CHAPTER 9

Reframing the International Trade and Investment Framework to Meet the Challenges of the 21st Century

Mehdi Abbas

Abstract

This chapter explores avenues for renewing the global trade and investment framework, namely the 29 WTO agreements, the 303 regional trade agreements (RTAs) and the 3,291 international investment agreements (IIAs). The crisis into which the WTO, the central institution of this framework, has been plunged will be the common thread of this reflection.

We aim to provide an answer that goes beyond the idea that the WTO crisis is due to the conflicting interests of a large number of members. This view tends to focus attention on issues internal to the WTO: its governance and decision-making procedures. It stresses the behavior of countries, formal decision-making processes or the governance mechanisms of the WTO. It largely confines the debate about the Doha Development Agenda (DDA) deadlocks to issues of institutional design and technical management of the negotiations. We assume a political economy approach. The multilateral trade and investment framework crisis can be explained, first of all, by the fact that it is regulated by agreements negotiated 25 years ago (1995) by the Quadrilateral (United States, European Union, Canada and Japan). China was not a member of the WTO at the time, the BASICS (Brazil, South Africa, India and China) did not represent more than 4.6 percent of world merchandise exports, the internet and digitalization were embryonic, and Asia-Pacific-centric global value chains had not fundamentally changed the global trade and investment system.

We will first examine developments of the global trade and investment system and the possible repercussions of the global health crisis on it. In fact, the global COVID-19 pandemic opens a new sequence in the globalization process, where power rivalries, evident since the 2007–2008 crisis, could lead to a more conflictual global political economy. That would make it more imperative to renovate the international trade and investment framework. Facing a less asymmetric and more state-centric and heterogeneous global trade and investment system, the new framework could open up to

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(i) more flexibility regarding North – South relations, (ii) more institutional and normative pluralism regarding future trade agreements and (iii) institutional experimentation to improve WTO governance.

Keywords

international trade and investment system – new international political economy – regional trade agreements – North – South relations – WTO

Introduction

This chapter examines the structural and institutional changes in the international trade and investment system (ITIS) induced by the ongoing global COVID-19 pandemic crisis, the war in Ukraine and the resulting new international political economy. The new international political economy refers to the interplay between the evolution of wealth and power relations, that is, the dynamics of actors' conflicting interests, and the transformation of international institutional arrangements, that is, the values, principles and rules on which actors' economic strategies are based.

While world trade decreased by 0.1 percent in 2019 due to trade tensions between the United States and China and slowing global growth, in 2020 it fell by 5.6 percent for goods and 15.4 percent for services (WTO 2020). The outlook for the next years remains uncertain due to the incidence of COVID-19 worldwide, the emergence of new variants of the coronavirus, and the effect of the war. The UN Conference on Trade and Development (UNCTAD) estimates a 40 percent drop in foreign direct investment flows for 2020–2021 (UNCTAD 2021, 1). Main international organization growth forecasts do not call for a global and sustainable recovery. After a 3.5 percent contraction in world GDP due to the "Great Lockdown," the IMF predicts "desynchronized growth" accompanied by an increase in inequalities (2021). The OECD shares this view and makes its outlook conditional on the coordination of global vaccine production and distribution, as well as on continued government support measures (OECD 2021).

Therefore, the global pandemic crisis and the Russia-Ukraine conflict could constitute a tipping point in the process of globalization. In addition to the slowdown in economic activity, the decline in international trade – which has been evident for many years – and the deterioration in employment and living conditions of several million people have contributed to making the current crisis a revelation of the vulnerabilities in production and exchange networks

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after five decades of globalization. Given its economic effects, the COVID-19 crisis is likely to bring about a restructuring of the geopolitical economy and, consequently, the reframing of the ITIS (Abbas 2016). This chapter argues that the crisis has opened a window of opportunity to rethink the governance of the international trade and investment system: It questions not only the purpose of international trade and investment governance (what are the values and social objectives of trade regulation?) but also its forms (how should multilateral collective action be organized?) and its substance (what would be the structuring principles of this collective action?).

This chapter explores possibilities for the renewal of the international trade and investment framework, namely the 29 World Trade Organization (WTO) agreements, 346 regional trade agreements (RTAs) and 3,291 international investment agreements (IIAs) (see Figure 9.1). The evolution of the WTO, the central institution of this framework, will be the main theme of this chapter. In doing so, the chapter examines the future of multilateralism as a principle for organizing international economic relations. The crisis in the governance of international trade can be explained first by the fact that the system is regulated by agreements negotiated and ratified 27 years ago (1995) by the Quadrilateral (United States, European Union, Canada, Japan). At that time, China was not a member of the WTO, the BASICS (Brazil, South Africa, India and China) accounted for no more than 4.6 percent of world merchandise exports, the internet and digitalization were in their infancy, and Asia-Pacific-centered global value chains had not profoundly changed the international division of labor. Hence, the WTO framework requires updating to deal with complex supply chains, contemporary production and consumption patterns, broader Sustainable Development Goals (SDGS), social and environmental

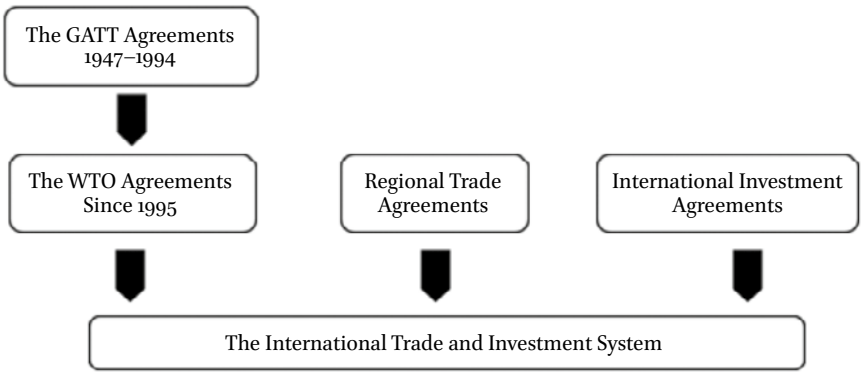

FIGURE 9.1 The international trade and investment system
SOURCE: AUTHOR'S PERSONAL COMPOSITION

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issues, and particularly the new balances of wealth and power in the global political economy.

