
Introduction

'[T]hrough foreign trade, people's satisfaction, merchants' profit and countries' wealth are all increased'

Ibn Kaldun, 14th Century Arab philosopher

Five Challenges Facing the Global Trade Regime⁴

International Commerce and its Regulation

Trade is as old as humankind; indeed it could almost be thought of as a human instinct. It is normally a vehicle for progress. Trade is driven by market forces, but like all forms of human activity it requires a set of rules and institutions which, ideally, should accentuate the positive and limit the negative. The perennial question is how to secure the appropriate balance in the relationship between the power of the market and the goals of the state. The starting assumption has usually been to allow the market to determine the norms and rules of the relationship. From the time of the consolidation of the European nation state in the 17th century, mercantilism has seen trade as an instrument of national (foreign) policy and in the contemporary era, the relationship between the globalisation of trade and sovereignty has become an increasingly contentious political question.

Scholars and practitioners of economic cooperation hold to the view that the balance between the interests of the state and the free functioning of the market can be mitigated. Economic globalisation complicates, but does not eliminate, the state's ability to mitigate the dislocations and other harmful effects produced by economic activity. In the second half of the 20th century, states addressed these harms through domestic policies and through the development of sets of norms and principles and various institutional instruments of multilateral, regional and bilateral economic cooperation that are now collectively referred to as the global trade regime.

Painful lessons, drawn from the economic turmoil of the 1920s and 1930s, helped to shape the global economic system established after 1945. Rejecting economic nationalism, beggar-thy-neighbour devaluations, and tariff hikes, the major Western powers created a

set of post-war economic institutions that fostered predictability, and thus growth, in international commerce. Traders could plan, firms could invest with confidence, and for three decades sustained improvements in living standards were enjoyed by millions. The GATT, the predecessor to the WTO, was a central pillar of the post-war economic system and the principles it embodied – non-discrimination, market opening, reciprocity, procedural fairness and transparency – even if not always fully practised, still provide solid foundations for the global trading system. Tariffs imposed by Western European and North American nations on imported industrial goods have fallen dramatically since the end of World War Two, to average rates of less than 4 percent today.

From the 23 countries that were contracting parties to the original GATT, the WTO has grown to include 151 Members (as of July 2007). Only one of the world's major powers, Russia, is not yet subject to multilateral trade rules. No Member of the WTO has ever sought to leave and, indeed, there is still a queue to join. The organisation is the leading forum for arbitration and negotiation on international commercial matters, and disputes between WTO Members are almost invariably settled. Importantly, few disputes result in the imposition of trade sanctions and rarely do harm to wider international ties. Overall, the WTO functions remarkably well in comparison to the other major international economic institutions. Expectations – in both the public and private sectors – are effectively shaped by the widely accepted WTO principles of non-discrimination, reciprocity and transparency.

The Warwick Commission Report is not a study of the WTO *per se*, although for obvious reasons, the WTO is central to our study of the multilateral trade regime.⁵ The four key functions of the WTO are:

- **Reducing discrimination and furthering market-access opportunities in international commerce** The successes of the GATT/WTO system are exemplified in the progressive liberalisation of tariffs since 1947 and the near-universal membership of the WTO today. The entry requirements faced by new WTO Members are stringent; mirroring the significant recent broadening of the multilateral trading system's substantive remit. Yet the fact that twenty-three countries have nonetheless chosen to meet them since 1995 suggests that they see benefits in joining the system.
- **Formulating rules for the conduct of international trade** The depth and range of rules on cross-border trade and investment have grown significantly over the 60-year life of the GATT/WTO. Parties to the agreement have not always agreed on the desirable content of the rules but nobody contests the value of multilateral rules in fostering certainty and predictability in trade and in helping to dilute the role of power in determining trade outcomes.
- **Promoting transparency in national laws and regulations** Through its various agreements, the GATT/WTO has enhanced the transparency of commerce-related national laws and regulations through the requirement for Members to publish changes to their trade measures and notify any changes in rules. The Trade Policy Review Mechanism also plays an important transparency role.
- **Settling commercial disputes** The Dispute Settlement Understanding (DSU) of the WTO has given an unprecedented enforceability to agreements. It is one of the most successful, and the busiest, state-to-state dispute settlement systems in the history of international law. As of January 2007, WTO members had filed 356 complaints through the DSU.

While the WTO's accomplishments are no mean achievement, the current multilateral trading system, as governed by the WTO, also faces serious challenges. In particular, there is evidence that many of the lessons of the 20th

century are in danger of being 'unlearned' in the 21st century, especially in relation to the importance of multilateral institutions, and the rules, norms and principles that underpin them. That a malaise afflicts the multilateral trading regime is suggested not only by the current impasse in the Doha Development Agenda (DDA) negotiations but also by other symptoms in the contemporary global economy linked to the global trade agenda, including the protests that accompany ministerial meetings of the WTO; near permanent rumblings of discontent by diverse groups of countries from within the organisation; and growing resort to alternative forms of economic governance, including bilateral and regional PTAs. But these developments are part of a strange paradox. As we argue in Chapter 1, while there is evidence of diminishing socio-political support for trade liberalisation in many Organisation for Economic Cooperation and Development (OECD) countries there is, at the same time, ongoing trade liberalisation in the developing world. Moreover, much of the trade liberalisation in developing countries has occurred on a unilateral basis.

