200,000,000 people with the capacity to use or misuse the largely American-created rules to outcompete their own creators. In a more limited way, Japan represented a similar problem but there were obvious differences. The dimension of the challenge was not only considerably smaller given the size of Japanese population and potential resources.

Those were the last “golden years” of the world economy in the 30-year period of recovery after World War II, with growth rates in Europe and the United States never to be seen again, near full employment and, consequently, a more accommodating attitude on the part of authorities and the public.

For all that, the Reagan administration conducted an aggressive campaign against Japanese economic and trade policies during most of the 1980s. It finally ended when Tokyo accepted the euphemistically named “voluntary export restrictions agreements” in sensitive products such as automobiles and steel. Reached under duress, these agreements actually imposed illegal quantitative export quotas on Japan. They amounted in reality to a form of “managed trade” in disagreement with the letter and the spirit of the General Agreement.

The threat presented by China to the world, not only to the United States, is incomparably more serious. Besides all the points related to manufactured goods trade listed in *The President’s Trade Policy Agenda*, the grandiose goals adopted by China’s Communist Party 19th Congress set the bar much higher. The Chinese are ready to use massive subsidies to conquer supremacy in high tech sectors identified in their “Made in China 2025” report.

It will certainly add a new source of friction to the traditional complaints against China’s practices in the field of intellectual property through pressures on foreign companies to transfer technology to their Chinese partners. An investigation on such intellectual property practices is underway under Section 301 and may well lead to a grave escalation of reciprocal trade retaliations with China.

This quick overview of some of the conflicts and frictions that are putting excessive demands on the multilateral trading system is sufficient to prove the point made at the beginning of this article: **this time is really different**. With his characteristically sharp realism, Henry Kissinger shows why the current situation has no true precedent. In a testimony to the Senate Armed Services Committee, he stressed that: “Not since it became a global power after World War II has **America had to contend with a geopolitical equal**” (emphasis added).

The central point is here. Other competitors in the trade area or elsewhere – Europe, Japan, South Korea – are allies of the U.S., they depend in the last analysis on America’s nuclear umbrella and conventional military power. They largely share American values as a matter of cultural

heritage, in Europe's case or are willing more or less freely to accept them, in Japan's and South Korea's case. Going back to Kissinger's reflections: "the United States believes its values ultimately will be universally adopted". In contrast, "never in China's centuries-long history has it conceived of a foreign nation as more than a tributary to the centrality of its power and culture".

The challenge presented by China consists then in the possibility of enabling "two different concepts of nationhood to exist at least peacefully – and ideally cooperatively, side by side". The difficulty stems from differences of culture: the Americans "seeking practical solutions to relatively short-term issues; China in quest of longer perspectives"⁵ (for instance, in the Belt and Road Initiative's attempt to shift the world's center of gravity).

No other formula, I feel, will better grasp the essence of the U.S. - China conflict than this clash of short-term and longer-term visions of the ultimate objectives of trade and economic competition. With the additional complication that this time the Americans are well aware that their destiny as number one Superpower is at stake in the dispute about high tech and intellectual property. In the Sputnik and Nikita Khrushchev's era, in the days of "peaceful coexistence" or "peaceful competition", we had perhaps a trailer of the film that is coming soon to our theater. Let us hope that, like decades ago, it will have a happy ending again.

São Paulo, February 13, 2017.

PS: I do not have to insist that, since this article was written, developments in the trade area, and in particular actions taken by the Trump Administration, have reinforced its conclusions.

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