There are three reasons for an integrated analysis of international trade and investment. First, the complementarity between trade and investment flows, between nations' comparative advantages and firms' competitive advantages, is well established. Second, at the institutional and regulatory level, the WTO agreements and the RTAs include provisions relating to investment (agreement on intellectual property, agreement on trade-related investment measures, subsidies, mode of supply of services, technical barriers to trade, rules on state-owned enterprises). Third, the integrated approach encourages a move away from silo governance of trade and production issues. Indeed, future regulations will deal with competition, investment financing and technology transfers. As such, they will influence not only access to markets but also the functioning and structure of domestic markets and will be a determining factor in firms' location strategies.

This chapter will first examine the evolution of the ITIS and the possible effects of the global health crisis on it. This crisis, a manifestation of the socio-economic and socio-ecological contradictions of globalization, could open up a new sequence in which the power rivalries that have been evident since the 2007–2008 crisis will lead to new trade and normative conflicts. This will make it imperative to renew the architecture of international exchange. In the face of a less asymmetric and more heterogeneous trading system, the promotion of a new collective vision based on new principles and rules, offering greater flexibility and more institutional and normative pluralism, is a way to rebuild confidence in multilateral trade governance.

Post-COVID-19 Globalization

The global pandemic crisis is occurring in a context where the ITIS still has not recovered from the effects of the global financial crisis and the major trade slowdown it caused (Georgieva, Loayza and Mendez-Ramos 2018; Constantinescu, Matoo and Ruta 2015) (see Figure 9.2). Moreover, the imbalances revealed by the 2008–2009 global financial crisis have not been corrected in the last decade. Public and private over-indebtedness remains massive, while employment rates coupled with the precarious nature of many jobs are affecting increasingly large segments of the working population (ILO 2020). The recessionary effect of the current health crisis will also be long-lasting due to the macroeconomic and sectoral effects of both COVID-19 and the Great Lockdown.

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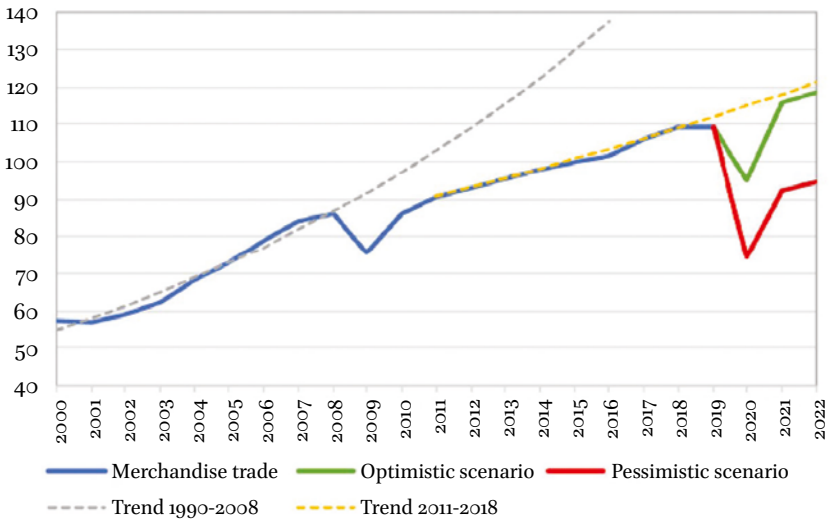

FIGURE 9.2 World merchandise trade volume 2000–2020
SOURCE: WTO (2020)

The recession caused by the COVID-19 pandemic resulted in a 12 trillion US dollar decline in gross world product over the period 2020–2021 (UNCTAD 2020a) and cumulative per capita incomes 20 percent lower than they would have been without the crisis in developing countries (excluding China) and 11 percent lower in advanced economies over the period 2020–2022. However, beyond the figures (see Table 9.1), the pandemic is having a lasting impact on transport traffic (air and sea freight, passenger and tourist transport), global supply chains and trade barriers in the form of export restrictions on medical supplies, vaccines, active principles and food products.

Post-COVID-19 globalization could be characterized by four structural trends. First, the COVID-19 crisis will perpetuate weak global demand, especially sluggish productive investment, as it has not been accompanied by a destruction or, to a lesser extent, a devaluation of productive and infrastructure capital. In most G20 countries, including the USA and all BRICS (Brazil, Russia, India, China, South Africa) countries, productivity slowed after the global financial crisis, in some cases to a lower level in 2019 than in 2009. In the USA, productivity grew by 17 percent in the decade from 1999 to 2009, but only by 12.5 percent in the decade that followed. In China, productivity growth has fallen from a spectacular 162 percent in 1999–2009 to 99 percent in the last decade (UNCTAD 2020a). Combined with financialization and increased corporate power, this sluggish growth is a source of instability as it leads countries into a spiral of slowing aggregate demand and financial fragility.

