

Chapter **II.14**

Can the World Trade Organization be Saved? Only if Australia and Other Members Stop Trashing It

Malcolm Bosworth

Australian National University (ANU)

Greg Cutbush

Australian National University (ANU)

Jenny Corbett

Australian National University (ANU)

November 2013

This chapter should be cited as

Bosworth, M., G. Cutbush and J. Corbett (2013), 'Can the World Trade Organization be Saved? Only if Australia and Other Members Stop Trashing It', in Fukunaga, Y., J. Riady, and P. Sauvé (eds.), *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration*. ERIA Research Project Report 2012-31, Jakarta: ERIA, UPH and WTI. pp.164-191.

II.14 Can the World Trade Organization Be Saved? Only if Australia and Other Members Stop Trashing It

Malcolm Bosworth, Greg Cutbush and Jenny Corbett Australian National University (ANU)

1. Introduction

The World Trade Organization (WTO) and the multilateral trading system that it administers are in deep trouble. The collapse of the Doha Round in particular highlights the extent of its decline. After 10 years Doha has failed - the first Round to do so absolutely. The WTO is verging on becoming irrelevant and a relic of past decades when it usefully contributed to global liberalization and a multilateral non-discriminatory rules-based world trading system. Furthermore, over the past decade, almost from the time the Uruguay Round was concluded, the WTO has been trashed by all Member governments. The WTO has always prided itself on being a 'member-driven' organization, and this partly explained its past success. But in recent years Members have driven the WTO in only one direction: into the ground.

The pity is that Members, and many influential trade economists who should know better, continue to ignore the WTO's parlous situation, and the harm to the global economy its self-destruction entails. They either think that the WTO is secure and will self-correct or do not think that having the WTO as an effective trade institution matters, or both. Nothing could be further from the truth.

The serious challenges facing the WTO and the urgent need for action have been well documented. Yet nothing has been done. The WTO is being allowed to wither on the vine and die as a promoter of global liberalization. Indeed, Members continue to trash it in practice by rejecting its fundamental principles and the very economic rationale for its existence.

Some say that the WTO will survive because of its multilateral dispute settlement role (its dispute settlement mechanism – DSM). While this is an important leg of the WTO,

along with the other two legs of rule-making and trade liberalization via multilateral trade negotiations, the problem is that each of these roles is intertwined. Like any three-legged stool, if any one leg collapses the stool falls over. The deliberate attack by Members on the liberalization leg of the WTO also extends to the DSM leg, the only impartial and binding mechanism for adjudicating and enforcing WTO contractual obligations. One might wonder whether a body unable to deliver further liberalization would remain vital (Wolfe, 2013). Moreover, if PTA-based DSMs are established in place of multilateral ones, then adjudication of disputes will reflect power asymmetries, benefiting the stronger trade partners (Bhagwati, 2012).⁸¹

The Bali Ministerial provides a long overdue opportunity to focus on the WTO's ills. The Ministerial must go well beyond just trying to rescue the Doha Round (DR) by adopting some 'lowest common denominator' agreements. Despite the over-optimistic and incredible estimates being touted of the economic benefits of concluding some of these lesser outcomes, often by those peddling vested interests, the DR negotiations fall well below the economic benchmarks needed for it to be seen as worthwhile.⁸²

Indeed, if this is the best the DR can achieve, it should perhaps be put out of its misery so that Members can move on and focus on the fundamental systemic issues threatening the WTO's very survival. Given the hyperbole of Members and of many directly involved in the negotiations, there is no doubt that any rescue of the DR would be sold as a mighty outcome. There would then be a risk that the fundamental cracks in the WTO would be papered over and any Members' will for major reform dissipated. Reform will be avoided while the DR remains on the books. The failure of

⁸¹ Moreover, third countries will have little scope for input into PTA-based DSMs, though their interests may very well be affected by how adjudication is structured.

⁸² The highly inflated benefits often associated with the DR as it currently stands results from many reasons. These include under-estimation of the foregone benefits associated with the many exceptions and escape clauses to liberalization negotiated as part of the DR, and failing to take full account of the fact that negotiating WTO commitments and agreements will have no significant impact unless these result in actual liberalization and related reforms.

the DR must be tackled head on and all Members must accept their fair share of the blame for the WTO's growing impotency.

A severe warning is warranted: without major changes the failed Doha Round could well be the last multilateral round of trade negotiations, at least for a long time. It is difficult to conceive that any country would be brave enough to embark on another Round. And even if they did, the likelihood that it could last for more than 10 years is itself symptomatic of deep problems.

In this chapter, we name the WTO's key shortcomings and identify some fundamental requirements for the restoration of the WTO's role in managing the global trading system. We say the way forward lies principally in the return of the primacy of the MFN and unilateral trade liberalization frameworks supported by a sincere commitment by Members to domestic transparency of existing and proposed trade initiatives.

2. Interpreting the WTO crisis

The WTO's problems have been well recognized by some and, for a decade at least, there has been no shortage of reviews and assessments of what needs to be done to reverse its declining influence. But WTO reform is no closer than it was a decade ago. There are two main areas where Members are attacking the WTO and the multilateral trading system.

2.1 *WTO agreements, disciplines and governance*

This area covers the effectiveness and economic naivety of the WTO agreements and its governance, i.e. whether its consensus approach to decision making can work in future given the WTO's enormous growth in membership, agreements and disciplines.

