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WTO – Challenges for the next 20

OMC – Desafios para os próximos 20 anos

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Abstract: International trade is facing some significant challenges: a serious deadlock to conclude the last round of the multilateral negotiation at the WTO, the fragmentation of trade rules by the multiplication of preferential and mega agreements, the arrival of a new model of global production and trade leaded by global value chains that is threatening the old trade order, and the imposition of new sets of regulations by private bodies commanded by transnationals to support global value chains and non-governmental organizations to reflect the concerns of consumers in the North. The lack of any multilateral order in this new regulation is creating a big cacophony of rules and developing a new regulatory war.

Keywords: WTO; mega-agreements; value chains; regulatory war.

Resumo: O comércio internacional está diante de significantes desafios: o impasse para concluir a rodada de negociações multilaterais da OMC, a fragmentação das regras do comércio com a multiplicação dos acordos preferenciais de comércio, a chegada de um novo modelo de produção e distribuição liderado pelas cadeias globais de valor e a imposição de um novo conjunto de regras determinadas pelas transnacionais e organizações não-governamentais. A ausência de uma ordem multilateral para todas essas novas regras está criando uma grande cacofonia e desenvolvendo uma nova guerra regulatória.

Palavras-chave: OMC; mega-acordos; cadeias de valor; guerra regulatória.

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A new paradigm is modeling the World: revolutionary innovations in all fronts, new information technologies, huge mobility of capital, use of risky financial tools, globalization of production, new emerging powers and the impact of consumer concerns on governmental policies. These phenomena are shaping the World and forcing the advent of a new World Order in the Multilateral Monetary, Financial, and Trading System.

The effects of this new paradigm are also transforming global governance. The political and economic orders established after the World War and centered on the multilateral model of UN, IMF, World Bank, and the GATT, leaded by the developed countries, are facing significant challenges. The rise of China and emerging countries shifted the old model to a polycentric World, where the governance of these organizations are threatened by emerging countries demanding a bigger participation in the role and decision boards of these international bodies.

As a consequence, multilateralism is being confronted by polycentrism. Negotiations for a more representative voting process and the pressure for new rules to cope with the new demands are paralyzing important decisions.

This scenario is affecting seriously not only the Monetary and Financial Systems but also the Multilateral Trading System. International trade is facing some significant challenges: a serious deadlock to conclude the last round of the multilateral negotiation at the WTO, the fragmentation of trade rules by the multiplication of preferential and mega agreements, the arrival of a new model of global production and trade leaded by global value chains that is threatening the old trade order, and the imposition of new sets of regulations by private bodies commanded by transnationals to support global value chains and non-governmental organizations to reflect the concerns of consumers in the North based on their precautionary attitude about sustainability of products made in the World. The lack of any multilateral order in this new regulation is creating a big cacophony of rules and developing a new regulatory war.

I. WTO, the new generation of PTAs and the Mega-agreements

The first challenge of the Multilateral Trading System is how to break the impasse of the last round of negotiations – the Doha Round. Since 2002, WTO members are struggling to balance the interests of developed and developing countries under the new geometry of power derived from the rise of the emerging countries. As a response to this impasse, many countries preferred to concentrate political efforts with the negotiation of preferential trade agreements.

With the difficulties to conclude the Doha Round and the challenge to adapt the old trade rules to the new reality, the US and the EU decided to launch a new generation of PTAs with several of their partners. Some examples are the US-Korea, EU-Korea, EU-Canada, US-Australia, and US-Chile agreements.

Moreover, to deal with the new challenges of trade, the US and the EU are negotiating what is being called 21st century PTAs: the Trans-Pacific Partnership – TPP (US, Japan, Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore and Vietnam) and the Transatlantic Trade and Investment Partnership – TTIP (US and EU). These two mega-agreements will enclose half of World trade but less than 50 countries. Behind these two new strategies of the US and the EU are the geo-economic interests of these partners and a response to the aggressive trade and investment policies of China.

These mega are a new sort of agreements. More than the reduction of tariffs, they aim to define a new structure and modalities for all kinds of non-tariff barriers to trade, along with new rules for important trade related issues such as investment, competition and new concerns as environment, climate, labor, food scarcity, animal welfare, private standards as the result of a mounting consumer pressure.

