

Multinationals, international arbitration, and the world trade system: confronting the inconvenient issues in the WTO

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Abstract

While most studies examining the weaknesses of the WTO (World Trade Organization) focus on shortcomings of its institutional arrangements and structural tensions between the two fundamental principles of the WTO - the single undertaking and the decision-making by consensus - this work takes a different view. It attributes the WTO's limitations to the neglect of essential subjects on the negotiating agenda and the omission of important actors at the negotiating table. The world trade system is in trouble - it has become divided between the organization that supposed to efficiently manage international trade and corporate actors who engage in global trade practices. Consequently, the article argues that to be relevant the WTO has to adapt to the changing nature of international trade by opening its doors to the business community and by allowing negotiations of plurilateral agreements among interested parties. The very idea that the WTO should remain exclusively an intergovernmental organization where only states propose and negotiate contracts appears to be more fitted for the nineteenth century mercantilist world. The globalizing economy of today is driven by powerful players that are not only states but also corporations. But corporate actors are outside the WTO, which deals only with states and manages inter-state multilateral agreements. Consequently, suggestions are offered on how to revitalize the organization, which still presents opportunities for improving economic development worldwide and making the global economy function more efficiently and cooperatively.

I. Introduction

The business community and the WTO (World Trade Organization) are artificially separated within the institutional structures of the global economy. First, there is a set of inter-governmental trade agreements institutionalized by the WTO. This multilateral organization includes the most advanced and legally binding inter-state dispute settlement mechanism. On the other side, there is a business world, which together with a growing transnational arbitration community has been trying to become self-reliant in resolving conflicts related to global commerce. This separation leads to negative outcomes. The WTO is becoming increasingly politicized and unable to deal with new trade issues. Its 164 Member-states are paralyzed by consensus rule and the commitment to universal multilateralism (single-undertaking). The WTO Doha Round of negotiations has entered a pernicious stage obscured by the large number of bilateral agreements signed since the Round's launch in 2001. In the meantime, private actors of the world economy together with the arbitration houses, arbitrators, and counsels in arbitration, continue to develop rules specific to their needs. However, these rules arguably lack predictability because they have ambiguous standing from the point of international law.

The article advocates bridging the divide between the WTO and the business world within the legal framework of the WTO. This move is important for improving global economic climate necessary for advancing economic development worldwide. As it stands the organization has an authority to develop and maintain the system of predictable legal rules that can enhance cooperation among various influential actors of the global economy. First step would be to open the WTO to the option of negotiating plurilateral agreements on matters that are vital to all concerned Members. The important topics for such discussions could include strengthening the

rules on state-trading enterprises, competition policy, and investment. It would be a step forward to involve corporate entities acting as partners in such negotiations. History teaches us that some of the most advanced international treaties that exist today originated as creative plurilateral agreements for interested parties. Agreements driven by needs and functionality present a compelling incentive towards establishing networks of formal cooperation.

The paper first explains why the WTO should allow formal plurilateral discussions under its legal umbrella. The reluctance of the WTO to deal with certain issues, which in fact may be of particular importance to the international business community, questions the role of the organization as a facilitator of predictable and transparent international trade rules. It does not help that corporate actors occupy an unclear legal place in the WTO system. Their absence compromises the discussions concerning new trade agenda and new multilateral regulatory initiatives. There is a need for more robust rules capable of integrating corporate trans-border relations - rules that can be negotiated and administered under the WTO. To be sure, such rules are not intended to be a competing alternative to international arbitration. Rather they are meant to be a complementing option that can improve transnational collaboration between multinationals and the states. In order for such an initiative to materialize, however, both the WTO and the corporate world must address a set of critical issues to build a foundation for cooperation. The most urgent among them are: rules on state-trading enterprises, competition policy, and investment.