The multilateral trade agenda expanded exponentially in the Uruguay Round and repeated calls are made for the WTO to take on additional disciplines, e.g. the Singapore issues (temporarily shelved), environmental and now exchange rate issues. The list of demands being placed on the WTO agenda appears never ending. Indeed, this has expanded too much with many issues added or requested that certainly should not be within the WTO's purview, for instance TRIPS. This and many other issues frequently raised, e.g. competition policy and labor standards, have no clear role in a trade agreement, let alone within the WTO. Many new areas are now a noose around the WTO's neck. Moreover, the WTO's rapid membership expansion, mainly developing countries and LDCs, while necessary for it to be a genuine multilateral body, has changed its complexion. The WTO now operates like a 'UN organization' where reaching consensus has become much more difficult. Put bluntly, the DR has been bogged down by involving many more Members and many more issues. Political jockeying and grandstanding has intensified so much that the economic underpinnings of the WTO and trade liberalization have been lost, thereby preventing economically sensible trade opening outcomes from being negotiated.

Governments, aided by trade negotiators and lawyers, have promoted a forest of multilateral agreements with escape clauses, exceptions and intentional ambiguity that have undermined their effectiveness and economic relevance. 'Setting trade policy by trade litigation' is now at the forefront. To reach consensus among the increased membership covering wide-ranging interests, WTO agreements are becoming watered down, ambiguous, cumbersome to apply, and difficult to interpret. Instead of aiding transparency and predictability, many of these revised and new disciplines and agreements are so vague and nebulous that they do the opposite and detract from these highly desirable features. Thus, a catch-22 situation is developing whereby the greater reliance on dispute settlement needed to help interpret the rules carries the risk of WTO litigation and jurisprudence determining Members' trade policies. This loss of economic relevance undermines the WTO, as countries

increasingly resort to legal loopholes and ambiguity in the WTO to defend economically bad trade policies, foolishly believing that WTO legal measures must be economically sensible. WTO agreements are economic agreements underpinned by legal obligations. If the agreements are economically flawed or interpreted too narrowly through a legal prism at the expense of good economics, then the outcomes will also be bad economically.

The WTO must remain focused on providing opportunities for Members to prosper. But it cannot guarantee this outcome for all players – it is foolish and potentially costly to the global economy to try, especially when there are so many other economic and non-economic factors beyond the WTO that determine economic growth and prosperity. The WTO is being asked by Members to do far too many things, which is only setting it up to fail and become irrelevant. The WTO cannot achieve all it is being asked to do. The underlying rationale of a WTO is to oversee trade liberalization to enhance trade and result in prosperity. This directly contradicts the growth of anti-globalization sentiments and criticisms of free trade emanating from Members. This major obstacle both for the WTO and for open trade policies has largely stemmed from governments' own poor selling at home of the economic merits of self-liberalization and of a more globally-integrated world economy. Members must resist or counter these ill-informed views at home through greater transparency and public scrutiny of protectionist policies if the WTO is to remain effective. The WTO must get back to basics and focus on its core capacities of trade liberalization. Re-focusing it into areas where it can be useful is urgently required.

The steady erosion of the WTO's centrality will sooner or later bring the world to a tipping point – 'a point beyond which expectations become unmoored and nations feel justified in ignoring WTO norms since everybody else does' (Baldwin & Carpenter, 2009). This tipping point, if not already reached, is rapidly approaching.

Of course the demise of the WTO and its core values will damage all economies, but disproportionately. The hegemonic Members may be able to go it alone and perhaps prosper in a discriminatory trading regime. However, for all other WTO Members this is not an option, and the WTO provides the best protection against powerful trading partners using their strength at the expense of non-hegemonic Members. 'The great political virtue of multilateralism, far exceeding in importance its economic virtues, is that it makes it economically possible for most countries, even if small, poor and weak, to live in freedom and with a chance of prosperity without having to come to special terms with some Great Power' (Viner, 1947).

Fixing the WTO's increasing ineffectiveness and irrelevance will not be easy, especially given that Members will need to negotiate reforms by consensus. There are significant obstacles to these being successfully tackled in the foreseeable future, even if embarked on urgently.

2.2 Government attitudes mocking the WTO

The second area contributing to the WTO's steady demise is the Members' stampede away from the fundamental principles of multilateralism. The same countries that instigated the GATT and the WTO now seem to have lost faith in it as an effective international institution fostering multilateral trade liberalization. The main principle discarded is the WTO cornerstone of unconditional most-favored nation or MFN treatment i.e. non-discrimination between trading partners that is the GATT Article 1. The practical application of MFN has always had weaknesses, especially given GATT Article XXIV, and now GATS Article V, that have allowed widespread exceptions to MFN via preferential trade agreements (PTAs) negotiated by members. Nevertheless, in the past, strong resistance by some influential countries (e.g. Australia, Japan and New Zealand) helped control the growth of PTAs despite some 'hegemonic' Members, especially the EU, repeatedly putting negotiating PTAs above MFN when setting their own trade policies.

The turning point was reached when the US openly began to support PTAs and started negotiating them willy-nilly like the EU. The US's trade policy of so-called 'competitive liberalization' based on endless negotiation of PTAs, like the EU's policies, has severely hampered MFN and along with it multilateralism. However, all other members have to share the blame as they too jettisoned MFN, despite paying repeated lip service, and have rushed to negotiate crisscrossing and inefficient PTAs that have proliferated. This is creating a cumbersome and discriminatory world global system. Little wonder then that the WTO has become badly damaged.

