

In the Aftermath of the Global Economic Crisis: Redesigning the WTO for the 21st Century

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The Program in International Finance and Economic Policy (IFEP) at the School of International and Public Affairs (SIPA), in conjunction with Columbia University's Asia-Pacific Economic Cooperation (APEC) Study Center, presented a panel discussion about the present and future of the World Trade Organization (WTO). Debra Steger, Professor at the Faculty of Law at the University of Ottawa, gave the initial presentation, and Michael Ewing-Chow, Professor at the Faculty of Law at the National University of Singapore, provided comments. Merit E. Janow, Professor of International Economic Law and International Affairs and Director of IFEP at SIPA, moderated the discussion.

Professor Janow began by asking the panelists' opinions on how the WTO is performing and what institutional adjustments need to be made. Professor Steger first praised the bold vision and inspiration of the prevailing international economic architecture: the World Bank, International Monetary Fund (IMF) and WTO, which were created after World War II to maintain peace and economic harmony in the future. The financial crisis has emphasized the interconnected nature of the disciplines encompassed by these institutions and the extent to which the world economy is one integrated whole. Accordingly, "Only effective and coordinated cooperative action will help to provide the necessary stability and equilibrium into the future." However, in G-20 leaders' gatherings following the global financial crisis, there has been a surprising omission of the WTO in discussions about economic reform.

Professor Steger then gave her assessment of the WTO compared with other international organizations. She noted that it has an unparalleled rules-based system and effective dispute settlement body that serves as a model for other international organizations. The WTO is considered highly representative and accountable when compared with the IMF and World Bank because of its one-country, one-vote policy and consensus-based decision making process. However, civil society stakeholders indicate that they believe WTO interactions with civil society are not open and transparent enough. Furthermore, it needs to improve its effectiveness and efficiency as a negotiating mechanism. The same consensus



Debra Steger

principle that enables the WTO to be a highly representative organization is also very cumbersome when making new rules and decisions.

Governments tend to focus on the trade round at hand, without considering the institutional issues of the WTO. Professor Steger and her colleagues are attempting to redirect the conversation to raise awareness about these issues. The 2004 Sutherland report and the 2007 Warwick Commission report outlined pragmatic reforms for institutional aspects of the WTO, but these were not implemented.

There is also room for improvement in the imbalance between the judicial and legislative sides of the WTO. Presently, the dispute settlement mechanism is strong, but the legislative part of the system does not function very well. Thus far, no case has arisen that is beyond the reach of the Appellate Body (AB), but it is possible that in the future there will be disputes that are bigger than it was designed to handle.

Another problem area brought up by Professor Steger is the issue of regional trade agreements (RTAs). Professor Steger recognized that RTAs have grown in popularity because of the slow pace of progress at the WTO, but she is concerned about the lack of definition in the relationship between the WTO and RTAs, as well as the shift in focus from the WTO to RTAs.

Professor Steger closed her initial remarks by enumerating good governance criteria that deserve closer scrutiny: legitimacy, effectiveness, accountability, representativeness, and efficiency. She also urged leaders to consider reform for the WTO in addition to reform of the IMF and World Bank.

Professor Ewing-Chow invited the audience to consider a world without the WTO. The IMF and World Bank would facilitate financial flows, but that would be an incomplete economic system. Ewing-Chow also alluded to the origins of the international economic system, which established a belief in multilateralism and a desire to maintain peace after World War II by integrating national economies to make war unprofitable. Without the WTO, neighbor tariffs would spring up, as well as discriminating bilateral and regional agreements. Eventually, this would “erode the multilateral rules basis of the WTO,” leading to a breakdown of international collaboration and even more unstable financial markets. He mentioned that a potential role of the WTO post-financial crisis will be to monitor and identify protectionist measures by its member countries.



Michael Ewing-Chow

Professor Ewing-Chow identified two main challenges facing the WTO: the rise of competitive, alternative, preferential regional trade agreements and internal administrative issues. He used the theoretical framework of legitimacy created by Ellen Buchanan and Robert Killane to frame these issues. They had suggested three main conditions for legitimacy of international institutions: moral acceptability, comparative benefit and institutional integrity. Under the first condition of this framework, both RTAs and the WTO qualify, as trade globalization is considered to be inherently good. Therefore, the greater questions concern comparative benefit and institutional integrity. Comparative benefit refers to evaluating one institution relative to another. Institutional integrity asks if the institution serves the purpose it is intended for – in this case, trade globalization.

Professor Ewing-Chow believes there is a risk that the WTO could go the way of the League of Nations if it does not move forward. The cycle of promise and disappointment since 2001 creates a question mark for its future. In this environment, an alternative has emerged, in the form of RTAs. Since 2001, there has been a 50-60% increase in the number of RTAs. Many nations are now diverting their trade resources to RTAs because they see little progress on the WTO front, demonstrating that they do not believe the WTO provides a comparable benefit.

Furthermore, according to Professor Ewing-Chow, the WTO also has weak institutional integrity because it lacks a clear mandate. For example, developed countries take the view that the WTO is about free trade, while the BRIC countries (Brazil, Russia, India, and China) are pushing back with their own demands and interpretation of the role of the WTO. Also, the member countries have never agreed on whether or not development is one of the goals of the WTO. The dichotomy between developed and developing countries resulted in the current impasse, which has lasted for seven or eight years.