Broadening the WTO Framework

Despite its progressive rules-based mandate the WTO is constrained by a simplistic understanding of the world trading system where large nations dominate the negotiating agenda and small nations follow. The same time, the WTO's decision-making procedures are still grounded in the GATT era consensus principle (Lanoszka, 2009, 51). This creates a paradox because in the rules-based WTO system the individual preferences of member-states do not simply converge under the leadership of the industrialized trading nations. On the contrary, smaller and medium countries empowered by the legal structure of the WTO feel free to articulate their diverse demands and express resistance when their needs are not met. The Doha Round of multilateral negotiations, the first round of talks conducted under the WTO, has stalled. This failure bears responsibility for fragmentation of international trade law, which in turn creates an incoherent system undermining the legitimacy of the international trade rules (Johnston & Trebilcock, 2013). Experts point out to hundreds of new international bilateral and regional trade agreements signed outside the WTO (Buckely, Lo, Boule, 2008).

It is time now to formally move beyond Doha. In the wake of the 2008 financial crisis, it was difficult not to see the limitations of the current international arrangements in dealing not only with finance but also with international trade (Mattoo & Subramanian, 2009). By being a single-undertaking inter-state organization, the WTO effectively discourages smaller economies from negotiating agreements they may not need. In this context it is useful to remember that that "the WTO is primarily an institution that provides a mechanism for members to make policy commitments" (Hoekman, Martin, Mattoo, 2010, p. 526). It is also not constructive to see the WTO primarily in simplistic terms that: "see the WTO's primary role as reinforcing open markets by constraining cheating on deals, or helping the state resist domestic protectionism, as if the only reason the trading system works at all is because of the threat of coercive enforcement" (Wolfe, 2005, p. 340). A more realistic model of an international organization is offered in the work of L. L. Fuller, a legal scholar, who is known to devote his life to creating the theory of good order and workable arrangements (Fuller, 1978). His ideas were first applied to trade negotiations by Fiona Smith in the context of agricultural talks in the WTO (Smith, 2009).

According to her findings, the WTO represents a case of *polycentric order*, which can be compared to a spider web-like complex arrangement (Smith, 2009, pp. 5-12). As a result the WTO being a large multilateral organization cannot operate effectively.

Specifically, we can identify five interrelated and overlapping strands negatively influencing effectiveness of the WTO. The first strand reflects the individual preferences of WTO Members. This strand is further differentiated into a 'smaller' domestic cobwebs of preferences expressed by various business and labour constituencies of individual WTO Members. The second strand has to do with concerns expressed by developing countries broadly clustered around the trade and development nexus. The third strand consists of a growing number of bilateral, regional, and multilateral treaties negotiated by various countries outside the WTO. The fourth strand is about the ethical dimension of international trade and may include the issues of labour standards. The fifth and the final strand is the internal institutional culture of the WTO. By definition, international organizations are compelled to please and serve their diverse Members but when conflicting demands clash with the organizational objectives the hypocrisy arises. This leads to the dysfunctional behavior of the organization- focusing on priorities without serious commitment to them. With time, it is difficult to conceal conflicts between what the organization as a collective actor says - its advocated mandate, goals, and policies - and what the organization does (Weaver, 2008, p. 19). Consider the fiasco of the WTO Doha Round initiated in 2001. But according to the WTO periodic news releases the Round is still progressing steadily?

The way out of such paralyzing cobwebs of pressure that stifle operations of all large multilateral organizations is to afford more flexibilities to their members. In the case of the WTO such flexibility would allow interested parties (WTO Members and corporate actors) to negotiate plurilateral agreements within the existing framework of the WTO. It would be a practical option grounded in the reciprocity principle as advanced by Fuller who believed that one of the method "by which polycentric problems are solved is that of contract or a reciprocal adjustment of each center of interest with those with which it interacts" (Fuller, 1978, p. 399). The concept of reciprocity was the foundation of the GATT system but with time it became difficult to apply it to new trade-related matters such as adequate level of intellectual property protection and environmental, labor, public health or safety standards (Abbott, 2002). The task of assigning economic values for the purpose of determining reciprocity to these kind of private law commitments gets further complicated by varied developmental priorities of WTO Members.