The major single factor explaining the loss of the WTO's influence and credibility has been the way Members have contradicted the MFN principle. Non-discrimination is the very rationale for the WTO's existence, and undermining this trashes the WTO. By negotiating discriminatory PTAs, Members have enshrined discrimination in the global trading system (Bhagwati, 2012). Despite the rhetoric of Members, these actions have directly weakened the WTO and usurped its role. And, despite what they say, this seems exactly what they are trying to do by pursuing PTAs.

Jagdish Bhagwati has correctly called PTAs a 'pox' on the global trading system that acts like 'termites in the basement' to progressively and relentlessly destroy the foundations of the WTO; we are now seeing this happening (Bhagwati, 2008).⁸³ The WTO's foundations are crumbling and there is an urgent need to call in the pest exterminators before it is too late!

These transgressions have multiplied over the past decade.

(i) *Proliferation of PTAs a stain on the WTO*

⁸³To Bhagwati's credit he has always staunchly defended the WTO and the importance of the MFN principle, and consistently been highly critical of the proliferation of PTAs. It is a shame that his grave warnings have not been heeded.

This proliferation of PTAs, often deceptively sold by Members under the guise of free trade agreements, is well documented. For example, the proliferation of PTAs over the past 10–15 years was identified by the Warwick Commission as a particular problem five years ago (Report of the First Warwick Commission, 2007). It stated ‘...this has raised pressing questions about the quality of trade relations today and their likely future directions in what few would regard as a stable equilibrium ...that where feasible, the energy behind such initiatives should be channeled towards reinforcing accepted multilateral principles.’ It noted that the very rapid growth of PTAs unnecessarily raised trade costs and had worrying implications for the stability, fairness, opportunities and coherence of the world trade regime.

The Warwick Commission recommended that efforts to clarify and improve disciplines and procedures in relation to WTO provisions on PTAs be intensified. It also recommended that major industrialized Members express their commitment to multilateralism and willingness to provide leadership to maintain and strengthen international trade arrangements for the benefit of all, by refraining from entering into PTAs among themselves, as should large developing countries with significant shares in world trade.

The Sutherland Report also raised PTAs as a critical problem for the WTO (Sutherland Report, 2004). It stated that the erosion of MFN within the WTO from the ‘spaghetti bowl’ of customs unions, regional and bilateral free trade areas, preferences and an endless assortment of miscellaneous trade deals so that MFN is no longer the rule, but the exception, matters profoundly to the future of the WTO.

But despite these dire warnings the problem has only compounded. Members’ usual justification for embarking on PTAs - that the WTO has bogged down so much and is too cumbersome to deal with - has simply become an excuse for them to bypass the WTO and to do discriminatory deals to erode MFN. The puzzling question is whether

this is intentional or unintentional; certainly it seems intentional on the part of the hegemonic members (i.e. the EU and the US).

Of course, the pursuit of PTAs as an alternative to the WTO lacks logic. The more Members engage in PTAs, the further the global trading system moves away from the goal of non-discrimination. The worse the problem becomes and the more the WTO implodes.

While being a latecomer to PTA negotiations, Asia has been making up quickly for lost time (Drysdale, 2013). As of September 2012, there were 103 FTAs with at least one Asian country; most were bilateral. Another 26 PTAs existed, 64 were under negotiation, and 60 more proposed. Most of the global PTA action now involves an Asian country.

Alarmingly the EU and the US have begun negotiating a Trans-Atlantic Trade and Investment Partnership (TTIP).⁸⁴ Also, within the Asia-Pacific region, two major agreements are being negotiated in competition with each other, the Trans-Pacific Partnership (TPP) agreement, led by the US and excluding China, and the Regional Economic Cooperation Agreement (RECP), led by the ASEAN economies and China, but excluding the US. Some Members e.g. Australia are negotiating membership in both.

Commitment to the ideals of free trade is evidently weak on both sides of the Atlantic, such that the TTIP may on balance divert trade rather than create it. And above all, it could be an obstacle to a truly global free trade order. However, the biggest victim of TTIP may not be any individual country, but the dream of global free trade. Instead of focusing efforts on reviving multilateralism, the global trade order becomes more complicated with every new PTA, and though they promote trade between partners,

⁸⁴ President Obama has reportedly set the deadline for the completion of the TTIP agreement by wanting it signed before leaving office in January 2017.

they can also inhibit trade with outside parties. Thus the TTIP may well make any future global trade deal less likely. PTAs such as the TTIP are not the best way to promote this ideal. The result of such initiatives may well be a step in the opposite direction (Hartwich, 2013). Negotiating the TPP and the RECP will be further nails in the WTO's coffin, while the TTIP will surely be its funeral.

(ii) *Special and differential treatment a curse on the WTO*

Special and differential treatment (S&D) for developing and especially for least-developed countries is seen as an essential feature of the GATT/WTO. During the Uruguay Round its coverage and form was expanded substantially to become a critical focus of developing country members in the DR. Yet economists have long recognized that Members using the S&D treatment available in the WTO to avoid making substantive liberalizing commitments are 'shooting themselves in the foot'. For all Members, the lion's share of the economic gains from trade openness comes from self-liberalization, not from other members' liberalizing. In spite of this, developing countries have generally decided to follow the politics and not the economics by preferring to use S&D to resist reforms. This has not only weakened the WTO but also harmed the developing members' negotiating positions by letting developed members 'off the hook' and not making them accountable to offer genuinely significant trade liberalization. It would serve developing members well if in future they could negotiate the removal of S&D in the WTO as a grand bargain in exchange for developed members providing significant liberalization.