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TABLE 9.1 Exports and imports volume of goods, selected groups and countries, 2018–2020 (percentage change over previous year)

Group/country	Volume of exports			Volume of imports		
	2018	2019	2020*a*	2018	2019	2020*a*
World	**3.1**	**−0.5**	**−8.8**	**3.8**	**−0.4**	**−8.5**
Developed Countries						
of which:	**2.6**	**0.0**	**−12.0**	**2.5**	**0.1**	**−10.5**
Japan	2.6	−1.6	−9.2	3.1	0.9	−4.4
United States	4.2	−0.5	−12.1	5.2	−0.3	−9.1
Euro area	1.9	−0.2	−13.3	2.2	0.0	−12.2
Developing Countries						
of which:	**3.8**	**−1.1**	**−4.7**	**5.7**	**−1.2**	**−5.6**
China	5.4	0.5	−4.4	6.9	−0.4	−2.0
Asia (excl. China)	3.7	−1.8	−4.4	6.9	−2.3	−6.6
Latin America	3.0	0.5	−8.7	4.8	−1.6	−12.0
Africa and Middle East	1.0	−3.9	−3.1	0.8	−0.2	−2.0

Note: (a) Percentage change between the average for the period January to May 2020 and January to May 2019.

SOURCE: UNCTAD (2020A, 20)

Second, the world's major economic powers will refocus their economic dynamics on their national, regional or continental markets. This refocusing has been at work in China since the global financial crisis and has been a factor in the major slowdown in world trade since 2012. It is also at work in the USA, where the Biden administration's plan in response to the pandemic is driven by domestic demand for consumption and investment in infrastructure. The same is true of the EU's Green Deal. The COVID-19 crisis has re-legitimized public policies to support demand and public intervention on market economic dynamics. It is also accompanied by a potential systemic risk due to the exponential increase in debt. The world economy could be more state-centric in the future.

The third structural trend is the deceleration in the development of global value chains (GVCs). Already at work since 2012, the slowdown of GVCs could become more pronounced as the health crisis has led to a break in supply chains that is damaging to firms and has revealed the vulnerabilities of national economies to this model of international production organization by multinational firms (MNFs). This deceleration is not just cyclical: The most profitable

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location trade-offs have already been largely achieved, the fall in transport costs and transaction costs linked to the connection of different production plants is itself subject to diminishing returns, the rate of using new technologies of information is slowing down, and the export promotion policies that have accompanied industrial and service sector relocations since the beginning of the 2000s are no longer in vogue (Ferrantino and Taglioni 2014; WTO 2017). Due to the war in Ukraine, the ITIS may witness a re-nearshoring and a re-bundling of the defining elements of modern GVCs. Thus, the fragmentation of tasks (unbundling) and geographic dispersion (offshoring) – could be challenged (UNCTAD 2020b). Add to this, the economic damages of the war in Ukraine which will contribute to a significant slowdown in global growth from 6.1 percent in 2021 to 3.6 percent in 2022 &d 2023 (IMF, 2022). The war can deepen the fragmentation of the ITIS in relation to security concerns that could lead to a rise in protectionist measures. In addition, the lockdowns in China (April and Mya 2022) to prevent the spread of COVID-19 are also disrupting supply chain which could lead to renewed shortages of manufacturing inputs and higher inflation (WTO, 2022).

The fourth and final trend in the reconfiguration of production and exchange networks is the change in the US attitude toward globalization. This is evident in the trade war, illustrated by protectionist measures and unilateral sanctions against China and the EU. The hostilities culminated in open conflict with the WHO. However, the pandemic crisis is not the cause, nor is the stalemate in the WTO negotiations or the failure to complete certain regional initiatives, particularly the Transatlantic Trade and Investment Partnership (TTIP). The contestation of multilateralism and globalization began prior to the Trump administration and will continue during the Biden one. It is rooted in the adverse effects of globalization on the US economy and the power shift related to the rise of China. A similar analysis prevails in Europe, where the EU New Trade Strategy takes note of the fact that globalization has not kept its promises in terms of jobs and prosperity and that China is a "strategic rival" rather than a "trade partner."

Indeed, "hyper-globalization," to use Dani Rodrik's (2011) words, goes hand in hand with systemic crises (the Asian crisis and its repercussions, the global financial and the pandemic crises). The latter have finally eroded the discourse on the benefits attributed to globalization.[1] The Asian crisis (1997) marked

1 Dani Rodrik defines hyper-globalization as a type of globalization aimed at the elimination of all transaction costs associated with the movement between the natural borders of nation-states of goods, services, capital and finance. These costs are not limited to tariffs and quotas but also include domestic regulations, standards, rules on product safety, rules on intellectual property and banking regulations.

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China's entry into hyper-globalization. The global financial crisis (2008) has accentuated the de-industrialization of historical capitalist nations and eroded their competitive and technological advantages vis-à-vis emerging capitalist nations, primarily China. The COVID-19 crisis has exposed the global economy to systemic vulnerability (Sumner, Hoy and Ortiz-Juarez 2020). Although five decades of globalization have been accompanied by a fall in the number of people living below the extreme poverty line (less than $1.90/day) from 1.9 billion to 700 million (this improvement mainly concerns China and Southeast Asia), it has also generated an increase in global inequalities (Milanovic 2016), a slowdown in the growth of the Human Development Index (HDI) over the period 2010–2020 and a worsening of global ecological degradation.

Thus, Rodrik's hyper-globalization, that is, the 1990–2014 period of integration of economies and increased competition, has led to the exhaustion of growth and has challenged the multilateral framework established by liberal institutionalism and its free-trade principles. At the same time, there is a growing awareness that the economic, social and environmental challenges facing the international community (reducing global inequalities and extreme poverty, preserving biodiversity, decarbonizing the world economy and producing global public goods) will not be solved within the current governance framework. It is therefore only logical that we are witnessing a return of states and an exacerbation of interstate rivalries – as illustrated by the rise of unilateralism, the multiplication of regional and bilateral trade agreements, the failure of the UN Global Environment Pact, the rise of "populist" governments, the assertion of a "geopolitical" European Commission and Brexit.

