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A Grand Bargain to Save the WTO from Declining Relevance

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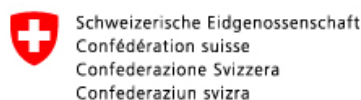
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ABSTRACT

The WTO is losing its relevance as the world economy continues to change while its diverse Members have been unable to agree on any major new rules since 1999. The powerful and others are going elsewhere for trade agreements, establishing preferential institutions among themselves. New ideas circulated of late offer an ambitious yet possibly feasible way out of the impasse that would put the WTO back on the map. The proposal, a grand bargain of sorts, would break the Doha impasse by expanding the agenda, simultaneously launching a set of new plurilateral negotiations under WTO discipline that could be multilateralized over the medium and long terms. Approving this grand bargain would harvest gains on “old issues” including agricultural subsidies and peak industrial tariffs that developing countries have long demanded. Continued impasse would drive the WTO farther off the stage. A final Doha deal limited to small pieces will probably be too small commercially and politically to accomplish this important institutional goal. The questions during the next decade then will be whether the stature and role of the WTO will decline further, and what that world will be like. It would be best if WTO ministers were to adopt the bolder package, a deal that could be described as one with something for everyone, and one that goes further than what any government has proposed.

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LIST OF ABBREVIATIONS

DSU	Dispute Settlement Understanding
EU	European Union
G-20	Group of Twenty
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GPA	Agreement on Government Procurement
MFN	most favoured nation
NAMA	Non-Agricultural Market Access
PAs	plurilateral agreements
PTAs	preferential trade agreements
US	United States
WTO	World Trade Organization

BREAK THE STALEMATE WITH A GRAND BARGAIN

The establishment of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) constituted historic achievements of international cooperation compared with the world before 1947. This multilateral institution embodying common rules, and a relatively automatic legal dispute settlement system open to all Members, large and small, is unusual. This is a place where multilateral rules may help check the power advantage that the most powerful states enjoy outside its walls. The system was successful in achieving its main original goals until the past decade, when it became more controversial. Today our WTO is losing its relevance, as the world economy continues to change while its diverse Members have been unable to agree on any major new rules since 1999. The powerful and others are going elsewhere for trade agreements, establishing preferential institutions among themselves.

This is a troubling development for all who value multilateral institutions for governance of the world economy, including those—most of us—who have been critical and believe the present WTO needs improvement. Governments' hands are full dealing with urgent challenges at home and abroad. But it would be a shame if urgent demands crowded out serious thinking about the long-term value of this important world institution until it was too late to save it.

New ideas circulated of late offer an ambitious yet possibly feasible way out of the impasse that would put the WTO back on the map. The proposal would break the Doha impasse by expanding the agenda, simultaneously launching a set of new plurilateral negotiations under WTO discipline that could be multilateralized over the medium and long terms.

In 2012, Hufbauer and Schott proposed such a grand bargain, but it has received relatively little public discussion so far. The present version is inspired by their initiative and by Hoekman and Mavroidis (2013), and borrows liberally from both. Lawrence (2006) also had proposed creating “a club of clubs.” One side of the bargain would be major elements of the Doha agenda—including the 2008 chairs' texts on agriculture and Non-Agricultural Market Access (NAMA) in addition to smaller items that have been the focus of talks since 2008. This first side would be conditional on a second side—authorization of future negotiations of a specified list of plurilateral agreements (PAs), of which the Agreement on Government Procurement (GPA) is an illustration.

One major reason for the WTO's declining relevance is that business has largely lost interest in WTO talks as means for addressing problems that concern them. Key constituency groups have told their governments that they do not see enough gain for themselves in the deals on the Geneva table and have pressed for regional and mega-regional deals instead. Thus a political rationale behind this proposal is to bring those constituencies back to support a WTO deal by adding to the agenda some new PAs that would interest them.

On the first side, all Members could gain by harvesting fruits of a decade's labours on the existing agenda. They could ban farm export subsidies altogether, lower bound limits on agricultural subsidies and tariffs, and address tariff peaks in manufacturing, while in effect exempting least developed and small and vulnerable economies from new commitments that they are not ready to accept. Developed countries say they cannot agree to these elements as they stand, so this first side of the bargain would require them to fall back from their current positions.