When only a few developing countries in the WTO were pushing S&D as an exception to MFN the damage to the WTO was limited. However, some three-quarters of WTO Members are now developing countries. Thus, S&D treatment and associated politics now dominate the WTO, and this is seriously undermining MFN and the WTO. Developing members are more interested than ever in ensuring that they avoid economically sensible self-liberalization by hiding behind strengthened

S&D treatment, trying to make developed members open markets without doing so themselves. At the same time, developed members have lost sight of the economic benefits accruing from self-liberalization, adopting instead a stance whereby they grant S&D to developing members and implicitly use this to justify 'watering down' their liberalization.

Selling the DR as a 'development round' to get it started has, as was predictable, backfired badly because it encouraged an attitude that its objective was global redistribution to developing members rather than growth. Hence, transfers and redistribution have become the focus of developing members at the expense of promoting global economic efficiency to benefit all members, rich or poor, even if unevenly. Efforts to ensure the economic benefits are spread evenly between all members are likely to be destructive and reduce benefits to many members to the lowest common denominator rather than raising the benefits to those members receiving only a few. Such outcomes are in effect Pareto suboptimal in a global sense in that some Members would benefit more from multilateral and self-liberalization without making some others worse off. Paying too much attention to distribution and equity is undermining liberalization. The WTO should not become a development institution overseeing transfers to developing countries. This, combined with the stampede to PTAs by Members, has replaced MFN and MFN thinking within the WTO with a preoccupation about discrimination and preferentialism.

(iii) Synergies lost between unilateralism and multilateralism

One of the foundations of the WTO's past contribution to global liberalization has been its ability to build on synergies between unilateralism by Members and their WTO commitments. Members embarking on unilateral liberalization, on which all genuine trade reforms ultimately depend, could bind such changes via WTO MFN commitments, thereby protecting against policy backsliding and enhancing the transparency and predictability of the trading system.

Now that the WTO has lost its MFN focus and PTAs have proliferated, this synergy no longer exists. There is a disconnect between unilateral MFN liberalization and discriminatory or non-MFN liberalization. With the era of multilateral trade rounds and system-wide rules behind us, PTAs have become the only game in town, and as a result the templates established by the hegemonic powers in unequal trade treaties with economically weaker countries will increasingly carry the day (Bhagwati, 2012). Such templates now extend beyond conventional trade issues to vast numbers of areas unrelated to trade, including labor standards, environmental rules, policies on investment expropriation, and the ability to impose capital-account controls in financial crises (Bhagwati, 2012).

After multilateral liberalization, the next best alternative for individual countries is always unilateral MFN reforms. The more countries that carry out such reforms the closer is global MFN liberalization.

The universal commitment that existed in many countries to unilaterally liberalize has evaporated. This has, not coincidentally, coincided with the growth of PTAs. PTAs have fed mercantilism by popularizing the incorrect economic policy objective of seeking market access abroad in return for their own liberalization. Members now see MFN reforms as undermining the opportunity for negotiating PTAs. Take for example the case of many developing Members that argue against multilateral MFN liberalization for fear of preference erosion within PTAs and/or under unilateral preference schemes provided by developed Members e.g. Generalized System of Preferences (GSP) arrangements. However, this is bad economic thinking. Trade preferences are well known to be 'bad aid, bad trade' since they end up supporting inefficient industries in developing Members. The same applies to exports from developed Members to preferential markets – if such sales need 'preference assistance' then they are unlikely to be efficient industries in the global sense and will

distort the resource allocation in the country concerned at the expense of economic efficiency.

In the case of Australia, the country's once strong commitment to unilateralism has all but died since the early 2000s. This death has coincided, not surprisingly, with the country's redirection of trade policy to negotiating PTAs. In other words, at a time when Australia's pursuit of PTAs has been greatest, its trade reform efforts have been lowest. Government policy is now to refrain from further unilateral tariff reductions and to lower tariffs only as part of PTAs. Moreover, issues have been included in Australian PTAs that have been used as negotiating coinage without first being assessed as to whether they have been in Australia's unilateral interests e.g. changes to Australian intellectual property provisions and including investor–state dispute settlement provisions. This really amounts to making policy on the run.

Most global and country-specific trade liberalization has come not from negotiated liberalization (whether it be multilateral or preferential) but from non-negotiated or unilateral liberalization. Indeed, some 75% has come from unilateral reforms. In large part this is explained by the fact that what are negotiated in formal talks are bindings or commitments, and not actual barriers.⁸⁵ Thus, for example, in the WTO where ceiling bindings in tariffs have prevailed with bound levels at rates well above actual levels, negotiated reductions in bound rates over time have done little to lower actual levels. In contrast, unilateral reductions reduce actual levels. Empirical results show that, for any Member, by far the bulk of economic gains that would accrue from

⁸⁵ Of course in PTAs actual tariff levels are negotiated. However, because they are applied discriminatorily, it does not follow that they are genuinely liberalizing in the economic sense. Indeed, they could be de-liberalizing and worsen a country's national welfare if, for example, the PTA results on balance trade diversion instead of trade creation. Moreover, whether PTAs are on balance genuinely liberalizing is also clouded by many other factors, such as the extent to which preferences are provided on goods where trading partners are actually competitive; the restrictiveness of rules of origin; and the margins of preference provided. Indeed, there is plenty of empirical evidence to suggest that tariff preferences available in PTAs are not used heavily utilized by trading partners, either because of commercial reasons, such that the costs and procedures required to obtain a certificate of origin to avail the preferential rate is not worthwhile given the margin of preference, or because the rules of origin have been set so restrictively so as to prevent the foreign exporter from being able to meet them and use the lower tariff rate.

multilateral liberalization can be realized from unilaterally liberalizing. Thus, sensible trade-related unilateral reforms, which any country has full control over, will deliver most of the economic gains from trade-related liberalization. The clear policy message is that all Members should focus on self-liberalization, and treat any gains from multilateral liberalization as a long-term bonus. Of course, if all countries follow suit, unilateralism will transform into multilateral liberalization and so the full benefits will accrue to the global economy and to individual countries.

