

UNIVERSITY OF LJUBLJANA
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BACHELOR THESIS

**THE WORLD TRADE ORGANIZATION REFORM:
A MAKE-OR-BREAK MOMENT**

Ljubljana, May 2020

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AUTHORSHIP STATEMENT

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TABLE OF CONTENTS

INTRODUCTION.....	1
1 INTERNATIONAL ECONOMIC ORDER.....	2
1.1 The role of the WTO	3
1.2 Principles of the WTO	5
2 CHALLENGES FACING THE WTO.....	6
2.1 Rising protectionist measures and economic nationalism	7
2.2 Dispute settlement system.....	10
2.3 Multilateral negotiations and the balance between multilateralism and regionalism ...	13
3 REINVIGORATING THE WTO AND MEMBERS' POINTS OF VIEW ON THE MODERNISATION PROCESS	17
3.1 Updating trade rules	18
3.2 Revitalizing the dispute settlement system.....	20
3.3 Strengthening the WTO's regular working practices.....	23
3.3.1 Consensus.....	23
3.3.2 Monitoring function and transparency	26
3.3.3 The role of the WTO Secretariat	27
CONCLUSION.....	29
REFERENCE LIST	30
APPENDIX	41

LIST OF DIAGRAMS

Diagram 1: Offer curve	9
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LIST OF GRAPHS

Graph 1: World merchandise trade (% of GDP)	4
Graph 2: World trade in services (% of GDP)	4
Graph 3: World average tariff rate	5
Graph 4: Number of trade-distorting global policies from 2010-2019	7
Graph 5: Average duration of DSU procedure in the 1995-1999 and the 2007-2011 periods.....	12
Graph 6: Time necessary to conclude WTO negotiations.....	14

LIST OF APPENDICES

Appendix 1: Povzetek (Summary of the thesis in Slovene language).....	1
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LIST OF ABBREVIATIONS

sl. – Slovene

AB – (sl. Pritožbeni organ) Appellate Body

ASCM – (sl. Sporazum o subvencijah in izravnalnih ukrepih) Agreement on Subsidies and Countervailing measures

CMA – (sl. Sporazum o kritični masi) Critical Mass Agreement

DSB – (sl. Organ za razreševanje spora) Dispute Settlement Body

DSU – (sl. Razumevanje razreševanja spora) Dispute Settlement Understanding

EU – (sl. Evropska unija) European Union

GATT – (sl. Splošni sporazum o carinah in trgovini) General Agreement on Tariffs and Trade

GVC – (sl. Globalna veriga vrednosti) Global Value Chain

G20 – (sl. Skupina dvajsetih) Group of Twenty

ITO – (sl. Mednarodna trgovinska organizacija) International Trade Organization

LDC – (sl. Najmanj razvite države) Least-Developed Country

MC11 – (sl. Enajsta ministrska konferenca) 11th Ministerial Conference

MC12 – (sl. Dvanajsta ministrska konferenca) 12th Ministerial Conference

MFN – (sl. Pravilo največje ugodnosti) Most-Favoured-Nation

MSME – (sl. Mikro, majhna in srednje velika podjetja) Micro, Small and Medium-Sized Enterprises

OPA – (sl. Odprt večstranski sporazum) Open Plurilateral Agreement

PA – (sl. Večstranski sporazum) Plurilateral Agreement

RTA – (sl. Regionalni trgovinski sporazum) Regional Trade Agreement

SDT – (sl. Posebna in diferencialna obravnava) Special and Differential Treatment

SOE – (sl. Državno podjetje) State-Owned Enterprise

TFA – (sl. Sporazum o olajševanju trgovine) Trade Facilitation Agreement

TOT – (sl. Pogoji menjave) Terms of Trade

US – (sl. Združene države) United States

WTO – (sl. Svetovna trgovinska organizacija) World Trade Organization

INTRODUCTION

The global trading system is in the midst of a tectonic shift. The World Trade Organization (hereinafter: WTO), which governs global trade rules, faces its deepest crisis since its foundation. Therefore, it is important to understand why the WTO faces a make-or-break moment. The aim of this paper is to explain the reasons behind the WTO crisis and present possible solutions that could reinvigorate the WTO.