However, despite its flaws, the WTO has more institutional integrity than many free trade agreements. It is a relatively transparent organization; free trade agreements are not transparent, nor is there a clear mechanism for new members to join. Also, free trade agreements are usually negotiated bilaterally, with limited monitoring. Although recently a transparency mechanism was included by the committee on regional trade agreements under the WTO, monitoring requires real enforcement, not simply naming violators publicly.

In his closing statement, Professor Ewing-Chow commented on the subject of transparency within the WTO. He agreed with Professor Steger that the WTO is more transparent and open than the IMF and World Bank, but that non-state activists and NGOs believe the WTO to be undemocratic because they are not able to participate in the negotiating process. Ewing-Chow differentiated “democratic” from “accountable” by clarifying that a democratic process does not mean that there is true accountability, and a lack of direct democracy does not mean that accountability and transparency do not exist. In the WTO, countries’ representatives are responsible to the electorate in their country. The WTO promotes transparency by publishing its reports. Ewing-Chow does not think it would be appropriate

for NGOs or non-state actors to be treated as equal members in WTO deliberations. First, NGOs already have a voice. Second, many developing countries are suspicious of NGOs and non-state actors because they come primarily from developed countries; they insist that the NGOs' roles must be acceptable to developing countries, not only developed countries.

Professor Janow commented that the WTO is essentially an enlarged version of the General Agreement on Tariffs and Trade (GATT), and in fact is still housed in the old GATT building. "The genius of the GATT was that it recognized that you could come to agreement on some common principles that would govern international trade, without harmonization of national systems." This principle cultivated the diverse membership that comprises the WTO. Janow also underscored a key difference between the WTO and other international institutions: "Unlike the Bank and the Fund, which have inherent powers, the WTO has no inherent powers. It is only the powers of negotiation that result in the membership, that result in binding rules, and then dispute settlement. So it's structurally a very different institution than other international institutions."



Merit E. Janow

Professor Janow also gave her thoughts on the imbalance between the dispute settlement system and parliamentary system. She said rebalance should be in the form of strengthening the parliamentary function, not weakening the dispute settlement system. Professor Janow also addressed her colleagues' concerns regarding cases that are too complex or political for the dispute settlement system, saying that in her experience on the AB, they have already faced such cases, and were able to successfully resolve them. She acknowledged, however, that there might be cases in the future that are beyond the scope of the AB. In that situation, she cautioned the AB against stitching together a framework that might cause it to be accused of overreaching.

With regard to regional trade agreements, Professor Janow encouraged the WTO to think more creatively in its response to RTAs. She also raised the idea of bringing together a group of prominent economists who would develop indicators of deep integration that would reflect substantially all trade. From these indicators, a template could be developed with which neutral third parties could evaluate RTAs to determine whether or not they advance economic and trade integration.

On the issues of legitimacy and transparency, Professor Janow observed that the WTO has experimented with various ways to increase transparency, such as allowing other governments to sit in on discussions and hosting NGO days or briefings with civil society

groups. However the negotiation or dispute settlements cannot be fully open processes, and there is still room for the system to evolve.

Professor Janow concluded with an open question on how the international rules system will address the trillions of dollars used to support domestic industry in the United States, Europe and other countries to combat the global financial crisis.



Michael Ewing-Chow, Debra Steger, Merit E. Janow

Question and Answer session

An audience member asked whether some culpability resides with the international organizations for the financial crisis. Professor Ewing-Chow responded that the WTO, which is a framework that allows people to trade freely, was not directly involved in any of the problem areas leading up to the financial crisis.

The second question concerned the democracy and transparency of green room meetings, where only a few countries can participate. Professors Janow and Steger both replied that

green room meetings now are more open than they were in the past. Steger suggested more formal mechanisms for accountability and representativeness at the WTO, such as a management committee that would allow all countries an opportunity to be part of a rotating membership. However, the reality is that all members of the WTO cannot participate in every committee meeting or negotiating process because that kind of burdensome structure would paralyze the WTO. According to Steger, "We have had informal groups in the WTO in the past, and the composition of them has changed to reflect the new power realities in the world today. But I'd like to see a more formalized process that really is more accountable. I wholly agree with what Michael said - the concern should not be on democracy within the WTO, but on accountability and representativeness."

The final question concerned what mechanisms exist to push through reforms. Professor Janow responded that it is the job of the membership to self-identify reforms, but there is no freestanding body that currently does this. Reform requires countries to come forward with ideas, which others can rally around. Professor Steger supported the idea that institutional reform has to be generated within, not imposed upon, the WTO. This may be one of the reasons why no action was taken on the Sutherland Report. In Steger's opinion, the Europeans are the most likely to lead on issues of economic integration and institutional integrity. They have even drafted a charter for a WTO parliament, which would be a body that brings together parliamentarians from various countries.

Professor Ewing-Chow offered the final thought. "On the point you made of who is going to make this happen, I think it's going to be a very endogenous process. Nobody today can make the WTO do anything because it is the sum of its members, and two-thirds of those members today are developing countries. And they're not going to be able to come to common consensus, either by the quad, or even by the green room, absent a groundswell from the bottom saying that this is something that is good for everybody."