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The WTO's first decade

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This year the World Trade Organisation (WTO) celebrates its tenth year of existence. That celebration is also an opportunity to review, audit, and evaluate its place, progress, and evolution. I am aware that this issue of the *World Trade Review* is carrying several articles about the 10th Anniversary. This contribution is targeted at the populist perception that the WTO is undemocratic. It also accepts that there are great injustices in the world trading system, but the answer to that is not the rejection of multilateralism but to conclude the Doha Development Round. The problem of poor nations is never too much trade; it is not enough trade. The WTO is unique among the international institutions and plays a vital role in the international architecture.

The WTO is at the centre of the debate about democracy because of its successes; not its failings. More and more countries want to participate. More and more people recognize that the WTO matters. More actors – businesses, unions, church groups, environmentalists, development NGOs – want the multilateral system to reflect their causes and their concerns. The WTO is not a 'global government'; but it is a key forum where governments cooperate globally. It is not a 'world democracy' – in the sense of being a government of the world's people – but it is the most democratic international body in existence today. It provides an answer to perhaps the central political question of our time: how to manage a globalizing world when democracy remains rooted in the nation-state. In a way, the WTO – together with an expanding web of other global treaties and agreements – is more interesting than a new layer of government. From trade to the environment, human rights to war crimes, the world is moving towards rules, not power, persuasion, not coercion – a world of mutual respect, rights, and freedoms.

This looks like a brave new world, but its roots can be traced back over half a century. The generation that emerged from the devastation of the Second World War pledged 'never again'. They dreamed of creating a new kind of global order based on common and universal values – of law, cooperation, shared prosperity, and individual rights. They launched the Marshall Plan, where for the first time in modern history the victors rebuilt their former enemies – the opposite of what had happened under the ill-fated Treaty of Versailles. They created a constellation of international institutions that, half a century later, are the bedrock of our global order today: the UN, the IMF, the World Bank, and the GATT – now the WTO.

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This system was the embodiment of a revolutionary idea: That freedom – free democracies, free markets, the free co-existence of nations and peoples – was the surest guarantee of peace. And that a free world could, in turn, only be built on the foundations of the international rule of law. It is sometimes easy to forget – when even the Cold War is a fading memory – how spectacularly successful that idea has been. UNDP reminds us that poverty has been reduced more in the past 50 years than in the previous five hundred. Life expectancy in the developing world has risen by over 20 years, and living standards by 190%. Literacy is up 34% in China, 33% in India, 39% in Sub-Saharan Africa, and 41% in North Africa. In the first half of the twentieth century, there were but a handful of democracies, and the future seemed a contest between the twin totalitarianisms of fascism and communism. By the century's end, 120 of the 192 governments in the world were electoral democracies. Never before in human history have so many people enjoyed the freedom of the market-place and the ballot box.

The existing system of international rules is not alone responsible for this world-wide march of freedom, but the promise of a 'free world' would be inconceivable without it. The debate about democracy and the international system is to be welcomed – encouraged. This is particularly true at a time when government cannot ensure clean air, and a clean environment, run an airline, organize a tax system, attack organized crime, solve the plagues of our age – AIDS, poverty, genocide – without the cooperation of other governments and international institutions. The threat to democracy is not debate, but silence and complacency, the indifference and ennui that comes with familiarity. The value of the protests in Seattle, Prague, Washington, and Genoa is that they have wakened us from our complacency and ignited a much needed debate. They have forced the world to look anew at 50-year-old institutions, not only to examine what might be wrong, but as a reminder of what is right – and what is enduring.

There is no meaningful 'democratic deficit' in the WTO unless we take the position that governments do not legitimately represent their citizens and their interests. Some argue just that. Many NGOs claim a right of direct participation, alongside governments, in the decisions of the WTO and other international bodies. They have the right to a voice, but not a vote. Some even propose a new 'democratic' international order in which NGOs would offer an alternative form of representation in competition with governments. Others go further still. They would have us treat the world as if it were a nation state writ large. There would be world elections to a world parliament and even a world government – exercising the kind of sovereign powers now reserved for nations states. Every citizen – not just every nation – could have a vote. This is not a new idea. Generations of idealists have dreamed of Alfred Lord Tennyson's 'Parliament of Man'.

