Chapter 2
WTO in Crisis: Déjà Vu All Over Again or Terminal Agony?

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Abstract  In contrast to previous episodes of paralysis during trade rounds negotiations such as the Tokyo and the Uruguay rounds, the current WTO crisis appears to be deeper and incomparably more complex. For the first time in the evolution of the world trading system, there is a serious threat not only to WTO as a negotiating forum but to its role as provider of a quasi judicial system for the solution to trade disputes. The challenge comes now not from weaker members but from the USA, its most influential and powerful member country. The problems created by the rise of China and the disruptions brought about by globalization are unprecedented. The failure so far to deal with those challenges suggests that the threat to WTO's survival has deeper roots than the prejudices of the current Trump Administration. Unless an effective and satisfactory solution is found, the danger will remain even after the end of the Trump Administration.

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

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

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A. d. Amaral Júnior et al. (eds.), The WTO Dispute Settlement Mechanism,
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M. Reinhart's famous book on "eight centuries of financial folly (Reinhart and Rogoff 2009)?"

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 Uruguay rounds lasted less than a month or for a couple of years at most. Never before in Uruguay rounds did the disagreement drag for 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, 10 years ago!

At least there are 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 issue of alternatives. Since the Uruguay Round, frustration with the existence of multilateral negotiations had found an effective alternative outlet: the proliferation of bilateral or regional so-called free trade agreements. New agreements and threats to terminate the NAFTA agreement that disillusions are undermining this approach as well, with no second-best rule-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 institutional 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.

Third, 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 Uruguay Round (November 1992) to open the way, months later, to the conclusion of the agreement, requiring agreement by many influential parties.

A quarter of a century ago, the main obstacle came from the Americans. The Blair and the European Commission, basically on reducing export subsidies and domestic support.

A neologism to describe situations when the USA had first signed and then retracted from a treaty as in the cases of the Rome Treaty (1957), the Vienna Convention on the Law of Treaties (1986), and the International Criminal Court Treaty (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 against it. Republicans argued that the treaty "would surrender US sovereignty to unelected US bureaucrats."
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: (1) threats were merely negotiating tactics; (2) at key moments, the President was talked out of acting by members of his staff; (3) 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, the country that is fast becoming the most important member of that system and at the same time 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%.
- 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%.
- 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 five million jobs.
- In the 16 years before China joined GATT/WTO—from 1984 to 2000—U.S. industrial production grew by almost 71%. In the period from 2000 to 2016, U.S. industrial production grew by less than 9%.
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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.


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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References

Kissinger HA (January 25, 2018) Opening statement to the Senate Armed Services Committee
Reinsch W (November 2017) The Millennial economy part II: how Trump wants to change the world. In: The Stimson Center’s trade in the 21st century initiative
Throw LC (September 1, 1990) In: The free library, journal of accountancy

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