The principle of reciprocity can be applied even among economically asymmetrical players if they are depended on each other to advance a mutually beneficial deal. We can draw some insights here from Schelling's work on interdependent decision-making. His theory relates to a bargaining environment where although the conflict is present, the mutual dependence of players involved requires some kind of collaboration and mutual accommodation (Schelling, 1980, p. 83). Triggered by the functional need to cooperate, relevant actors will seek means to collaborate and preferably have the outcome locked in by signing a formal agreement with recourse to a rules-based dispute settlement mechanism. In the context of WTO plurilateral negotiations we assume common interest among participants that prompts them towards value-maximizing behavior resulting in compromise and acceptance of an optimal outcome.

However, equally important is the issue how to operationalize such plurilateral negotiations within the WTO. The WTO encompasses a set of legal agreements, which are multilaterally binding because they apply to all Members of the organization as per the principle of single undertaking. Yet there are already exemptions and flexibilities inside some agreements translating to significant differences in obligations for different countries. Most notable exemptions stem from WTO Members' participation in regional trade agreements (GATT Article

XXIV), there are also special provisions for the least-developed countries, but, most importantly, the WTO includes the General Agreement on Trade in Services (GATS).

Apart from accepting a set of core WTO/GATS rules, every WTO Member displays a unique schedule of GATS-consistent liberalizing commitments made in domestic services sectors. Schedules vary from very short ones in case of least-developed countries to very long and elaborate ones for major industrialized countries. Some of the most complex schedules demonstrate a high level of technical creativity combined with prudential sensitivity. These schedules reflect a guarded way a country can open itself to foreign competition by choosing a number of GATS allowable limitations consistent with domestic laws and regulations. GATS's ingenuity permits a country to gradually liberalize domestic services at its own pace and scope. The variations in the depth and in the range of liberalizing commitments made by WTO Members under GATS means that it is an agreement capable to facilitate successful plurilateral negotiations - the 1997 telecommunication deal being a primarily example. A major obstacle for domestic liberalization of services sectors in the WTO, however, is the absence of reliable data and systematic inputs from business community and service providers. Even the most advanced economies have problems with gathering up-to date state statistics assessing their services sectors. To be sure, the GATS agreement should be considered a work in progress (Feketekuty, 2000). However, formalized and direct involvement of business actors in the discussions concerning transnational trade in services could resolve many substantial matters and help advance services liberalization.

Economic Actors of 21st Century

Soon after the start of a new millennium the report published by the Washington based Institute for Policy Studies (IPS) revealed that of the 100 largest economies in the world, 51 are now global corporations and only 49 are countries (Anderson & Cavanah, 2000). The report's findings also pointed out that sales of 200 corporations were growing at a faster rate than overall global economic activity. Between 1983 and 1999, the 200s combined sales grew from the equivalent of 25% to 27.5% of World GDP. Another significant claim: top 200 corporations' combined sales are bigger than the combined economies of all countries minus the biggest 10. Conclusions of the report were based on the analysis contrasting the sales of the Fortune Global 200 with the GDP of countries. As such the report's methodology was rightly criticized because corporate sales and the GDP measure are quite different things. In other words, if the report wanted to demonstrate who is the most powerful globally it should had better explained this comparison because the GDP is a poor indicator of a state's international influence. Factors such as technological and military strength, geo-political position, resource endowment, social cohesion, economic stability and rule of law also play a role. Furthermore, the GDP can be inflated by the debt-financed wasteful government spending or it can be distorted by underreporting of activities in the informal sectors. Still, notwithstanding the flaws of the analysis, the report challenged our conventional views by positioning multinationals at the center of the international global economy.

A decade later another report, this time by the World Bank, assessed the world's top 100 economies, using similar methodology. The data for this report was collected in 2009 from PricewaterhouseCoopers and Forbers and used purchasing power parity to analyze the numbers. Because the study concerned urbanization problems, cities were also used in the analysis. The results show that among 100 top world economies 53 were countries, 34 cities, and 13 corporations (Hoornweg, Bhada, Freire, Gomez, Dave, 2010). The report again contradicted the established state-centered view of the international system.