Central to good trade reforms and a well-functioning WTO is for all Members to endorse the primacy of unilateral liberalization, and to understand that most benefits come from self-liberalization and improving one's own economic efficiency rather than from any greater market access abroad. Hence, using one's own liberalization as leverage or as a bargaining coin to 'force' other members to open their markets can backfire and become a recipe for reform paralysis.

While unilateralism can drive multilateralism, the reverse is wishful thinking. No matter what Members agree to in Geneva, the outcomes will not be implemented unless it is in the Members' political and economic interests to do so. WTO agreements are becoming more ambiguous and full of escape clauses and wiggle room for Members to legally back out of commitments. More to the point, countries seem to be more intent to use such loopholes to adopt protectionist policies, selling at home the false message that any measure is worthwhile having if it can be legally justified in the WTO. Nothing could be further from the truth. Unfortunately WTO legal consistency these days has become an excuse for countries to avoid making good economic trade reforms at home. The widespread use of S&D treatment by developing countries in a quest for gains that might come from liberalization by other countries participating in multilateral initiatives is a classic case of this delusional thinking.

However, domestically, the trade department that is responsible in each case for a Member's WTO negotiations has no mandate to propose unilateral trade reforms and hence often obstructs them. Thus, there is a disconnect between the trade department that sets 'WTO policy' in Geneva and the departments at home that are responsible for setting trade-related policy measures. Frequently, therefore, trade departments obstruct unilateral reforms, and a prerequisite for unilateralism may be to reduce the influence of trade departments over setting trade policies. For example, the large trade-opening reforms that Australia adopted in the 1980s and 1990s first required the trade department's influence over domestic trade policy to be reduced and for the Australian Treasury, the department responsible for economic policy, to take the lead. This is because the trade department argued strongly against unilateral reforms, incorrectly believing that Australia should only open its trade policies within multilateral negotiations so that it could get some market opening abroad in return.

Jan Tumlir, a former Chief Economist of the GATT Secretariat, elegantly described the misconception pervading the GATT/WTO and all other negotiations-based approaches to trade liberalization long ago. He pointed out that while people accepted the argument that when every country protects its economy, all countries suffer, they failed to draw the correct conclusion i.e. that 'liberal (free) trade is the best policy for all countries' to follow irrespective of what others do and instead concluded that 'liberal (free) trade is the best policy only if all countries practice it'. This combined with the one-time 'fruitful lie' that the gains from trade come primarily from the exports you sell rather than the imports you buy, have been the false premises on which the complex edifices of international trade agreements have been built. This fruitful lie no longer works because Members have 'come to believe their own mercantilist propaganda, and have embraced the misconception that their countries' interests are served only if they can get the other guy to make concessions bigger than their own' (Crook 2006).

This same misconception and the desire by governments to use trade policy to achieve foreign policy objectives underlie the proliferation of discriminatory PTAs. Members should stop preaching the economic merits of PTAs and using hand-picked but flawed commissioned studies claiming substantial economic gains to justify PTAs that are being negotiated for foreign policy reasons. The international norm of combining trade and foreign affairs within the same ministry or department facilitates such policy trade-offs, when in fact trade policy should be primarily concerned about promoting economic efficiency.⁸⁶

While democratic governments are free to enter into PTAs for whatever reasons, they should not sell them on flawed economic benefits and modeling but on their non-economic or foreign policy gains. Governments have oversold the economic merits of PTAs, which are usually counterproductive and normally negotiated non-transparently, with details not being released for much needed public debate and scrutiny until it is too late and the PTA has been concluded (Australian Productivity Commission, 2010).

Moreover, the refrain repeated by governments and many economists, that PTAs will be subsequently multilateralized so that all will turn out well, is a ruse. There is not one example to date of this happening. The move to mega-PTAs now occurring will make this likelihood even slimmer; it is far more likely that the world will slide into a handful of large discriminatory blocs which will institutionalize discrimination and undermine global prosperity. What PTAs are about is simply regionalizing multilateralism at the expense of global prosperity, the WTO and the global trading system, to everyone's peril.

⁸⁶ Another flawed combination is putting trade and industry within the same ministry. This often leads to internal inconsistencies since good trade policy is a neutral one that does not favour any one sector or activity over another. However, often industry policy is directed at trying to assist manufacturing policy relative to other activities, mistakenly thinking that what is in the interests of a larger industry sector must be in the national interest e.g. the flawed 'infant-industry argument' often used to justify industry assistance.

(iv) Confusion between integration and trade liberalization

Governments, like many economists, are also blurring the distinction between integration and trade liberalization, which is contributing to false premises. The term integration is being flung around by all as if it in itself is the ultimate objective. But it is not. The ultimate objective of the WTO and trade liberalization is to improve economic prosperity. This means economic integration is a tool to enable efficient global supply chains to be developed internationally so that the benefits of economic efficiency from trade liberalization can be realized. These are the economic benefits from globalization. For this to happen requires a non-discriminatory global economy built on MFN trade liberalization. This, through efficient trade, global integration results; it is trade that integrates and this is a by-product of trade liberalization and greater global non-discriminatory trade.