Hence the second side—but note that it would not add any new (post 2008) WTO obligations for any country to open its own market. Instead the WTO membership would only need to authorize subsets of Members who choose to do so to negotiate new PAs among themselves. Article II.3 of the WTO Agreement authorizes such agreements that bind only the states that sign them. Designers of the package could select particular PAs in part to generate interest from disaffected constituencies. For instance, they could include pacts to liberalize services trade in general; PAs on particular services such as telecommunications beyond basic services; and zero for zero tariff deals in particular sectors of goods trade. (If some Members concluded a PA on services or any other issue independently of a grand bargain, doing so would probably reduce the value and the odds of ratifying the remaining less-grand bargain.) None of these plurilaterals could change rights or obligations already adopted by consensus of the whole WTO; they could only create new rights and obligations for the subset. If interested Members were not prepared to grant their agreement's benefits to non-signatories, that agreement could be applied to other WTO Members on a conditional most-favoured nation (MFN) basis. All Members would be welcome to join but they would not receive the MFN benefits of the deal unless they joined.

WTO approval of a new PA requires consensus, according to Hoekman and Mavroidis (2013), citing Article X.9 of the 1994 WTO Agreement. Hufbauer and Schott (2012) believe three-fourths of WTO Members could authorize a conditional MFN agreement by approving a waiver under WTO Agreement Article IX.3. Either way, every WTO Member would be welcome to participate in these discussions and decisions, which would confer legitimacy on the results.

POSSIBLE OBJECTIONS AND RESPONSES

In discussions of the plurilateral option, several thoughtful expert objections have been raised (Vickers 2013 and in works cited there).

- 1) PAs are by definition less inclusive than multilateral agreements signed by all members.
- 2) If they also depart from unconditional MFN treatment, they would discriminate against countries that are asked to approve their creation.
- 3) PAs would formalize a two-tier system in world trade to the disadvantage of those not in the top tier.
- 4) The proposed deal should be rejected because the Doha round was to be the development round, and rich countries still have not delivered enough on their promise to correct imbalances of the Uruguay round and before.

One response is that Members could require certain multilateral disciplines for future plurilaterals that would address their disadvantages and enhance the possibility that they will increase the WTO's vitality and centrality. The following illustrate possible requirements.

- a) All WTO Members are eligible to participate in the initial negotiation, voluntarily. After the PA is in force, signatories must negotiate with any non-signatory WTO Member that wishes to join at that time. Thus these pacts could be expanded, and possibly serve as vehicles for multilateralizing the rules they develop. At the same time this alternative to the single undertaking model would also help Members avoid new rules they feel are inappropriate for them.
- b) A PA must cover substantial trade in the covered area, for example 50 percent of the world as was the case with the GPA.
- c) Disputes arising under each PA must be adjudicated through the WTO Dispute Settlement Understanding (DSU) including the common Appellate Body. This requirement will increase the relevance of the multilateral DSU and help prevent forum shopping and fragmentation of world trade case law, which can increase costs for firms in many countries. The roster of panellists could be restricted to the PA's signatory states. The option

of retaliation in case of non-compliance could also be restricted to suspension of provisions of the PA in question; cross-retaliation could be prohibited (Lawrence 2006).

- d) PA signatories must report regularly to the WTO on measures taken. The WTO could establish a body to conduct regular joint surveillance for the sake of transparency and the interests of non-participating countries.

If Members also made unconditional MFN mandatory, they could undermine the entire bargain. Unconditional MFN treatment would, of course, be better for multilateral principles and the interests of non-signatories. But countries considering a PA under WTO disciplines might well be reluctant to follow this path if one or more large trading states were able to reap the benefits without making any contribution. The unconditional MFN approach may not be sufficiently attractive to draw potential constituencies away from their alternative, which is a set of discriminatory deals on a regional or mega-regional basis. PA advocates should, however, be less concerned about free-riding by small Members. Thus it might be worth exploring a provision that would extend agreements' benefits to non-signatories whose economies are below certain thresholds defined for instance in terms of gross domestic product (GDP) and GDP per capita. One response to the fear of creating a two-tier system is that no one will be excluded; every WTO Member will be welcome to join each of these PAs. Second, we already have a two-tier system, one under precious little multilateral discipline. Many Members are giving discriminatory preferences to partners regionally, and in some cases agreeing to deeper integration measures that go beyond WTO rules. This year the European Union (EU), the United States (US), and Japan are discussing new mega-regional preferential trade agreements (PTAs). Firms on the inside of a PTA may indeed increase their productivity relative to those on the outside because they are forced to do so by stronger competition. But blocking a deal in Geneva cannot prevent this economic divergence. The choice is between bringing the phenomenon under greater uniform WTO discipline, and not doing so.