Dream on. The international community is manifestly not ready for world government. Hopefully it never will be. Anyway, it is not going to happen. Who are 'we the people' in a world where pride in culture and nation is so strong, and where shared global identity is so weak? Who represents a world electorate?

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Does anyone really believe that a body politic exists at the global level with a strong enough sense of community that it could legitimize decisions and the exercise of power based on world majority option? It does not exist. The philosopher Leo Strauss predicted that the 'universal and homogenous state' would be a tyranny. Too many countries, cultures, and peoples would see world government as just that – a thinly veiled disguise for imperialism, neo-colonialism, more a tyranny than a democracy. The claim that the World Trade Organization is 'undemocratic' starts from a basic fallacy. The WTO is not imposed on countries. Countries choose to belong to the WTO. No one is told to join. No one is forced to sign our agreements. Each and every one of the WTO's rules is negotiated by Member governments; it is agreed by consensus, and ratified by parliaments. Countries choose to participate in an open, rules-based multilateral trading system for the simple reason that it is overwhelmingly in their interest to do so. The alternative is a less open, less prosperous, more uncertain world economy – an option few countries would willingly choose. At the WTO we introduced mechanism to involve parliamentarians, bring to Geneva for briefings officials from the many poor and small countries that cannot afford representation in Geneva. Something no other international agency has tried.

The multilateral trading system's expansion is remarkable. It began with just 23 Members in 1947. The WTO now has nearly 150 Members – including, recently, China and Chinese Taipei – and this number could easily reach 170 or more within a decade. This also explains why Members have repeatedly agreed to widen and deepen the system's body of rules. The multilateral trading system was initially concerned mainly with trade in goods, and it was based not on a permanent organization but on a provisional treaty, the General Agreement on Tariffs and Trade ('GATT'). By the end of the Uruguay Round in 1994, the system contained sweeping new rules for services, intellectual property, subsidies, textiles, and agriculture. It was also established on a firm institutional foundation, the new WTO, with a strengthened mechanism for settling disputes. Nor is there any sign that the system has stopped moving forward. The most recent Round, launched in Doha in November 2001, has development issues at the centre. No other international body oversees rules that extend so widely around the world, or so deeply into the fabric of economies. Yet, at the same time, no other body is as directly run by Member governments, or is as firmly rooted in consensus decision making and collective rule. The multilateral trading system works precisely because it is based on persuasion, not coercion; rules, not force.

Two fundamental principles underpin the equal rights of WTO members. One is the principle of non-discrimination. The WTO treats all Members alike, be they rich or poor, big or small, strong or weak. The same rules apply to everyone, even the world's largest and most powerful economies. Central among these rules is the 'most-favoured nation' (MFN) obligation – which prevents WTO Members from discriminating between foreign goods, or treating products from one WTO Member better than those from another one – and the 'national treatment'

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rule – which obliges governments to treat foreign and domestically produced products equally. The MFN obligation is embodied in Article I of the GATT, Article II of the General Agreement on Trade in Services ('GATS'), and Article 4 of the TRIP's Agreement. Some exceptions are allowed to MFN. For example, under GATT, Article XXII countries within a region can set up a free trade agreement that does not apply to goods from outside the group. Or a country can raise barriers against products from specific countries that are considered to be traded unfairly. And in services, countries are allowed, in limited circumstances to discriminate. But the agreement only permits these exceptions under strict conditions. In general, MFN means that every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners – whether rich or poor, strong or weak.