Instead, however, many governments and others see integration mainly in geographical terms and/or at least see economic integration through regional rather than global lenses. Hence, regionalism is being promoted above globalism, and discrimination and PTAs are becoming common. This is economically undesirable. It promotes regional discriminatory PTAs and regional integration at the expense of non-discriminatory global integration. Thus regional supply chains are displacing more efficient global supply chains and leading to global inefficiency. MFN liberalization does not discriminate, and regional integration and supply will develop efficiently if they are more economic than global integration and supply chains. This does not mean that regional integration is not important, but that discriminatory trade policy and the WTO should not be used to encourage it over global integration. Doing so is totally inconsistent with the WTO's fundamental MFN principle.

3. Fixing the mess

Some may say that it is already too late, and the failure of the DR perhaps supports this view. However, this is too pessimistic, although the fix will not be easy. But the

global economic gains of resurrecting the WTO will be substantial and need to be fought for.

Ironically, the WTO rot appears to have set in as much from Members overplaying their reliance on a multilateral versus unilateral approach to liberalization as from them downplaying the costs of discriminatory arrangements. Thus, we would contend, the Doha impasse has become an excuse for poor decisions by nations on both the domestic and international fronts.

The basic problem for the WTO has been the massive change in Members' attitudes towards what the institution should do and a willingness to trash its basic MFN principle rather than to treasure it. The WTO will not be revived unless these attitudes are reversed. Doing so should be the current priority. While the WTO agenda and agreements have also become increasingly flawed, fixing them will be a very long-term project. Moreover, this will first require a change in Members' attitudes; otherwise such changes are likely to reflect current bad attitudes and further entrench them. It must be remembered that Members do not have to use the economic weaknesses in WTO agreements as legal excuses for bad economic trade policy; Members can instead focus on the economic merits of the rules.⁸⁷ However, Members now seem to place greater reliance on such escape clauses in line with their changed attitudes to trade liberalization and the role of the WTO.

Reversing the above attitudes will at the very least require fundamental changes to how WTO Members approach the WTO. Greater domestic and international transparency in Members is imperative. What is clear is that many of the solutions being suggested by Members and others for reviving the WTO would actually hasten

⁸⁷ For example, it is well recognized by economists that the underlying rationale for Members using trade remedies, e.g. anti-dumping action, is flawed. Such measures to stop so-called 'dumping' of exports are clearly anti-competitive and protectionist. Yet the WTO allows such countries to legally apply anti-dumping measures provided the provisions of the relevant agreements are met. However, Members are not required to have anti-dumping legislation or to adopt such measures. However, because it is a legal protectionist loophole within the WTO anti-dumping action has proliferated to become the measure by choice to restrict competitive imports. Members fail to recognize the vital distinction between what is WTO legal and what is good economic policy with regard to anti-dumping action and other trade remedies.

its death, being based on the flawed attitudes outlined above. The following warnings and suggestions should be taken on board.

3.1 The Single Undertaking negotiated in the UR should not become a scapegoat

The 'Single Undertaking' agreed in the UR to remove the 'à la carte' menu from which Members were free to choose which agreements (or Codes) to take on and which not to was once heralded as a major outcome. And it was, since it necessitated all members to sign on to everything, such that it prevented Members from opting out of certain agreements. This is basic to having a genuine multilateral institution. Of course the depth and coverage of commitments being negotiated still vary substantially across Members, but all were required to participate in the negotiations and at least to commit to basic obligations.

Prior to the UR, the GATT was stalling partly for lack of a Single Undertaking, hence the concerted push during the UR to introduce it. Strangely, however, some, including many of those who applauded its achievement at the time, are now calling for its abandonment, and mistakenly believe that it is now part of the problem. Undoubtedly, the Single Undertaking, just like having many more Members, makes consensus-based negotiations much more difficult. However, it also greatly increases the potential multilateral gains and the WTO's effectiveness. All Members must therefore try harder for it to work, and to make complementary changes to the institution as needed to enable it to work as a genuine multilateral body. Removing the Single Undertaking and returning to a situation that clearly did not work is misguided.

More thought needs to be given before such a superficial fix is hastily adopted. Hard won efforts to introduce a Single Undertaking, surely necessary if the WTO is to be a genuine multilateral system, should not be discarded on a whim. The single undertaking is not the problem, but indeed is something worth hanging on to and

fighting for to ensure that the WTO remains a global player with all Members signing on to all disciplines. This should remain the basis of negotiating new disciplines within rounds of negotiations, which is the appropriate time for new disciplines to be introduced.

However, given the already overfull WTO agenda which covers areas that should not really be there and has seriously diverted the focus of the WTO away from trade liberalization, there should be no attempt to introduce additional disciplines until success with existing issues is achieved.

3.2 Reject suggestions that the Single Undertaking should be removed to allow for more liberalized commitments to be negotiated plurilaterally among WTO Members

Again the objections to singularity are based on a misconception. There is nothing within the WTO, including the Single Undertaking, that prevents WTO Members from negotiating among a subset to adopt more liberal commitments. This was the case, for example, for the International Technology Agreement (ITA), which was negotiated within the WTO among a small subset of Members.

Membership and coverage of the ITA has since progressively expanded. Plurilateral agreements should not, however, become the operational norm of the WTO – these are sharply at odds with the concept of multilateralism and every attempt should be made to abide by the Single Undertaking.