Conflictual Globalization in the Context of a New Balance of Power and Wealth

Let us recall an obvious fact: Globalization gives rise to an unequal distribution of wealth and a redistribution of power and of states' hierarchy. It affects the balance of power between states due to the changes in their autonomy and capacity. Thus, globalization reshapes the relative distribution of capabilities and vulnerabilities between states, which influences the nature and axes of conflict. This is why globalization does not imply more peaceful relations between all states. The disruptive effects of globalization in much of the world will likely contribute to new sources of conflict.

From a systemic point of view, the COVID-19 crisis is not a storm in a serene sky. It did not come out of nowhere. It is rooted in globalization-related socio-economic and socio-ecological contradictions, and in the growth model driven by export competitiveness. Export-led growth strategies built on a race

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to the bottom in terms of regulations and environmental and social standards are no longer reproductible and appear less and less sustainable. On the one hand, profitable specializations are being frozen by the emergence of new commercial and productive powers. On the other hand, in a context of slowing growth, the world economy is experiencing a situation of excess capacity, reducing the potential for access to markets. In addition, there are biophysical and ecological constraints linked to intensive growth strategies and international integration that are highly resource-intensive.

From a geopolitical point of view, the accession of new economic competitors to the status of powerful countries profoundly modifies the governance of international exchanges (Hopewell 2015; Elsig, Hahn and Spilker 2019; Hosli and Selleslaghs 2020). Power is once again becoming the structuring parameter of international political economy relations (Drezner 2007; Schaffer and Pollack 2010). This leads to a more conflictual multilateralism in which issues of "strategic autonomy" and "national security," or "collective security" in the case of the EU, once again become the priority. The global economy is caught between a "Thucydides trap" and a "Kindleberger trap."[2] Unlike the global financial crisis, where the G20 and international financial institutions helped coordinate major stimulus packages and avoid trade conflicts, trade measures in response to the COVID-19 crisis have largely been driven by national interests. The coordinated approach of a decade ago has given way to unilateral strategies (Brown 2020). The production and distribution of vaccines, supposedly a global public good, have not escaped the interplay of interstate interests and rivalries.

The combination of the global pandemic crisis, China rising power and the Russia-Ukraine war lead to a move from *efficiency*-driven to *security*-driven ITIS. In such a context, trade and investment governance is shaped by conflicting preferences, values and interests among actors of unequal power. Focusing on power dynamics in the global political economy leads one to consider, on the one hand, that distributional issues prevail over efficiency issues in shaping trade and investment rules and, on the other hand, that cooperative behavior is conditioned by relative gains (Grieco 1990; Powell 1994). Periods of reconfiguration of the hierarchy of economies are characterized by increased productive and distributive conflicts because neither the ascending nor the contested powers are willing to validate asymmetric compromises with unequal gains.

2 We refer to Graham Allison's (2017) analysis according to which the world economy is caught in the "Thucydides trap" of the systemic rivalry between China and the United States, on the one hand, and Joseph Nye's (2017) "Kindleberger trap" linked to the lack of leadership assumed either by a benevolent hegemonic power or by a coalition of states.

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The former consider that they do not have to bear the costs of running institutions that do not serve their interests, and their rise in power confirms the benefits they derive from the status quo. Contested powers, meanwhile, believe that their relative decline is the product of institutional arrangements that are fundamentally unfavorable to them and of the abuse of ascendant powers. They no longer wish to bear the cost of governance and, refusing the status quo, engage the system in a conflictual dynamic (Allison 2017; Hurrell 2018).

How does this perspective shed light on the governance challenges of the international trade and investment system? First, the new balances of power have gradually eroded the grammar of a system based on non-discrimination (equal treatment), reciprocity and leadership. The new emerging powers do not follow a logic of equal treatment – on the contrary, they claim a more favorable special treatment, to which they believe they are entitled – and they break with the principle of "national treatment" by favoring, through a whole series of distortions, their national firms. Reciprocity, too, is being undermined: Usually based on the exchange of tariff concessions, it is now normative and regulatory barriers that prevail, whether in the areas of investment, competition, public procurement or health standards. As a result, the historical supporters of the reciprocal and orderly opening of markets no longer see any point in it (failure of leadership), especially as they believe that the emerging countries – China in particular – have benefited greatly from the system.

The established power (USA) is now less willing to compromise with the rising power (China). In the wake of the 1997 Asian crisis, the Washington Consensus produced the "Great Moderation" (1997–2007). Among the most notable elements of this Great Moderation is the integration of emerging economies into global production and trade networks and China's accession to the WTO (2001). This accession occurred a year after the US established "normal and permanent" trade relations with China (May 2000). Twenty years later, China is no longer a mere "normal and permanent" trade partner but has become a "strategic" or "systemic" rival. The technological, economic and normative challenges this change poses have led the USA to engage in a diplomatic-economic struggle, one of whose forums is the WTO. Thus, the WTO's stalemate is, above all, a reflection of the United States' strategic choices.

Expressed at the Nairobi Ministerial Conference (2013) and refined since then, the US position aims to get the other member states to undertake a reform of the WTO regime in line with their interests and, more generally, to initiate a renovation of international trade arrangements, as was done with the North American Free Trade Agreement (NAFTA), now replaced by the US-Mexico-Canada Agreement (USMCA). This strategy recalls the sequence that led to the launch of the Uruguay Round and the creation of the WTO: attacks on the

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General Agreement on Tariffs and Trade (GATT) and multilateralism, a return to bilateralism, the fight against the trade deficit (with Japan at the time), an unprecedented commitment to regionalism (the launch of NAFTA) and, under the impetus of the "Reciprotarians" – of which Robert Lighthizer, the US Trade Representative between 2017 and 2021, was one of the spearheads – the assertion of an aggressive reciprocity. The US strategy aims to make the *status quo ante* impossible, hence the neutralization of the dispute settlement procedure and the use of a unilateral logic of power relations.