Current global events make the topic extremely relevant. A trade war between the United States and China produced tremendous damage to the economies of each country and has decreased the welfare of many people. Furthermore, it has brought into question the benefits of trade liberalization and globalization because more open international trade creates winners and losers. Unequal distribution of benefits connected to international trade liberalization is hotly debated in many countries. As a consequence, trade-distorting policies are becoming more popular all around the world and protectionism is on the rise in countries that have enormous power and influence on the global economy. Accordingly, the WTO has struggled to keep its crucial role in maintaining a rule-based trading system because global events are undermining the WTO's credibility and many seem to have forgotten the fact that the WTO has brought substantial achievements to the world and has helped to increase overall welfare.

By analysing the role of the WTO one can better understand why the world needs such an international institution and that global trade without the WTO would severely damage the global economy. However, only when the WTO is fully operational can the promised benefits of its existence be achieved. Therefore, it is important to improve and strengthen the role of the WTO in order to preserve its relevance and effectiveness. Especially now, when new technology is the main attention grabber, while environmental concerns remain ever present, when the United Nations' sustainable development goals must be achieved by 2030, and when the current coronavirus pandemic makes electronic commerce even more important and also delivers other challenges to the trading system, it is extremely important that the WTO remains active and adapts to new challenges.

Adapting to new 21st century challenges means accepting new trade rules and updating the rules that were negotiated in the 20th century. Because decisions at the WTO are traditionally made by consensus, it is important to figure out if that working practice is making the WTO efficient or is a source of the current stagnation. Moreover, it is crucial to realize that negotiated trade agreements are not worth much without a fully operational WTO dispute settlement system where rules can be enforced. From 11 December 2019 the WTO lost its ability to provide a fully operational dispute settlement system and rules can no longer be enforced. Consequently, the whole system is endangered, and the effectiveness of the WTO is called into question.

To better understand why the WTO reform is needed or why the WTO is not publicly perceived as relevant, effective, fully operational and credible the following research

questions were formed: “What are the main challenges faced by the WTO that block the organization’s progress?”, “What are possible solutions that could help to solve the current WTO crisis?” and finally, “How should the WTO be reinvigorated from the point of view of WTO members?”. The goal of this paper is to find answers to these questions and to provide required information in order to better understand the discussed topic.

To obtain the necessary information different works will be analysed and reliable data will be researched to make the conclusions valuable and useful. The thesis is based on a theoretical analysis and therefore no hypotheses are being made. For the purpose of understanding the need for the WTO reform findings from relevant empirical studies will be included that will help to produce the required knowledge. Furthermore, to obtain an in-depth understanding of the research area, qualitative and quantitative approaches will be combined by analysing graphs, explaining models, analysing literature, observing trends, analysing relevant studies and analysing other data.

The thesis is organized in the following order. Firstly, the international economic order is discussed and the role of the WTO is explained. Secondly, the challenges of the WTO are introduced. Finally, possible solutions to the mentioned challenges are provided and different WTO members’ points of view on the WTO reform are presented.

1 INTERNATIONAL ECONOMIC ORDER

Over the years the International Economic Order has been changing. The agreed-upon international rules, norms and procedures that define the cross-border exchange of goods, services and capital were created to foster trade liberalization (Braithwaite & Drahos, 2000).