Many emerging countries as Brazil, China, and India, as global international traders, prefer to give priority to the multilateral track, where they presume to better influence the trade game and better defend its interests. However, the conclusion of the Doha Round is more difficult to achieve than expected. After almost two decades, the only tangible result is the Agreement on Trade Facilitation.

Many countries, on the contrary, chose to pursue another track: to increase their trade through negotiations of PTAs. This strategy, on the one hand, creates new market opportunities, but on the other hand results in the fragmentation of international trade regulation, creating conflicts and lack of transparency, accountability, coherence, and legitimacy.

There is a new reality that must be confronted. The US had launched the TPP, encompassing several countries in the Pacific region and the EU is changing its priorities from WTO and

PTAs to opt for a new challenge – the negotiation with its most controversial trade partner, the US. The creation of the TPP and the TTIP are revolutionary initiatives to the trading system. They will surely benefit its parts but, at the same time, will create an uncertain scenario for all other trade partners. Due to their sizes, they will establish a new system of rules, probably in conflict with WTO because it will discriminate parts-in from parts-out of these PTA. New rules will occur in areas expanding WTO rules (WTO-plus) as service and intellectual property, but also, with rules in new areas as environment, climate change, labor, investment and competition (WTO-extra rules).

The new generation of PTAs and the megas, when concluded, will promote a deep economic integration within its members, which should result in the elimination of several trade barriers, regulatory harmonization or regulatory equivalence, and creation of regional value chains. The benefits of this deep integration include an increase in business opportunities (trade in goods and services and investments) amongst the partners as well as the exchange of know-how and technology through the internationalized production chain, enhancing the countries' competitiveness.

However, the formation of these megas will affect negatively trade partners that do not participate in this process of regional integration. When tariff and non-tariff barriers are considered, the negative effects on some outsiders, such as the BRICS, will be significant, not only in terms of growth but also in terms of trade balance.

Facing the reality of the multilateral trading system with the crises of the WTO and the multiplication of a new generation of PTAs and mega agreements, the excluded countries, encompassing emerging, developing and least developed countries, will have to rethink their strategies related to trade policies.

- They can follow passively the negotiation and implementation of these new generations of PTAs. The consequence is that these new rules will be imposed to the excluded countries and they will need to adapt and follow several of the requirements present in these two agreements without having participated in the drafting of such rules, and thus, without being able to negotiate its own interests and perspectives in the regulation of such themes. Therefore, becoming rule takers, instead of rule makers, and bearing all the costs related to their late arrival in the new generation of international trade rules.

- They can accept the new reality and decide to be a member of these new blocs, as soon as the first generation of mega is created. There will be a short space to negotiate their interests since the degree of freedom will be smaller. This option will represent the incorporation of the new models of trade under the assumption that participating in the benefits will compensate the costs of adaptation.

- They can decide to maintain a small number of PTAs and to leverage the only forum that has a multilateral character – the WTO. The impulse for the creation of the mega can have two reasons. One is that the EU and the US, after many years, could not impose their interests upon the emerging countries and decided to go to another track for their trade policies. The other is that they decided to create new rules to impose to the other, having as objective the transformation of the WTO in a weak organization. The only solution is for all the excluded countries to return to the WTO and make a last effort to close the Round in exchange of a new round with all the important new issues.

The new paradigm of the World, however, asks for a profound reform of the WTO, not only decision process by consensus, a new geometry for agreements as plurilaterals and multilaterals, and new forms of trade for developing countries.

II. Global value chains

The International Trading System is incorporating a new paradigm in the production of goods and services – the paradigm of the of global value chains. The intensification of this model in the production system is forcing trade experts to reconsider many rules of trade regulation and also to defend this model as the new vector of integration for developing countries in international trade. OECD, IMF, World Bank and WTO are investing great efforts in the analysis of these global chains.

Numerous definitions are being proposed in order to characterize global value chains. A chain can be identified as a set of activities required to produce and deliver a product to the final consumer, including services carried out prior to production as R&D, software, design, branding, financing, activities of system integration, as well as post-production services such as logistics and after-sales services. There are producer-driven chains for high-tech products based on capital, but also consumer-driven chains that for mass products based on lower wages.

Evidence points to the low level of integration of many emerging and developing countries regarding global value chains. In order to guarantee their integration, it will be necessary to rethink their trade policies towards new industrial policies aiming to achieve greater competitiveness for their national industries.