Second, the new multipolar international political economy of trade and investment is characterized by the complexity of making operational compromises. The Doha Round has, from its inception, suffered from the comparison with its predecessor, the Uruguay Round. It was seen as an "Uruguay Round-bis." This led to dissatisfaction with the poor results. However, the wealth and power relations that led to the ratification of the Uruguay Round no longer exist. On the contrary, for the first time since the Havana Conference (1947) the system is truly multilateral, rather than hegemonic or under the control of the Quadrilateral, the formal developed countries group in the GATT that imposed their agenda on the rest of the member states. The stalling of the Doha agenda is first and foremost a manifestation of the concrete learning process of multilateralism: It indicates that new "grand bargains" are probably unreachable.

Moreover, the substantial transformation of multilateral trade governance under the WTO regime makes the negotiation process considerably more complex. This assessment stems from three sets of interrelated factors.

First, WTO agreements do not cover only border protections; they also increasingly involve beyond-border regulatory measures and address the "third generation of trade barriers" (Cottier 2006).[3] Multilateralism has thus been transformed from negotiations on tariff concessions to negotiations on domestic policy and internal regulatory issues (competition policies, investment restrictions, government purchasing, industrial standards, etc.). This constitutes a big shift in the functional focus of the GATT – WTO regime. This, in turn, has been reinforced by rising concerns about the "*'Trade and …'* agenda," which could be addressed to the institution: trade and intellectual property, trade and investment, trade and competition, trade and environment, trade

3 The first and second generations related to tariffs and to non-tariff barriers. The third generation relates to national and sovereign control systems. The most common non-tariff barriers to trade are technical measures, administrative rules and procedures, standard and expertise procedures, quantitative and regulations restrictions on imports, internal taxes, restrictions on competition and freedom of circulation, and labeling requirements.

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and technical standards and, in the future trade and climate change, trade and decent work, trade and global health.

Second, WTO agreements contain provisions designed to enhance the international contestability of markets (Baldwin, Nelson and Richardson 1992; Graham and Lawrence 1996; Barton et al. 2006). Market contestability will consequently be concerned with non-trade policies and divergent regulatory regimes (e.g., environmental and competition policies, standards for the protection of intellectual property) as well as qualitative barriers to trade (Krugman 1997; Subedi 2006). The multilateral trading system has moved toward a rationale of incentives aiming to liberalize and establish common market standards designed to level the playing field in favor of transnational corporations and global financial actors.

Third, the WTO agenda includes a new set of rules with recommendations for compliance and procedural and substantive standards.[4] States have forged a new regulatory regime that aims to achieve "greater harmonization and mutual recognition of members' regulatory system" (Footer 2006). The Uruguay Round Agreement (URA) legacy is built on the central hypothesis that nation-state capacity, autonomy, authority and normative power have to be constrained by the structural power of markets. This does not fit with the return of states as actors in market regulation. The primacy of the global market (competition, international contestability of markets and non-discrimination principles) denies any pluralistic institutional configuration among nation-states. The Doha Development Agenda's (DDA) deadlock resulted from the inadequacy between these institutional forms and the "new normal" of the international trade and investment system.

Therefore, the existing governance model of international trade and investment needs to be renewed.

Toward a New International Trade and Investment Framework

The stalling of the DDA is an illustration of this growing conflict potential. This is why a renewal of multilateralism is needed. Many proposals for reform have been developed in recent years. However, these proposals suffer from three weaknesses. First, they are all formulated by supporters of free

4 See sections 2.2 and 2.4 of the Agreement on Technical Barriers to Trade, 3.3 and 5 of the Agreement on Sanitary and Phytosanitary Measures, Articles VIII and X of GATT 1994. Furthermore, the WTO regulates the use of exemptions for non-commercial reasons (Articles XX and XXI of GATT and XIV of GATS).

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trade (Bertelsmann-Stiftung 2018; Canada 2018; European Commission 2018; Warwick Commission 2007; Sutherland et al. 2004) who are in favor of the system, who pay little attention to the purpose of the negotiations and who are blind to the asymmetries and inequities in WTO agreements. Second, they are predominantly technocratic and focused on the governance of the organization. Third, they do not address the issue of the new international political economy produced by globalization but rather minimize the antagonism of preferences and the conflicts of power involved.

Since the WTO is a member-driven organization, new compromises can only be produced through an interstate process, which should be as open and inclusive as possible. Moreover, the consensus rule prevents any reform that calls into question the institutional legacy of the trading system.

The renewal of multilateralism must integrate the new power and wealth relations that structure globalization, deal with the structural and institutional heterogeneity of the ITIS, and address the economic, social, ecological and political failures revealed by the global pandemic crisis. Consequently, it will not be enough to reform the decision-making processes within the WTO (Narlikar 2019). The ITIS needs different values in order to re-establish its legitimacy and to manage its multipolarity. This is why this chapter suggests that global trade governance could be oriented toward the achievement of the United Nations' SDGs, opened to security and vulnerability principles. It will have to be geometrically variable both in form and in substance, providing flexibility in the normative and institutional design of its rules.

Having clarified these points, three possibilities can be envisaged.