The global trading system that was set up after World War II was to a large degree formed by the United States (hereinafter: US) (Gebremariam, 2017). The US funded and supported the creation of international financial institutions, namely the International Monetary Fund and the World Bank, to help the post-war economies recover and to ensure the stability of the system (Cox, 1979). The International Trade Organization (hereinafter: ITO) was to be the third pillar of the global economic order and its aim was to regulate trade and oversee areas such as economic development, employment, commodity agreements, business practices, tariff reductions and foreign trade investment (Drache, 2000). While waiting for the ITO to come into existence, the 23 participating countries signed an interim international trade agreement named the General Agreement on Tariffs and Trade (hereinafter: GATT) (Lewis, 1978). Because the United States failed to ratify the charter for the ITO, the proposed institution never came into existence. As a consequence, the GATT became the international regime governing trade (VanGrasstek, 2013).

Even though the GATT was originally planned to be provisional it turned out to be the only major agreement from 1948 to 1994 that was defining rules for international trade (Fan & Qianlin, 2017). Multilateral trade negotiations (known as “trade rounds”) were the driving

force to further reduce trade barriers and to update the GATT rules so that the global trading system would become more liberal. However, by the early 1980s the global trade became more complex compared to the 1940s and this was a sign that the rules of the multilateral trading system should be extended and made more suitable for new challenges (Abbott, 2013). For example, trade in services was becoming more and more important but the GATT rules did not cover this area. As a result, the Uruguay round that started in 1986 produced a crucial reform of the world's trading system that included topics connected to rules for dealing with trade disputes and areas associated with intellectual property, services, agriculture and textile (Krugman, Obstfeld & Melitz, 2018).

The Uruguay round also led to the creation of the WTO in 1995. The WTO covers a broader scope of trade topics compared to the GATT and even though the WTO replaced the GATT as a formal international organization, the GATT 1994 (an updated version from the GATT 1947) remains a component of the WTO rules for trade in goods (Aaronson, 2001).

1.1 The role of the WTO

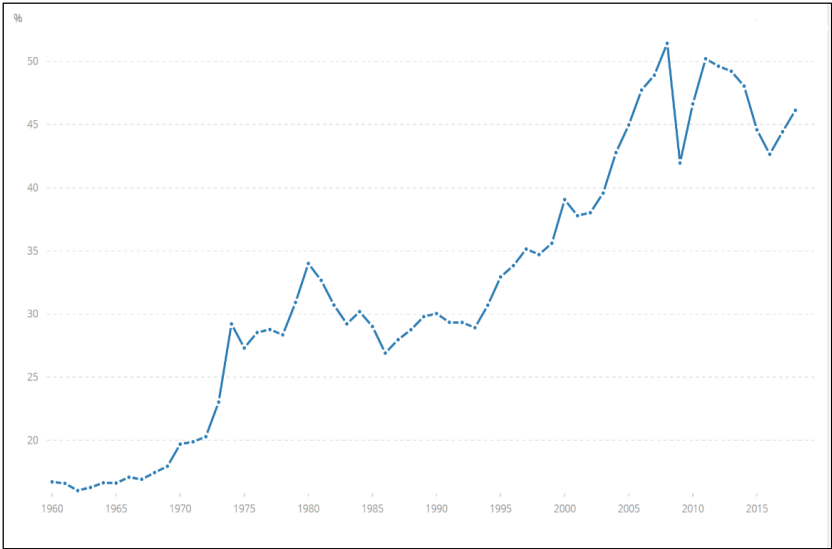
Since the establishment of the WTO on 1 January 1995, this international organization remains the only one dealing with rules for global trade between its 164 members (WTO, 2020). The rule-based international trading system as we know it today could not have existed without all of the negotiated trade agreements made from year 1947 (the year the GATT was signed) until today. Thus, having an institution that defines the rules of the game when it comes to trade in goods, services and intellectual property rights is a vital factor in producing a certain degree of stability and predictability.

The important role of the WTO is also seen in its attempt to find some degree of harmony between different members (Krugman, Obstfeld & Melitz, 2018). Members of the WTO differ in their income levels, culture, goals, economic systems (for example state capitalism versus market economies), and historic development, and such dissimilarities between members can explain why it is hard to reach an agreement among all 164 WTO members and why conflicts occur. Consequently, the WTO dispute settlement system provides a crucial place where members can address and solve their problems. Moreover, today's integrated world economy needs coordination between different government policies because it is very likely that one national economic policy will spill-over to others in the trading system (Gros, 2020). Consequently, the WTO promotes peaceful relations among members and tries to find workable solutions through the scheme of negotiations.