It can be argued that there are two main options open for these emerging countries not yet integrated. On the one hand, these countries could conduct unilateral inclusion policy with the adoption of an open trade regime by reducing tariffs, increasing flexibility in rules of origin and reducing trade protection via antidumping, with financing and tax incentives in the search for technological innovation. On the other hand, it is also possible to adopt a policy of negotiating preferential trade agreements with countries that complement such insertion, via reduction of tariffs, coordinated rules of origin, and importation of higher-tech components and technology transfer.

All the logic of global value chains should be taken into account when emerging countries discuss their trade policy and whether and how they intend to be integrated into global chains changes. The logic of global value chains is significantly affecting the logic of their international trade policies and the same is true for the inverse.

III – Regulatory barriers, market standards and the rise of the consumer interests

The Trade System is facing a new challenge with the multiplication of rules that affects not only the trade of goods and services but also the production methods, labor standards, and the impact on the environment and climate. Important trade regulations also encompass many other rules such as customs measures, investment, and competition rules, not to mention energy, emissions, animal welfare, and geographic indication. More than tariff barriers, trade is being affected by the widespread imposition of regulations, standards and certifications, and detailed labeling about the origin of inputs, methods of production, and impacts on sustainability of every product.

Regulatory measures are being used to differentiate products. They can appear in technical regulations (mandatory) and standards (non-mandatory) for industrial products, sanitary and phitosanitary measures to food, voluntary standards related to labor, and voluntary or mandatory standards related to sustainability of production.

They can be created by national governments or international governmental organizations as international standards. They can be negotiated by international private associations as international private standards and incorporated by governments. They can also be created by the market through transnational enterprises imposing standards on their value chain, by non-governmental organizations or consumers associations as “voluntary” standards.

The main problem of this regulatory cacophony is that each rule creates its own regulation, standard, and certification. They can be created by several different entities as private sectors, associations, transnationals, and governments. They can be mandatory or voluntary, or can be imposed by the coordinators of the production chains.

The multiplication of these standards is also imposing new rules in the preferential trade agreements. The result is the creation of three types of governance: one is the regulatory coherence among domestic bodies inside the country; other is the regulatory convergence to be negotiated among partners of the same trade agreement, involving the discussion of different methodologies of work as harmonization or equivalence of standards. When countries of different level of development are interacting, a third type of governance is created, that of regulatory cooperation.

There is an important issue behind all this variety of standards in international trade. The great majority of this government or non-governmental, private or market, national or international regulations are being created by developed countries under the pressure of their consumers, conscientious with the future of the Planet. Developing and more especially emerging countries are also aware of the main problems concerning sustainability. However, they are in another level of development. Trade is an important component of their economies and the developed World is an important market for their exports. What developing countries are facing now is the multiplication of new barriers to their products.

In international trade, the multiplicity of regulations, standards and certifications can be transformed in trade barriers much more significant that the old tariff barriers. Certainly they are the new 21st Century model of trade barriers, a new divide between the North and the South. There is an urgent need to put some order on this regulatory chaos. It is time to the main actors negotiate some international rules to transform these standards in instrument of development not of a new division among countries.

Governmental regulations and standards are already incorporated in the rules of WTO. However, developed countries are blocking the discussion of private and market standards in the WTO. They are not recognizing the effects that private standards are creating in the international trade. They are distorting trade, and under the responsibility of WTO members and its governments.

Private – market – non-governmental – transnational standards, whatever the chosen name, are important issues for developed countries, created mainly because of the concerns of their citizens. However countries are in different degrees of development and awareness in relation to sustainability demands. To transform private or market standards in significant barriers to trade could cause a bigger threat that is to undermine the whole meta-structure of the WTO, created by a huge effort of its members, along the last seventy years.

In the present Global World of production and consumption, in the era of global governance, new barriers should not be imposed to the developing countries but be discussed in the only forum that has a multilateral dimension – the WTO.

Conclusion

These three important trends, the megas, the value chains and the market standards are not only impacting the Trading System, its structure, rules and instruments of action, but they are also damaging its whole framework constructed along the last 70 years. In addition, they are creating a new and severe divide between develop, some emerging and many least developed countries.

The dilemma is clear – either these three new threats are analyzed and a new set of rules are negotiated among all the players in a multilateral way – that is in the WTO – or the new Global Trading Order will be split by a new war, a regulatory war, that will divide the Global Trade Order in the Global North against the Global South.