Opening the WTO Regime to Institutional Experimentation

Institutional experimentation would concern both the introduction of new collective preferences into the WTO agreements and the institutional design of certain trade regulation measures. This would address the WTO's lack of legitimacy. Indeed, the WTO would gain in legitimacy if its function as a forum for discussion, exchange and expertise were consolidated. Article III.5 of the agreement establishing the WTO stipulates that it shall assume the function of "enhancing coherence in global economic policy-making." Institutional experimentation would be part of this.

The new international political economy that the ITIS is facing calls for greater flexibility in its architecture, which could be increased through institutional experimentation. This means neither "development-by-bricolage" (Wilkinson 2019) nor a grand design change, but rather calls for the use of instruments for trade policy renewal, such as *waivers* in the WTO agreements, *peace and escape clauses* and *firewall clauses*. These clauses would necessarily

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be temporary, linked to the assessment of countries' needs (as is the case for Aid for Trade) and accompanied by monitoring of their implementation and their effects, both for the countries adopting the clauses and for other WTO members. This would aim to avoid the protectionist risk associated with such regulatory innovations.

Two priority areas could be used for experimentation. First, new derogations and exemptions under Article XX of the GATT and Article XXI of the General Agreement on Trade in Services (GATS) devoted to the challenges of ecological sustainability and social inclusion should be adopted. Second, the relationship between the WTO regime and the UN SDGs should be bolstered. The SDGs include many provisions over which the WTO regime has jurisdiction (sustainable agriculture, investment-related measures, transfer of green technologies, subsidies for renewable energy). Thus, for a period up to 2030 (end of the SDGs), measures – which could be considered as a kind of sustainable development peace clause – related to the treatment of environmental externalities, decarbonization of the energy mix or the production of global public goods (food and health security, free access to patents) could be authorized without exposing states to countermeasures or a dispute settlement.

The developing and least-developed countries draw attention to the protectionist risk of including environmental, climate or social (decent work) clauses. However, the consolidation of the forum function for political dialogue and expertise, coupled with institutional experimentation, would make it possible to limit this risk. As waivers are by definition temporary, a gradual extinction clause could be included *ex ante* in the experimentation mechanisms.

Institutional experimentation would also concern the social values of multilateral trade governance. It would seek to highlight the failings and inconsistencies of the current international architecture and would question the exclusively free-trade approach to multilateralism that has characterized the WTO regime since its establishment. This process would be accompanied by a political dialogue between the state members. It is often overlooked that one of the most significant WTO contributions is its role as a forum for discussion, disclosure and sharing of trade and regulatory preferences. The consolidation of this so-called political function is the main proposal to be retained from the report of the expert group on the revitalization of the institution (Bertelsmann-Stiftung 2018). In view of the serious strains on the smooth functioning of the international trading system, it would be appropriate to set up an independent commission to examine whether the record of three decades of the WTO regime is consistent with the principles of the Marrakesh Agreement. The preamble to the Agreement refers to "the achievement of full employment" and "a high and steadily rising level of real income and effective

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demand," as well as the importance of "sustainable development" compatible with different levels of development. This commission would aim to clarify how the social values of multilateralism could be made more concrete.

Reshaping the Multilateral Globalization – Development Compromise

The DDA has been confronted with the "market access vs. development" dilemma. The topics selected for negotiation and the modalities for implementing agreed outcomes have not been conducive to the economic catch-up of the majority of developing countries and to an inclusive treatment that corrects the shortcomings of the URA (Davis 2019; Scott and Wilkinson 2021).

The re-legitimization of multilateralism necessarily requires a renewal of the WTO's Special and Differential Treatment (S&DT) for developing countries (DCs) and least developed countries (LDCs). The last two decades, marked by the stalemate of the DDA, allow us to identify two avenues for reflection.

The first concerns the differentiation between DCs and LDCs. The S&DT, established on the historical division between developed and developing countries, is not institutionally equipped to deal with a pluralistic and heterogeneous ITIS. The country-oriented S&DT with transitional periods inherited from the URA is no longer sustainable because the "developing countries" category is no longer homogeneous. But all the proposals related to the S&DT reform refer to the new definitions of country categories. Hoeckman, Michalopoulos and Winter (2004) suggest that an "LDC+ group" would encompass the countries that need special and differential treatment. Stevens (2002) proposes applying S&DT to relevant economic factors and criteria. Prowse (2002) argues for "country-specific audits" to determine a tailored mix of temporal exemptions and technical assistance for each developing WTO member. These proposals focus on the "country" dimension of the issue and are "business as usual" in thinking about the integration of DCs and LDCs within the ITIS. However, the redefinition of state categories will not modify DCs' and LDCs' marginalized status without a change of the content of some trade rules. Therefore, the definition of a new globalization – development trade-off requires, on the one hand, a new approach in the elaboration of S&DT measures and, on the other, rules focused on the UN SDGs.

Regarding the new approach for S&DT rules, developed countries argue that the lack of differentiation among the 130 countries that make up the DC – LDC group makes it difficult to reach a compromise. Developing countries are opposed to the principle of special and differential treatment being reserved for LDCs alone, which would reduce their multilateral trade rights. How can the structural heterogeneity of the international trade system be reflected

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institutionally? Here again, institutional experimentation could help reach a compromise. One option would be to focus differentiation not on the status of countries but on the policies and measures negotiated, that is, the substance of the agreement. This is the approach used in the Trade Facilitation Agreement, which entered into force in February 2017.