However, in siding with the critics of the methodological approach used in the report, another study offered a convincing alternative by comparing tax revenue generated by governments with revenue generated by corporate actors (Chowla, 2005). This approach compares much more appropriate factors in order to assess power differentials between corporations and sovereign states. The main source was Fortune's data sets and the Development Indicators prepared by the World Bank. To refine the investigation, credit ratings of states and corporations were also examined with an understanding that influence comes, among other things, from the ability to access funding in private credit markets. The research still revealed only 29 countries in the top 100 most influential revenue generating entities. Arguably, the most obvious weakness of such an approach relates to its difficulty in predicting the staying-power of today's high-ranking corporations. In the 2005 study, the group of the dominant 71 corporations turned out to be quite diverse and included companies that are not on the list ten years later. Then again, the 2015 Forbes Ranking of the largest corporations includes a number of entities that were absent from that group a decade ago, such as four Chinese companies. These four are in fact on the very top of the 2015 list: ICBC, China Construction Bank, Agricultural Bank of China, and Bank of China. Another absentee from the old list, Apple, now places 12th but ahead of Chevron and Wal-Mart. The fluidity of these rankings provide thus largely untested evidence as to the sustainability when it comes to global influence of corporate actors. But such a changing landscape of corporate powerhouses testifies to the fact that trade agreements can benefit from flexibility of plurilateral arrangements as capable of responding to fluctuating international trends and developments.

Domestically, first corporations were towns, monastic orders, and universities. In the UK, the concept of limited liability was only introduced in 1862 by the Companies Act. In Canada, 1867 Constitution gave provinces jurisdiction to allow provincially incorporated companies, although federal government retained power to incorporate. In the United States of America, it was always up to the states to create corporations. In early days, corporate charters had to be carefully negotiated with legislators of individual states who had power to grant or refuse the application. Presently, the process of incorporating in the US is so easy that can be done online. In summary, a corporation is a fairly new economic player. There were relatively few transnational corporations until the relaxation of capital controls and investments laws in the latter part of the 20th century (Monks & Minow, 2011). Given their short history, international trade law lacks systematic provisions on multinational corporations. There is a tendency in international relations to consider a corporate entity as having a limited agency contained under the state jurisdiction. Such attitudes provide an excuse to see the WTO solely as the inter-governmental organization where only the states are capable of making informed and legitimate deals. In reality, private corporate entities have proliferated to become decisive players in domestic and international economies. Thus, not having multinationals at the negotiating tables, undermines the effectiveness of international trade agreements.

As there are more complex corporate entities worldwide, the need for rules to resolve conflicts between them grows. Being on the outside the WTO system, multinationals are trying to become self-sufficient. Accordingly, the community of transnational commercial arbitration has been steadily expanding. Between 1992 and 2012 the caseload of cases dealt with by the five major arbitration houses has risen from 606 to 2368. These numbers, as impressive as they are, still do not include the cases of specialized arbitration that have also multiplied over the last two decades (Mattli & Dietz, 2014). In contrast to the WTO, international arbitration courts represent a form of transnational private authority. There is universal and specialized international commercial arbitration to distinguish those cases that are handled by the major arbitration centers like the International Court of Arbitration at The Hague and those conducted in smaller

forums established by specific industries under the auspices of their respective associations. There is also an investor-state type of transnational arbitration provided by one of the World Bank Group arm called the International Center for the Settlement of Investment Disputes (ICSID) created in the late 1960s. Once basically a dormant institution, the ICSID has turned into a very busy place as more and more bilateral investment treaties have been concluded.

Supporters of international arbitration focus on the efficiencies of the system and its widely acknowledged credibility. The outcomes of the disputes are routinely accepted, despite the cases being adjudicated by private transnational tribunals. From the point of interested parties such disputes were made enforceable in public courts under the 1958 New York Convention on the Enforcement of Private Arbitral Awards. Presently, the Convention has 156 signatories and most of them apply the Convention only to the extent to which other States grant reciprocal treatment. Ratification of the Convention especially benefits the countries with weak public courts. In the absence of strong state institutions in many developing countries, foreign suppliers can find at least some assurances of rules-based business environment in those countries who are signatories to the Convention (Hale, 2014). Furthermore, transnational arbitration can play a positive role in promoting harmonization of the international investment regimes. Dispute resolution under these agreements increasingly rely on cross-treaty interpretation. Equally important is greater use of MFN clauses in bilateral and regional preferential deals.