Of course, the trends depicted above in the relationship between industrialised and developing countries relates to more than trade. Enhanced global integration also exists in the domains of finance, technology and culture. At the same time, it is important to remember that we do not live in a simple binary world of developed and developing countries. Both these groupings are rich in contrast. We believe that these deepening interactions are not accompanied by an equivalent enhancement of the existing global governance infrastructure, which gives rise to what is frequently referred to as a 'global governance gap'. While it is important to recognise that this Report is embedded in this wider context – a context that includes serious questions about the contemporary functioning of the other international economic institutions whose mandates increasingly intersect with that of the WTO – it cannot and does not address these related issues.

The central aim of this Report is to identify a number of key problems that affect the workings of the global trade regime in general, and the WTO in particular, in the early 21st century. As we make clear, these problems have many different facets. They raise questions of politics and public policy as much as they do questions of economics. Arguing that trade reform raises the overall welfare of a nation persuades few, especially at a time when distributional concerns are growing. Traditional intra-national concerns about the political economy of trade policy are being augmented by a more diverse and often difficult set of state-to-state interactions on commercial policy matters. Both these tendencies have dogged the Doha Round negotiations.

The Report in no way suggests that the system is irrevocably broken. Rather, it asks whether the rules, principles and processes that underpin the multilateral trade system can address the challenges it faces in the first decades of the 21st century. In the chapters that follow the analysis focuses on these challenges and identifies a number of concrete, practical recommendations for policymakers. These recommendations, we believe, are reasoned rather than ideological, and reformist rather than revolutionary. In what follows, we identify five central challenges facing the world trading system and the questions and dilemmas they pose for policymakers.

1 The Rise and Decline of Support for

Openness A paradox is emerging in the current global political and economic landscape. While many governments continue to liberalise and internationalise their economies, there has been a marked reduction in public support for open markets in significant sections of the populations of major OECD countries. Concern about stagnant wages, job losses, job instability, growing income inequality and environmental degradation are a central part of political debate in many industrialised countries. Trade is seen as part of the problem rather than part of the solution by some sections of the community. At the same time, there is growing support, at least at the level of government policy, for economic liberalisation in many of the faster-growing, developing countries.

In addition to the scepticism of anti-globalisation movements, some business leaders in OECD countries also seem increasingly ambivalent towards multilaterally-brokered trade reforms, either for reasons of complacency – taking open markets for granted – or because of a growing concern that the slow pace of WTO discussions is out of “sync” with ever-accelerating cycles of corporate decision-making. Such a disconnect also helps explain the greater faith that many businesses seem to place in the faster pursuit of preferential, especially bilateral, trade bargains. Furthermore, in many cases, political leaders see further liberalising reforms as ‘no-win’ political propositions for them on the home front, thus limiting their room for manoeuvre in global trade talks. Growing discontent appears to be eating away at the domestic political roots that have underpinned reciprocity in trade relations and it raises important questions about how to restore national political bargains to support openness.

While an in-depth analysis of such domestic changes is beyond the scope of this Report, it bears noting that they undoubtedly have ramifications for the global trade regime, which is the focus of the Report. The last few years have served as a stark reminder that decision-making at the WTO can be neither swift nor seamless. Moreover, the growing mismatch between the length of time taken to arrive at agreed outcomes among WTO Members and the planning horizons of many business executives may help to explain the latter’s reduced support for trade reform. Similarly national politicians, whose focus often extends no further than the next election, may discount WTO initiatives if negotiations drag on endlessly. Innovative solutions, the most salient of which may well have more to do with the reform of domestic policies than with modifying international trade rules, are needed here.

2 Managing Multipolar Global Economic

Governance The second challenge facing policymakers is to ensure that the increasingly multipolar nature of the global trading system does not itself become a source of stalemate and dysfunction. It is clear that a

re-adjustment in power relations in the global economy is currently unfolding. The recent years have witnessed a transition from one global economic equilibrium to another as new voices and centres of gravity emerge in the world economy. In this context, careful thought and action is needed to ensure the sustained participation of all major groups of WTO Members. Simply put, the fast-growing emerging economies must assume constructive leadership roles in the global trading system while steps are needed to ensure that the originally dominant economic actors, above all the United States and the European Union, do not disengage. At the same time, the smallest and poorest WTO Members must retain a valued stake in the system. Tackling this challenge requires a revised *modus operandi* in the negotiation, content, and form of WTO agreements.