Concerning the globalization – development compromise, it is necessary to address the "market access vs. development" dilemma. Trade governance needs to be able to address the global trade imbalance produced by ultra-mercantilist and trade expansionist policies that contribute to competition that destroys social cohesion and ecosystems. Multilateral trade governance should not be exclusively geared toward improving market access as the primary means of achieving the "sustainable development" objective stipulated in the preamble of the WTO agreements. Two WTO publications, *Making Trade Work for the Environment, Prosperity and Resilience* (WTO and UN Environment Programme 2018) and *Mainstreaming Trade to Attain Sustainable Development Goals* (WTO 2018), have highlighted the need for greater coherence and effectiveness to reach win – win opportunities on trade, climate change, environment and sustainable development.

To this end, the SDGs could serve as a substantive reference for multilateral trade negotiations. They constitute a lever for greater coherence in global governance. Apart from the formal affirmation of mutual support between free trade and environmental and climate protection, nothing has been concretely elaborated since 2015 to articulate WTO and SDGs regimes. Such an articulation implies that states must clarify their priorities between competitive integration, export expansion and ecosystem protection. The negotiation of a future agreement on investment facilitation could focus on the promotion of sustainable investment. The failure of the negotiations on the liberalization of environmental goods and services should pave the way for their reshaping in the direction of affirming criteria of environmental sustainability, as well as the reduction of the carbon footprint of goods and trade facilitation for goods. Similarly, the place of sustainable development and related obligations should be re-evaluated in RTAs and IIAs. The COVID-19 crisis highlights the need for more resilient production systems and a degree of "strategic autonomy" in the international division of labor, which will only be possible if countries allow sufficient policy space to diversify their economies and increase added domestic value. Therefore, the consolidation of a policy space for sustainable development and a low-carbon transition must become the goal of WTO negotiations. This could give rise to experimentation with flexibility in relation to green investment promotion, green innovation sharing and the dissemination of low-carbon technologies.

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Faced with the Doha stalemate, developed countries have turned to bilateral and regional trade agreements that extend and consolidate the GVCs in which they have competitive advantages. In addition, there is a growing trend toward plurilateral negotiations, which risks fragmenting the trading system and eroding its multilateral character.

Regionalizing Multilateralism

The proposal to "regionalize multilateralism" echoes Richard Baldwin's "Multilateralizing Regionalism" (2006). Baldwin argues that current regionalism complements, rather than challenges, multilateral governance. Regional mega-agreements (such as the Comprehensive Economic and Trade Agreement, the Regional Comprehensive Economic Partnership and the Japan – EU Free Trade Agreement, among others) would be an institutional laboratory for multilateralism (Figure 9.3 related to the rise of RTAs). But the stalling of multilateralism cannot be passed over through regional agreements, which are themselves experiencing difficulties. By reversing Baldwin's expression, this chapter insists that the multilateral trade regime could consider reconfiguring production and trade networks on a regional or continental basis, as was mentioned in the first section.

The major economic powers (US, EU, China, Japan) are engaged in a process of intensification of their economic exchanges on a regional or continental

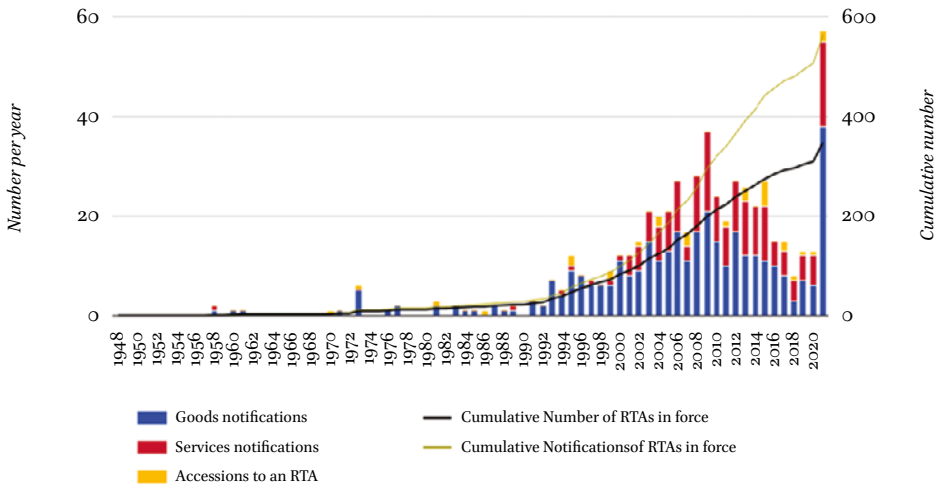

FIGURE 9.3 RTAs currently in force (by year of entry into force, 1948–2022)
Note: Notifications of RTAs: goods, services and accessions to an RTA are counted separately. The cumulative lines show the number of RTAs/notifications currently in force.
SOURCE: HTTPS://WWW.WTO.ORG/ENGLISH/TRATOP_E/REGION_E/REGION_E.HTM

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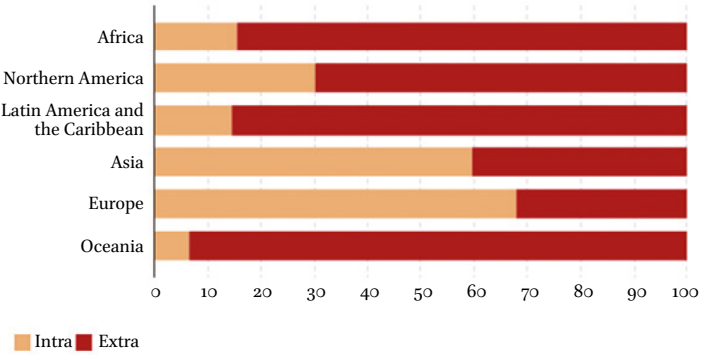

FIGURE 9.4 Intra- and extra-regional exports, 2019 (percentage of total exports)
SOURCE: UNCTAD (2020C)

basis. The first section of this chapter has underlined the fact that production and trade networks (Figure 9.4), as well as monetary and financial networks, are increasingly regionalized.