Non-discrimination has been key to the multilateral trading system's success. Preferential trade blocs and alliances, by definition, exclude and marginalize non-member countries. This not only hurts the countries themselves, but can be harmful for the system as a whole. It is widely accepted that competition and conflict amongst trade blocs in the inter-war years was a major cause of global instability – paving the way for a descending spiral of tit-for-tat protectionism, economic depression, and ultimately world war. The multilateral trading system – based on a uniform set of international rules under which all countries are treated equally – was designed precisely to avoid a world of inward-looking trade blocs and self-destructive factionalism. From a national perspective, the principle of non-discrimination has also allowed countries to liberalize their economies and integrate into the world trading system at their own pace. MFN and National Treatment do not demand 'harmonization' towards universal norms or rules. On the contrary, these rules were designed precisely to allow countries to maintain their own policy 'space', to set their own standards and priorities, so long as all economic actors – foreign and domestic – were treated equally. Non-discrimination has provided the essential underpinning for the huge expansion of global trade over the past half century, and for the broad political consensus to move the system forward into new sectors and wider responsibilities. Non-discrimination has also enshrined universality as a central objective of the trading system. It is certainly one major reason why the GATT/WTO system has emerged, especially after the Cold War, as a major force for integrating developing and transition countries into the world economy.

Equally central to the multilateral trading system is the principle of consensus decision making. Unlike other international agencies, the WTO has no executive body with delegated authority to take decisions on behalf of member governments. The small WTO Secretariat has only limited independent authority and initiative-taking rights, but no grants or loans to hand out, no licenses to issue, and no influence over individual countries' policies (although technical advice is offered, and some analytical comments are provided in regular trade policy reviews). In short, the WTO does not tell governments what to do. Governments tell the

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WTO. Each WTO member has equal rights, and an equal rights and an equal vote under the agreements. Because no decision is taken unless all member governments agree, effectively every country – from the largest to the smallest – has the power of veto. Even the enforcement of rules is undertaken by the members themselves under agreed procedures that they negotiated. Sometimes enforcement includes the threat of sanctions. But those sanctions are imposed by Members not by the organization.

This is not to say that the day-to-day workings of the WTO are perfect. Far from it. One problem is that the system continues to rely on major new negotiating rounds – and 'package' deals – to create new rules or to clarify existing ones. This means that reforms to the system occur episodically and infrequently. Seven years elapsed between the end of the Tokyo Round and the beginning of the Uruguay Round; eight years between the Uruguay Round's completion and the launch of the Doha Development Agenda in November 2001. And the Uruguay Round itself spanned eight years from beginning to end. One reason for the successful launch of the Doha Development Round was a series of important reforms to WTO decision-making processes since the failed launch of negotiations at the Seattle Ministerial in 1999. In Geneva, thousand of hours were spent in plenary discussions and in meetings of heads of delegations. Every issue and every national position had been fully aired and explored before Doha. At the Conference itself, every effort was made to keep ministers and delegations fully involved in the negotiations. When more limited – or 'Green Room' – meetings were held, they typically involved more and a wider representation of countries than the whole of the original GATT. At all times developing countries were in the majority. The transparency and inclusiveness – which is to say the 'legitimacy' – of the process helps to explain why member governments were more prepared and more willing to reach agreement.

Another challenge is that not all governments are equipped to participate in WTO processes as effectively as they would like – certain least-developed and small countries cannot even afford to maintain offices in Geneva. The scope, complexity and value of the WTO's legal system continues to expand. Much of the controversy about implementation of Uruguay Round commitments stemmed from the human and resource constraints faced by developing countries in adapting legislation to new obligations and building the infrastructure needed to implement them. That is why an increasingly important function of the WTO is technical assistance and capacity building – helping transitional, developing, and least-developed countries to integrate into the multilateral trading system and to participate fully in negotiations. One key objective, as a result of Doha, is to empower officials to better identify their negotiating objectives and to analyze the many proposals that will be forthcoming from other partners. Many of these activities are organized jointly with other international organizations, as a way of achieving a more 'coherent' approach to global economy policy making and development. A sign of confidence in my time as Director General was a 300%

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increase in capacity building programmes. At a time when other agencies had their budgets cut.