3 Defining the Contested Boundaries of the WTO The third distinct challenge facing policymakers is reconciling the sometimes competing objectives of the WTO. Accompanying their growing weight in the WTO, developing countries have rightly demanded that certain matters of particular importance to them be addressed, for example, agricultural trade barriers. At the same time, WTO Members want multilateral trade rules to keep up with commercial developments in the world economy. As the debate over the ‘Singapore Issues’ in the DDA showed, the very boundaries of the WTO are contested. This raises important questions about the remit of the WTO. For instance, should the WTO confine itself to a limited number of trade-related measures, assuming the latter term could be satisfactorily defined? If so, would such a WTO retain the interest of all of its membership? Alternatively, should the WTO gradually become the locus of economic regulation in an increasingly integrated global economy? These questions speak to the very purpose of the WTO and practical guidelines, founded in commercial, legal and political realities, need to be advanced.

4 Making the WTO Work for All Members: Justice and Fairness Issues and Development The purpose and boundaries of the WTO are not the only areas that have attracted

controversy. Decision-making processes in the WTO have come under scrutiny and not just for those concerned with issues of procedural fairness for its own sake but because process also influences outcomes. Unfair processes can result in disengagement by Members and a decline in the credibility of an organisation. The WTO attracts criticism from, among others, some Non Governmental Organisations (NGOs) and developing country governments, dissatisfied with what they see as the qualified legitimacy of its negotiation, decision-making, and dispute settlement processes. These criticisms were brought to a head at the Seattle Ministerial meeting in 1999. The WTO has been insufficiently credited for responding to this challenge since then. It has instituted several substantial reforms, especially in the direction of improving internal transparency, and it is not difficult to argue that it is ahead of other international organisations in this regard.

Nevertheless, several fundamental problems persist. These are reflected in the continuing criticism of the WTO and were evident in many of the responses to the questionnaire distributed by the Warwick Commission. The WTO needs to continue its efforts to build a more just multilateral trade system. Members need to balance the potentially competing demands for efficiency, fairness, and legitimacy within the system in such a way as to keep the diverse membership of the WTO engaged. Fairness here typically refers to procedures used in the negotiation and decision-making process (often termed “procedural justice”). They also include issues of fair representation, fair treatment, fair play, and transparency.

Development issues have become more prominent in WTO deliberations in recent years, reflecting the changing composition of its membership and a deeper but still far from perfect understanding of the relationship between trade, growth and development. Here too the trading system faces a significant challenge – that of establishing a balance of rights and obligations among Members that is both perceived as legitimate and sufficiently flexible while also addressing the trade-related development needs and priorities of individual members.

Two key elements defining the utility and relevance of the WTO to developing countries relate to S&DT and capacity building. A more de-politicised, nuanced and analytical approach is needed to define appropriate levels of commitment for individual Members in the system – levels that are commensurate with individual Members’ development status and implementation capacity. On capacity building, the WTO is but one player among many that share responsibility with the Members concerned to build capacity in order to participate more effectively in the trading system. The WTO needs both to appreciate its limitations as a source of technical assistance and to engage in those capacity-building activities it is best placed to supply.

5 Multilateralising Preferential Trade Agreements The fifth challenge facing the world trading system follows partly from a growing frustration with slow decision-making in the multilateral regime. As a consequence, policymakers are turning to other vehicles for trade reform – notably bilateral and regional trade agreements of a preferential nature. To be sure, frustration with the multilateral system is not the only spur towards growing preferentialism, but experience shows that these alternative vehicles for reciprocal trade liberalisation have important and, to the extent that they have recently taken on truly global proportions, increasingly significant knock-on effects for the multilateral trading system as the share of global trade conducted along preferential lines reaches unprecedented levels. Reconciling these approaches to trade reform is not a particularly new challenge but it is an enduring one. This Report makes a number of recommendations in this regard, including some steps to “multilateralise” regionalism.

The Structure of the Report

Chapter 1 of the Report surveys the global commercial and political context in which the Report is situated. It starts with a review of the positive elements of the contemporary global economy and the global trade regime before identifying those more troublesome elements that are making it increasingly difficult for the global trade regime to advance – what we call the paradox of deeper integration and shallower support. Chapter 2 explores the challenges of agenda-setting and decision-making in the WTO and recommends new approaches to these issues. Chapter 3 examines development issues in global trade, and makes several recommendations, notably pertaining to S&DT for developing countries and the AFT initiative. Chapter 4 focuses on the question of PTAs and makes a number of recommendations about multilateralising regionalism. The Conclusion: Which Way Forward? briefly makes one general point; that the membership of the WTO undertake a constructive, non-litigious, non-confrontational “reflective exercise.” It identifies the conditions under which such an exercise might take place as a positive approach towards cooperation in the near future.