The post-COVID-19 geopolitical economy may reinforce the trend toward regional economic and monetary cooperation. Indeed, in recent years, regulations on intellectual property or on investment have been expanded and strengthened, particularly through regional and bilateral trade agreements. Furthermore, supply chains have never been truly global. Instead, they are highly concentrated in three regions and in particular sectors. Regional supply chains have always prevailed in the commodities sector, where raw materials from developing countries are shipped for processing and the end use is essentially aimed at geographically close developed countries, although rapidly increasing demand from China has introduced a more global component into production and trade networks since the early 2000s. Some research shows that trade in goods and services is heavily dependent on three regional supply centers, organized in Europe around Germany, in North America around the USA and in Asia around China, which has replaced Japan as the main pole of attraction for industrial Asia (UNCTAD 2020a). Truly global value chains are limited to labor-intensive industrial sectors, such as textiles and garments, where a significant share of global production is located in China. However, rising labor costs are pushing much of this production activity out of China and into other locations, particularly in Southeast Asian countries. In contrast, in more technology-intensive sectors, such as information and communication technologies, the clusters in Europe, North America and Asia have remained dominant despite China's increasing role in intermediate stages linked to the clusters in Europe and North America (WTO 2019).

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The pandemic crisis has revealed the need for greater regional coordination to mitigate economic shock in terms of unemployment, corporate bankruptcy, financial market fragility and for the stability of GVC networks (Kimura et al. 2020). The crisis could be a lever to the densification of monetary and financial relations on a regional basis (Kim, Kim and Choi 2018). The regionalization of monetary and financial relations is related to the new balance of power in the global economy. The reframing of the CFA franc zone, the changing role of the European Central Bank (with the move toward more federal policies), the amendment to the Chiang Mai Initiative,[5] and the return of regional development banks in the debate on financing SDGs show that regional or continental-level regulations could be the building blocks of post-COVID-19 globalization. Even the climate – energy nexus evolves on a regional basis, considering that we have observed the regionalization of energy supplies as well as the consolidation of environmental and climate cooperation on a regional basis. This phenomenon is called "the growth of ecoregionalism" (Balsiger and VanDeveer 2012), as international environmental (biodiversity, fight against pollution emissions, sustainable infrastructures) and climate policies (adaptation) are implemented at the regional or continental level.

The pandemic crisis is likely to reinforce this trend. Consequently, would multilateral trade rules not benefit from formally acknowledging the emergence of the regional level of governance of international trade and investment networks? This means taking a step back from the WTO as a member-driven organization: Rather than exclusively working on a state-centric basis, it should also work on the basis of regional areas/agreements, allowing for collective bargaining and ruling.

The regionalization of multilateralism could follow two paths. The first is based on the fact that all WTO members participate in an RTA. It would then be possible to experiment with regional variations of multilateral disciplines. The issue would no longer be the articulation between regionalism and multilateralism, but the hybridization of multilateral rules according to regional trade and production issues. The multilateral framework would produce rules that allow for regional flexibility, as part of an ITIS organized around bilateral and/or regional strategic partnerships. The WTO's institutional arrangements (the Trade Policy Review Body and the RTA Transparency Mechanism, created in 2006) would evolve to monitor these partnerships.

5 The state members of the Association of Southeast Asian Nations (ASEAN), plus China, Japan and South Korea, pledged at the 24th ASEAN+3 Forum to strengthen their financial cooperation to achieve resilient, inclusive and sustainable economic growth. The Multilateralization of the Chiang Mai Initiative (CMIM) for regional self-reliance, the Asian Bond Markets Initiative (ABMI) to facilitate cross-border transactions and the Strategic Guidelines for the ASEAN+3 Financial Process were agreed upon.

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The second path is related to a globalization – development compromise and S&DT rules. It would be possible to consider that certain S&DT provisions could be elaborated on the basis of regional agreements or groupings. Indeed, trade and development issues are often similar for countries that are geographically close. This institutional experimentation could be complemented by an organizational evolution of the WTO through the creation of a Trade and Development Council whose function would be to debate and elaborate regulations in line with the commercial, productive and technological needs of the DCs and LDCs.

Conclusion

The global pandemic crisis has revealed many socio-economic, ecological and political failures and vulnerabilities, which call for collective responses based on new principles and ways of operating. The ITIS is no exception, especially since some of these vulnerabilities stem from the way the system is organized and the way economic globalization is deployed.

Although it is too early to assess the full impact of the COVID-19 crisis on international governance, several consequences of the pandemic could reinforce the dynamics of inequality, the dominance of large corporations, the unfair distribution of the benefits of globalization and the exacerbation of national egoisms. Are we heading for another "lost decade" with no hope of achieving the SDGs by 2030?

The governance of the ITIS is at a crossroads: It can either take a confrontational and protectionist path or, conversely, it can embark on a path of rethinking and renewed cooperation. Whether one or the other of these options prevails will essentially depend on the nature of the compromises that the main players of globalization (the USA, China and the EU) work out and on their capacity to associate other states to their institutional and regulatory preferences. The emerging economies have already changed the institutional path of globalization. The new hierarchy of power is coupled with a new grammar of international exchange. This new grammar should increasingly articulate institutional and regulatory flexibility, normative pluralism, variable geometry and critical mass agreements, in case of consensus failure.

It remains to be seen whether this new architecture, structured by power issues, will be able to take charge of the production of global public goods, the inadequacies of which the current crisis has revealed, and the place it will reserve for the least developed countries and vulnerable economies. These two challenges are at the heart of the project to create a new architecture for international trade.

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