Another goal is to help member governments make better use of dispute settlement. The WTO has expanded the rules of international trade manifold compared with the GATT, and has created a new dispute settlement system – a 'world trade court' – with a possibility of appeal. Legal advice in trade matters is expensive, thus creating potential problems of access to justice for developing countries. To help redress this imbalance the Advisory Centre for WTO Law was opened in October, 2001. It marks marks the first time that a true legal aid centre has been established within the international legal system, with a view to combating the unequal possibilities of access to international justice as between states. Individuals appearing as defendants before War Crimes Tribunals have always been able to call upon pro bono legal aid. The International Court of Justice has a small fund out of which costs of legal assistance can be paid for countries who need such help.

The fact remains that the multilateral trading system – for all its imperfections – gives even the smallest and poorest countries far greater leverage and security than they would ever have outside the system. Multilateral negotiations allow weaker countries to pool their collective influence and interests – as opposed to bilateral or even regional negotiations in which they have virtually no negotiating clout. In the same way, a system which replaces the role of 'power' in international trade relations with the rule of 'law' is invariably to the advantage to the smallest and weakest countries. The alternative is no rules and no impartial dispute settlement – a world where commercial relations are based on economic and political power alone, where small countries are at the mercy of the largest.

It is an article of faith among opponents of the WTO that the system is 'undemocratic'. The irony is that many of the things they do not like about the WTO stem from too much democracy, not too little. They want the WTO to force open markets, preserve union jobs, strengthen labour standards, protect animal rights, preserve the environment, watch over indigenous people, save the developing world from capitalism, and a lengthening list of other goals – even when these goals are resisted by sovereign countries. They grasp that the dispute settlement system, and its threat of trade sanctions, gives the WTO unique power to impose policies on recalcitrant governments – if only the WTO could be made to exercise those powers.

Some argue that consensus rule making should be reconsidered because reaching agreement among nearly 150 governments is simply too slow, too cumbersome, 'bureaucratic'. Since every Member effectively has a veto, it is claimed that the WTO can only move at the speed of its slowest or most obstinate member – which is too slow for a fast-globalizing world. Still others suggest that the issues now facing the WTO are too complex to be effectively debated and decided upon by all of its member governments acting as a 'committee of the whole'. As one trade expert puts it, 'mass membership simply does not lend itself to operational

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efficiency or serious policy discussion'. This is why proposals for the creation of a smaller executive body – like the World Bank's Development Committee or even the UN's Security Council – are heard from time to time. But the more fundamental argument is political. The fact is that on certain issues international consensus simply does not exist. The rationale for circumventing consensus – through executive powers, weighted voting, trade sanctions – is basically that objectives which cannot be reached through persuasion should be reached through coercion. Of course, the consensus principle can sometimes be taken to unproductive extremes. When a national interest is involved, that is fine. However, it does not always work so well in micro or practical 'housekeeping issues' which are not of national interest, such as who is to speak at a seminar, but which are used as leverage by some representatives to get attention elsewhere.

The notion that consensus can – and should – be overruled on basic policy questions is easily the most dangerous idea confronting the WTO. The more fundamental objection is that imposing policies on unwilling Members is 'undemocratic'. Who determines 'correct' standards? What gives the WTO the right to act as judge, jury, and police over sovereign governments? Only governments can decide that. And what makes us think that coercion and threats can produce lasting solutions? Not only are we asking the multilateral trading system to perform a role which runs contrary to its basic principles, but, worse, coercion is the surest way of poisoning the spirit of international cooperation that is so desperately needed to begin building a consensus around broader global solutions. Unilateralism will not convince any country of the rationale or validity of the objectives which another asserts.

A measure of civilized society is how it manages its differences. Is it by the rule of law or by force? By that measure the WTO has a lot to be proud of. With all its imperfections, the world would be a more dangerous, less democratic place without the WTO. It is worth defending despite its imperfections.

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