3.3 Expose the so-called ‘free-rider’ problem for what it is – economic nonsense

WTO Members that fear the so-called ‘free-rider’ problem are either economically ignorant and/or playing politics within the WTO at the expense of multilateralism and the WTO’s economic role. Proponents of the free-rider view are mercantilists in

saying that trade access at home is a gift that should not be given to a trading partner without something being received in return. They imply that foreign parties are parasites unless they grant access to those offering to open their markets. This overplays the value of foreign concessions and underplays the domestic benefits of liberalization. In fact liberalization is beneficial for both sides. Trade is not a zero sum game. Rather it is a positive sum game and that is the intellectual basis for multilateralism and the WTO's rationale.

The proposition that market opening measures should only be available to exports from countries that reciprocate by providing acceptable market opening measures flies in the face of the foundation stone of multilateralism, namely non-discrimination between trading partners.

In fact, there is no free-rider problem and WTO Members need to acknowledge this is the case. It is well known economically that a country benefits most from self-liberalization on an MFN basis, irrespective of whether or not other countries liberalize. Correcting perceptions about this matter lies at the heart of restoring the WTO's role.

3.4 *Return MFN/non-discrimination to WTO's top priority*

The major single factor explaining the loss of WTO influence and credibility has been the considerable damage Members have done to the MFN principle. Promoting non-discrimination is the rationale for the WTO's existence, and if this is undermined or trashed, then so is the WTO.

As indicated, all Members have been guilty of trashing MFN. Despite paying lip service to its importance, their actions speak otherwise, as they accelerate negotiations on preferential trade arrangements which enshrine discrimination in the global trading system. Despite the rhetoric by governments, these actions directly

weaken the WTO and usurp its role. And, despite what governments say, this is exactly what at least some Members are trying to do by pursuing PTAs bilaterally and regionally.

Restoring the WTO's foundations relies on Members supporting the WTO's MFN principles, not only with words but with actions. PTAs are no substitute for multilateralism and take the global system further away from, and not closer to, where we want to end up; that is with an open non-discriminatory global trading system whereby global integration is not undermined by regional integration based on discrimination. Integration must be efficient to ensure efficient supply chains are developed. This cannot happen in a world limited by regional horizons.

Calls to get governments back to multilateralism are unlikely to be heeded if that is not what governments, or more precisely their constituents, want. A greater understanding of the economic inadequacies of PTAs and the comparative strengths of multilateral liberalization is likely to be required. This can only start within countries through governments actively promoting the correct economic message, that PTAs are flawed and will worsen rather than improve the global situation.

3.5 *Non-MFN plurilateral WTO agreements must be avoided*

It follows that if plurilateral agreements are to be negotiated in the WTO among certain members in an effort to promote trade openness, they must be non-preferential and negotiated on an unconditional MFN basis. The WTO is not strengthened, as many would seem to contend, by having non-MFN agreements negotiated within its purview and/or for it to administer. It already has one such major agreement, an overhang from the GATT days, the Government Procurement Agreement (GPA). This preferential (plurilateral) agreement is non-MFN, in that only a subset of WTO Members is included. And those who expressed the view that a non-MFN agreement was acceptable since it could be transformed later into an

unconditional MFN agreement within the WTO Membership, have not seen this happen.

The same mistakes made in the GPA look like being repeated in efforts by some, led by the US and strongly supported by Australia, to negotiate a plurilateral Trade in Services Agreement (TISA). Already, it seems pretty clear that this will not be an MFN endeavor, and benefits will not be extended to WTO Members who do not join that specific agreement. This would be a backward step that would weaken the WTO – it does not need another non-MFN agreement to administer. Worse still, the shortcomings of the proposed TISA are bound to become sources of lengthy disagreement between the initial promoters of the agreement and prospective participants. Negotiations could become interminable. Predictably, arguments about TISA's structure will delay its finalization and may ultimately lead to its demise. Meanwhile, initial and prospective participants will have gained a ready excuse for undertaking no liberalization at home. Until the agreement is settled, governments will have an international pretext for delaying any moves to free up their service industries. Unilateral reforms will be put on hold. Thus, as in the past, we could see a WTO mechanism become an obstacle to world trade liberalization rather than the reverse.

4. Enhanced transparency holds the key to changing government attitudes

Greater and more effective transparency lies at the heart of deeper global liberalization and the survival of the WTO as an effective and relevant institution. After all, the fundamental benchmark for good transparency and micro-economic reform is MFN. Better transparency leads to governments adopting better policies (Stoeckel and Fisher, 2008). Transparency is often not defined correctly, especially in the WTO context. Transparency involves the publicly accepted scrutiny of the economy-wide benefits and costs of policies. Transparency identifies the national interest; informs and educates the government and the public; exposes narrow

vested interests, weakening their influence; and helps build coalitions for reform. By establishing criteria for 'good' policy, transparency leads to a more predictable policy environment and reduces investor and trader uncertainty.

Decisions on opening world markets are made in the domestic policy arenas of individual countries, under pressure from protected domestic producers seeking to avoid the required adjustment. When governments succumb to these pressures, as they have in the DR, they not only forego the unilateral gains (in domestic efficiency) available from reducing their own barriers but also diminish the capacity of the WTO to deliver the additional gains (improved market access) available from liberalizing in a multilateral context (Lowy Institute, 2009).

4.1 *Transparency within the WTO*

There is only so much international transparency can achieve. Governments can easily ignore findings from external organizations, and international transparency is not linked to the domestic transparency process. International transparency tends to be comparative across countries. But such comparisons matter little; the main issue is whether a country can be made better off by unilaterally reducing trade barriers which is the choice each country has, not whether it can influence the behavior of others (Stoeckel and Fisher, 2008).