Critics nevertheless say that in comparison to the exponential growth of international trade since the 1990s, the rise in international arbitration cases have been relatively modest. As a result the cases adjudicated by different arbitration tribunals cannot function as a legal support structure for the global economy. Another view that commercial arbitration proceedings are effective because they are supplemented by countries' domestic laws is also contested. The evidence seems to indicate that the most efficient arbitration services are specialized and confined to specific industries. Thus they are completely outside the purvey of the state and hence limited in their scope and application. In short, international commercial arbitration does not provide efficient contact enforcement for international trade flows (Dietz, 2014).

The most convincing critique of transnational arbitration, however, is a legal argument from a renowned scholar of international law. Two major points are made: that international arbitration rules are deficient when it comes to democratic legitimacy and that these rules lack sufficient predictability (Schultz, 2014). The rules of a global arbitration regime are written by private actors associated with arbitration institutions and arbitration associations who form a different group from those to whom the rules apply. In order to standardize the procedures the rule-making experts have created an elaborate and quite overwhelming body of rules that constitute the fundamental set of reference in most arbitration proceedings. This private proceduralization of arbitration, however, is quite abstract from the social context in which the businesses operate (Schultz, 2014, pp. 160-162). As a result, the transnational arbitration regime fails to pass a legitimacy test by missing the important construal behind the rule of law: democratic engagement of those to whom the rules apply.

Second point considers another critical construal of the rule of law that relates to its internal standard of merit, which is procedural. This strand of the rule of law is known as formal legality which brings with it a promise of predictability. Formal legality holds that "legality is a yardstick against which a normative system may be assessed because of certain formal virtues of legality, because of law's formal regulative quality" (Schultz, 2014, p. 165). By calling something law, we in principle take it to exhibit a certain degree of predictability. Unfortunately, international arbitration, although conducted in the name of law, happens according to insufficiently predictable norms. What is highly problematic is that vague principles, often

grounded in different legal systems, are used and applied by international arbitrators as if these principles were law (Schultz, 2014, p. 119). In summary, the legal argument does not allow international arbitration to be considered as law because it fails to demonstrate having legitimate authority and because it does not carry a sufficient expectation of predictability.

In conclusion, while transnational arbitration retains an ambiguous status from the point of international law it is often the only viable option for corporate actors to have their conflicts resolved. The WTO is all about the states with governments setting the negotiating agenda and representing corporations in the resolution of officially designed inter-state disputes. Still the WTO dispute mechanism has contributed to the establishment of legitimate, integrated, and predictable body of international trade law. Transnational arbitration tribunals may provide for more direct and cost-effective options for dispute resolution but the trade law developed under the WTO serves as a set of reference for international treaty creation and in cross-treaty interpretation by transnational arbitration tribunals.

In practical terms, there are two tracks of international commercial rules today. One decided by the states and the other by private actors. While these two tracks so far coexist without major collisions as supported by informal meetings between governments and selective businesses when new bilateral and regional trade and investment treaties are considered, the fact that the WTO does not allow corporate actors into its legal framework, creates a paradox. Despite being primary drivers of the global economy corporations find themselves in an outsider position on the international legal stage of economic decision making. In the next section, the paper identifies critical issues on both sides of the divide with hope of bringing private and public actors together under the WTO rules.

WTO and Business Community - Issues of Convergence

There are three critical issues that would greatly benefit from bringing together the interested state actors and corporate actors to the negotiating table: state-trading, competition policy, and investment. These issues failed to be properly addressed within the WTO in the context of multilateral trade negotiations. The provision on State-trading Enterprises is in fact part of the system but due to the lack of political will it has become a subject of benign neglect (Article XVII of the GATT). The last two were first introduced during the first WTO Ministerial Conference back in the 1990s but slowly faded away from the negotiating agenda since some WTO Member-states resisted them.

