

Restoring Trust in Trade

International Colloquium: 17 December 2018

*Effecting Global Economic Governance
through the WTO: One Step at a Time*

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Overview of presentation, based on contribution to *Restoring Trust in Trade*

- **Against background of changed circumstances, examination of four themes of the conference on ‘Effective Global Economic Governance by the WTO’ that Peter and his colleagues organised at Vaals, near Maastricht, in 2005 (2005) 8 *JIEL* 667**
 - 1. Consensus decision-making**
 - 2. Issues of transparency, democratic legitimacy and participation by civil society in WTO decision-making**
 - 3. Secondary law-making by WTO bodies**
 - 4. Role of the WTO Secretariat**

Changed circumstances

- **Backlash against globalisation, WTO and neoliberal economic order in favour of economic nationalism and increased protectionism**
- **greater move towards regional and mega-regional trade arrangements, e.g. CPTTP and CETA**
- **retrenchment from multilateralism towards plurilateralism, bilateralism**
- **move towards unilateral action – forms of exceptionalism, isolationism and anti-elitist & populist trade policies**
- **return to power politics *versus* rule of law-based trading system**
- **multilateral trading system served well but 25 years later (?)**

Consensus decision-making at WTO

- **Consensus decision-making has become Achilles heel of WTO**
 - **enshrined in Art. IX:1 and fn. 1 WTO Agreement**
 - **following adoption by General Council of ‘Decision making Procedures under Articles IX and XII of the WTO Agreement’ (WT/L/93) - waivers and accessions, subject to voting, by consensus**
 - **reinforced by consensus in dispute settlement and when amending DSU (Art. X:8 WTO Agreement)**
- **problem of built-in ‘veto’ effect – gives too much weight to *de facto* economically more powerful WTO Members**
- **voting seen mostly as fall-back (or used as a threat) where consensus cannot be reached with exception of amending provisions in multilateral trade agreements**



Transparency in WTO decision-making – now regular work and transparency

- Previously more focus on external transparency of WTO
 - relationship of WTO to NGOs – now broader civil society
 - document de-restriction – problem of JOB documents
 - *amicus curiae* briefs before panels and Appellate Body & opening up WTO dispute settlement proceedings to public
- now increasing importance of internal transparency – notifications to WTO councils and committees (EU Proposal on regular work and transparency)
 - complete and timely as well as effective and interactive notifications
 - better monitoring through requiring WTO Member to explain delays, give substantive replies / allow quantitative assessment by Secretariat / publish comments and replies on public database / put non-compliant Members on spot
 - US wants Working Group on Notification Obligations and Procedures – report annually
 - sanctions for wilful and repeated non-compliance – enforce notification compliance (proposals: EU, Sep 2018 and US, March 2018)
 - counter-notifications, e.g. through joint counter-notifications / consequences
 - strengthening TPRM, following next appraisal (no date set) – no specific plans



Democratic Legitimacy and Civil Society

- **Issue of parliamentary participation in foreign trade at national and multilateral level ebbs and flows (US is opposed)**
 - comparative study of parliamentarians' views of alternative mechanisms for ensuring parliamentary oversight of WTO rule-making (Shaffer, 2004)
 - Parliamentary Conference on the WTO, organised by Inter-Parliamentary Union (IPU) and European Parliament 2003-2018 – aim to enhance transparency and accountability of WTO activities [6-7 December meeting addressed WTO reform]
- **civil society – study by Hannah et al, 2017 – critical of WTO more public relations exercise, e.g. annual Public Forum, should not define the terms of engagement – need more focus on trade and SDGs + digital agenda**
 - narrow lens through which WTO views civil society, based on NGOs
 - 2013 Panel of Experts report on WTO Reform Agenda – better national trade dialogue
 - debate on global trade governance among CSOs has dissipated or shifted forum, e.g. to mega-regionals, e.g. CPTTP, CETA, possibly USMCA (ex NAFTA) – EU FTAs with trade and sustainable development (TSD) chapters with civil society for a and domestic advisory groups (DAGs)



Secondary rule-making and role of WTO Secretariat

- **Domain of secondary rule-making – has morphed into idea of adjusting and clarifying the rule-book incrementally through the WTO councils and committees but without concrete proposals, as yet**
 - **adoption of decisions by some committees, could be expanded**
 - **EU planning to assess each of multilateral trade agreements for WTO rules advancement**
 - **should include services as well as goods, especially since services agenda is incomplete (EU proposals on WTO modernisation)**
- **role of WTO Secretariat – EU, as always, sees possibility for Secretariat to be more involved in qualitative assessments of notifications and replies to comments + more active role in TPRM to highlight unnotified measures (US broadly in favour – March 2018)**