Regarding past imbalances and Doha's development goal, current rules unjustly favour the interests of the most powerful, and so these arguments were worth making. But we also need to recognize that after more than a decade those arguments probably have achieved all they are going to achieve. Approving this grand bargain would harvest gains on "old issues" including agricultural subsidies and peak industrial tariffs that developing countries have long demanded, though it would leave work to do. To block this deal today in the hope of leveraging greater concessions out of the EU and the US without adding new gains for them would only sacrifice available gains on old issues and allow our common institution to continue its decline, in effect if not in intent.

THIS BARGAIN WOULD BE SUPERIOR TO THE ACTUAL ALTERNATIVE

Perhaps the most compelling pragmatic response to concerns about discriminatory plurilaterals approved by the WTO is that the alternative we are getting is worse (Hoekman and Mavroidis 2013).

- 1) The WTO is deadlocked and its institutional competition from PTAs has grown stronger since 2008.
- 2) The proliferating PTAs also discriminate.
- 3) Moreover, although GATT Article XXIV was designed to provide some discipline, this article is almost never enforced.
- 4) PTAs have no obligation to accept a new member, so are free to exclude and might be less effective vehicles for multilateralization.
- 5) There is no requirement that disputes arising from PTAs must be adjudicated within the WTO. In fact, many are developing their own *sui generis* dispute settlement institutions.
- 6) Some recent PTAs have been adopting rules that are not found in the WTO, and hence escape the multilateral regime entirely.
- 7) Some PTAs are not as transparent as might be wished. In sum, discriminatory PTAs are arguably subject to less multilateral discipline than could be applied to the proposed PAs. The grand bargain could, therefore, produce an improvement over the actual alternative for all who value multilateralism, including Members who opt out of the new PAs at present.

If such PAs were created, substantial world trade in the covered goods and services would be liberalized to a greater extent and on at least a plurilateral basis likely encompassing several regions, not just one, or would apply common rules to this trade. And if traders in those sectors see that the WTO is again a productive venue for advancing their interests, the intensity of their demand for alternatives to the WTO should wane. WTO Members might woo customers back into the store by making the store more appealing. And Members could do so while also harvesting major gains from Doha and without accepting any additional WTO obligations to open their own markets.

SAVE OUR MULTILATERAL INSTITUTION

This essay's main goal was to spotlight the WTO as a valuable common institution for the long term and to promote a remedy that could save it from becoming irrelevant. Less powerful and faster-growing countries have as much at stake in the vitality of this institution as slower-growing traditional leaders.

If this proposal seems convincing, what should be done now? Director-General Roberto Azevêdo might call informal meetings to discuss fresh ideas such as this grand bargain. A group of former chairs of the WTO General Council could voice support in public as well as informally. Business leaders could endorse it. Trade ministers could instruct their ambassadors to make a serious effort to find mutually beneficial agreement along these new lines. Group of Twenty (G-20) heads of government could give a similar policy direction.

If this proposal does not seem convincing, which course of action would be more effective for achieving this institutional goal? The single undertaking approach has arguments in its favor, but more than a decade of effort in this diverse world has not produced a single undertaking, and has produced widespread frustration. Continued impasse would drive the WTO farther off the stage. A final Doha deal limited to small pieces like the 2013 Bali deal will probably be too small commercially and politically to accomplish this important institutional goal. During the next decade will the stature and role of the WTO decline further, and what will that world be like?

In contrast, imagine the reaction if WTO ministers were to adopt the bolder package outlined here. The deal could be described as one with something for everyone, and even one that went further than any government had proposed. The media would salute and cheer the ministers and the Director-General for a surprising, heartening achievement in the common interest. This dramatic news could shift the attention of world investors, traders, and governments back to Geneva for the next decade or more.

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