First issue: state-trading. The international trade system from its early days recognized the presence of state trading entities. Although the GATT was based on the principle of free markets, in a politically motivated move, the system's architects decided to accommodate state-trading in the communist world. Over the years, Article XVII of the 1947 GATT on State Trading Enterprises not only facilitated the participation of several Soviet Bloc economies in the GATT but also made possible the WTO accession of Russia and China. But Article XVII, which was first intended as a special exemption reserved for unique circumstances subject to a rigorous notification process, turned into a provision excusing a widely accepted practice. When the WTO was being established a special Understanding on the Interpretation of Article XVII was included in the package of Final legal texts. The Working Party on State Trading Enterprises was established by the Council for Trade in Goods at its meeting of 20 February 1995, pursuant to paragraph 5 of this Understanding. The Working Party developed an illustrative list of state trading relationships and activities in 1999 (WTO Document: G/STR/4). These activities, however, have not resulted in a well monitored notification and review process. The number of notifications had been steadily declining and Members who are particularly known to engage in state-trading are hardly ever sending such notifications (WTO Document, G/L/1090). Private

corporations are at disadvantage in the system that explicitly allows state-trading but provides rules intended to ensure non-discrimination and transparency in international trade. It becomes difficult to condemn private corporate actors for their attempts to seek tax-heavens or avoid anti-trust regulations, while state-owned companies often thrive because of direct subsidies and preferential treatment by their governments.

Second set of issues: competition policy and investment. A number of WTO Members placed these issues on the multilateral negotiating agenda during the 1996 Ministerial Conference in Singapore. From early on it became clear that there was no consensus among the hundred-plus WTO Members on appropriate standards for competition policy. While the arguments in favor of an agreement cited the need for international antitrust rules, the need for competition rules that can substitute for antidumping laws, and the need for rules that would target some anticompetitive practices such as price fixing and market allocation (Palmer, 2003, pp. 297-304). The initiative on investment was proven to be very controversial. It echoed the OECD talks on the Multilateral Investment Agreement (MAI), which eventually collapsed two years later. The WTO Working Groups on the issues continued to work but no progress was made. The majority of work in the WTO Working Group on Trade and Competition Policy revolved around establishing the appropriate standards for competition policy and relevant enforcement mechanisms. The ultimate goal was the future harmonization of the best practices, although this idea was hotly contested and never amounted to any tangible proposal. The issue of investment was picked up by a number of regional and bilateral agreements but was essentially abandoned in the WTO.

The issue of plurilateral agreements. Here, the WTO has made some progress in terms of realizing the necessity to relax the principle of single-undertaking. There are currently two plurilateral agreements negotiated among interested WTO Members: on services and environmental goods. Frustrated with the progress of the Doha Round, twenty three Members of the WTO (including the EU) started in 2013 to negotiate a plurilateral agreement aimed at liberalizing their services sectors. Together the negotiating countries include almost 70 percent of world's trade in services. The so-called Trade in Services Agreement (TiSA) uses the GATS framework and its main provisions to either deepen the liberalization of the existing sectors or to liberalize new ones. The sectors under consideration: telecommunication, financial services, e-commerce, maritime transport, air transport, and professional services. The negotiations also concern agreements on such issues as: domestic regulation, localization, and transparency. The most recent 19th round of talks took place in July 2016 and registered some progress on a number of issues. However, Brazil, China, India, and Russia are notably absent from these negotiations and so are the corporate actors despite their strong presence in the sectors under discussions. Only the respective governments participate in the talks and the European Commission, which traditionally represents all EU members, a situation somehow complicated by the June 2016 UK's referendum to exit the Union.

In July 2014, a group of WTO Members launched negotiations on the WTO plurilateral agreement on environmental good (AEG). This group now includes the EU and sixteen other countries. The agreement is intended to improve market access to a broad range of environmental goods, such as products related to the production of renewable energy, air-handling equipment, water treatment technologies, waste management or recycling equipment, and environmental and atmospheric monitoring instruments. The talks utilize an existing list of 54 environmental goods put together by the Asia-Pacific Economic Cooperation forum – in 2012 to reduce import tariffs to 5 per cent or less by the end of 2015. These goods include wind turbines, air quality monitors and solar panels. To date, 15 rounds of negotiations have taken place with an ambitious plan to conclude the agreement by December 2016. Since this agreement

deals with goods and mainly concerned reduction of tariffs, it may not be essential to include corporate actors, although their input would benefit the talks. However, the plan to enhance the agreement at a later stage by matters concerning domestic regulations and services may be difficult to materialize without participation of the business community.