The Trade Policy Review Mechanism was a bold and worthwhile Uruguay Round initiative to raise global transparency within the WTO in the hope that it would also contribute to domestic transparency. However, it has fallen well short of its objectives. The reasons are numerous, including Members' attitudes that limit the TPRM's effectiveness in practice as Members under review adopt a double standard to transparency i.e. they interpret greater transparency to refer to other Members' trade policies but not to their own policies. This flawed view fails to appreciate the individual value to all Members of having an independent and fully transparent review

of their own trade-related policies. It treats greater self-transparency as a 'poor' outcome rather than a virtue; if sensible economic reform is to be implemented the problem of existing policies must be exposed domestically. It was hoped that periodic TPRM reviews would help change Members' attitudes but this has not occurred.

The TPRM meets the fewest criteria for good transparency (Stoeckel and Fisher, 2008). TPRs contain no economic analysis, especially economy-wide analysis. The independent Secretariat report contains substantial input from trade departments of the Member under review which has the incentive to defend its policies. The TPRM has had no substantial impact on better trade policies, largely due to it not evaluating the effects of the Member's trade policies on its national interest (Stoeckel and Fisher, 2008).

The TPRM has to be re-invigorated to be more effective. It suffers from deficiencies and has become a routine institutional review that is tired and stale. Hence, while still worthwhile, it needs to be refreshed.

4.2 Domestic transparency the main ingredient for promoting unilateralism and an effective WTO

Regardless of international transparency, advancing better trade policies requires shifting the emphasis to domestic processes; this will always be more influential in shifting the political economy of reform than external scrutiny (Stoeckel and Fisher, 2008). The Australian Productivity Commission is the outstanding example internationally of good domestic policy transparency and comes closest to applying all the key elements of good transparency.

Since protectionism results from government decisions at home, for domestic reasons, any response to protectionism must begin at home and bring into public view the domestic consequences of those decisions. Domestic transparency arrangements provide public advice about the economy-wide costs of domestic

protection. The resulting increase in public awareness of those costs is needed to counter the powerful influence that protected domestic interests exercise over national trade policies (Lowy Institute, 2009).

The TPRM recognizes in principle the importance of domestic transparency. But Members have generally failed to implement it; indeed many Members would seem to have gone backwards.

Perhaps the G-20 could play a role in addressing the WTO's deep problems and promoting greater transparency within their own economies. However, given that the G-20 contains many of the main WTO recalcitrants, the prospects of progress via this route should not be overrated.

5. Conclusion

The WTO is imploding, largely because Members are trashing its core principles. The WTO can be saved but it will need a major change in Members' attitudes to it, including most crucially a return to MFN. The proliferation of PTAs directly undermines the WTO and all Members have been complicit in this. It is not too late, but the time for action is now. Members can no longer preach the virtues of MFN and the WTO while doing the very opposite in practice. Promoting greater transparency, in the WTO and more importantly at home, is a key ingredient needed to change Members' attitudes in favor of trade-related liberalization and non-discrimination. And of course the best way to limit the adverse effects of PTAs is to engage in MFN liberalization, either multilaterally or preferably unilaterally.

It is vital that Members do not 'save' the WTO by introducing changes that, while perhaps more in tune with Members' existing bad attitudes, destroy the very foundations of the WTO. Under this approach, the question would quickly become

not 'can the WTO be saved' but 'is the WTO worth saving?' For now it definitely is, but if the current rot continues than this may not always be the case.

References

- Baldwin, R. and T. Carpenter (2009), 'Why Not in the WTO? The Erosion of WTO Centricity in Trade Liberalisation', Geneva: Centre for Trade and Economic Integration (CTEI) at the Graduate Institute of International and Development Studies.
- Bhagwati, J. (2008), *Termites in the Trading System: How Preferential Agreements Undermine Free Trade.*, Oxford University Press, USA, July.
- Bhagwati, J. (2012), *Doha Round: Failure of Talks Means World Lost Gains That a Successful Treaty Would Have Brought.*, The Economic Times, 1 June.
- Crook, C. (2006), *The Fruitful Lie.*, The Atlantic, October.
- Drysdale, P. (2013), *Asia and the International Trade Regime*, East Asian Forum, 7 January.
- Hartwich, O. (2013), *Tools to Lock Away Global Trade.*, Business Spectator, 28 June.
- Lowy Institute for International Affairs (2009), 'Message to the G20: Defeating Protectionism Begins at Home', *Policy Brief*, Sydney, September.
- Productivity Commission (2010), *Bilateral and Regional Trade Agreements*, Research Report, Canberra, November.
- Stoeckel, A. and H. Fisher (2008), *Policy Transparency, Why Does It Work? Who Does It Best?*, Paper prepared for the Rural Industries Research and Development Corporation, Canberra, July.
- Sutherland, P. (2004), *The Future of the WTO, Addressing Institutional Challenges in the New Millennium*, Report by the Consultative Board to the Director-General Supachai Panitchpakdi, Geneva.
- Viner, J. (1947), *Conflicts of Principle in Drafting a Trade Charter*, Foreign Affairs XXV, July.
- Warwick Commission (2007), First Report on *The Multilateral Trade Regime: Which Way Forward?*, Coventry, University of Warwick.
- Wolfe, M. (2013), *Globalization in a Time of Transition*. Financial Times, 16 July.