Direction for Future Research

This article identified the major limitations of the international trade system. The system is characterized by the artificial separation between the inter-state WTO and the globalizing business community. As the international economic climate deteriorates, holding back the economic development globally, the WTO remains paralyzed. This is why it becomes increasingly appropriate to examine the possibilities of including the relevant business actors in the WTO talks aimed at facilitating rules-based cooperation between governments and multinationals on several critical issues. The interested Members of the WTO have already initiated a series of plurilateral negotiations on services and environmental goods. These talks would greatly benefit from participation of corporate actors to make the anticipated agreements more effective and comprehensive.

There are several critical issues concerning international trade that need collaboration between governments and corporations in order to ensure the growth and smooth operation of the global economy. First there is the dilemma of state-trading multinational enterprises. The concept of state-trading goes against the rationality of free markets. Most of the emerging economies have been historically state-centered and presently they follow a model of state capitalism where the state is a dominant economic player and uses the markets primarily for political gain (Bremmer, 2010). State-trading multinationals can be quite different from the private multinationals and their modes of operations are often shielded from the scrutiny of their trading partners. The world trading system would benefit from formal rules that would ensure greater transparency in assessing the operations of state-trading enterprises.

Secondly, the investment and competition policy are issues that tend to be only partially dealt with on the domestic level. The international economic relations suffer from the lack of consistency in the way bilateral and plurilateral agreements approach these issues. However, the idea that investment and competition rules can be harmonized on the global level by designing multilateral agreement for over hundred-plus Members of the WTO is not realistic. Given the complexity of the global economy today only plurilateral agreements that include corporate actors can produce effective rules based on measures often rooted on sector specific understandings. The legal framework of the WTO provides an excellent opportunity to accommodate limited sectoral and issue-driven plurilateral agreements. The WTO can offer predictability of rules and of outcomes especially given its sophisticated dispute settlement mechanism, which can be expanded to address investor-state disputes. On the other hand, the continuation of the existing scenario where the WTO only deals with selective, and often politically motivated, inter-state disputes while corporations seek the help of legally ambiguous arbitration houses, is not sustainable. Both sides can end up with limited set of rules subject to arbitrary actions of the powerful states.

As this article was being finalized, the latest edition of the Economist features a report on the world's most powerful companies. Appropriately titled "In the shadow of giants" the report examines the rise and perseverance of multinational corporations. Most powerful multinationals have captured enormous market shares and built resilient defenses against competition. Companies with more than \$1 billion in annual revenue account for nearly 60% of total world's revenue and 65% of market capitalization. They also have enormous assets equivalent to 10% of GDP in America and up to 47% in Japan. In addition, about 10% of all the world's public

companies generate 80% of all profits. The report concludes that policy-makers soon will be faced with the great policy challenge to address business concentration without adopting punitive anti-business sentiment (Economist, 2016, pp. 3-16). In fact, the report may be overstating the ability of governmental policy makers to shape policy agendas involving multinationals. For the start, it would be helpful if policy-makers revamp their thinking about multinational corporations. The state may attempt to control the domestic policy space but the scope of Multinational Corporation's necessities formal collaboration with the business community that exceeds the mandate of the domestic regulators and politicians.

There an opportunity for a meaningful engagement between the governments and the corporate actors under the predictable system of international law. Both sides can benefit from the clear rules and standards. In this context, the already existing WTO framework can be utilized by opening the organization to business actors and by allowing negotiations of plurilateral agreements that include corporations under its legal umbrella. Subsequently, there are two choices in front of the WTO today: 1) remain a semi-relevant inter-state organization where only selective issues are discussed, where some limited technical arrangements are slowly advanced, and where increasingly politically motivated disputes are adjudicated; 2) allow for discussions on plurilateral projects among interested parties that would bring critical issues to the table and encourage rules-based cooperation with corporate actors.

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