With its existence the WTO set the global rules for non-discriminatory, more open and fair trade. As a result of this, trade in goods (see graph 1) and services (see graph 2) has increased, the world average applied tariff rate has fallen (see graph 3), the confidence of exporters and importers has increased due to a reduction in uncertainty connected to commerce, WTO

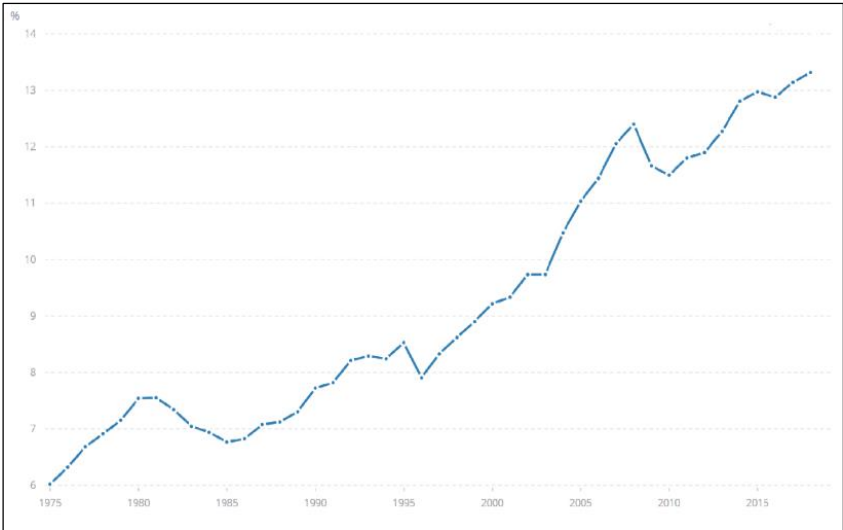
members have gained greater market access and the established rule-based WTO trading system has delivered economic development and growth (WTO, 2020).

Graph 1: World merchandise trade (% of GDP)



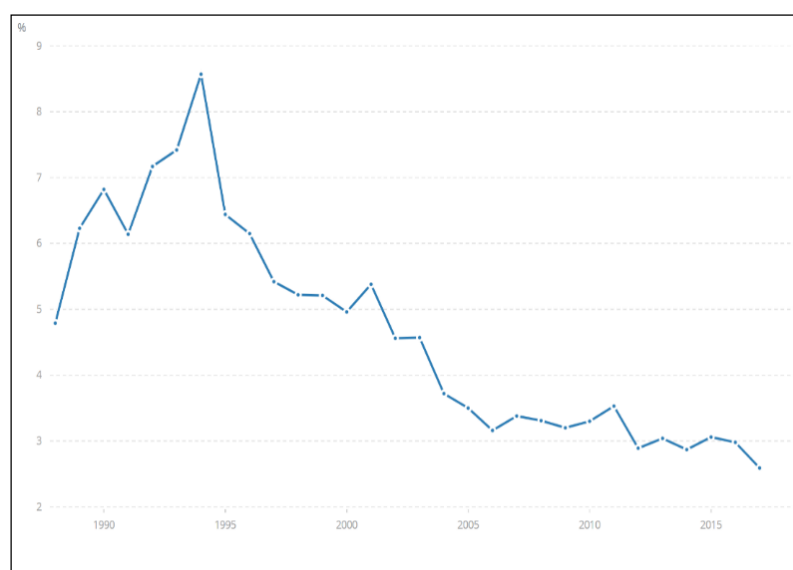
Source: World Bank (2020).

Graph 2: World trade in services (% of GDP)



Source: World Bank (2020).

Graph 3: World average tariff rate



Source: World Bank (2020).

The graphs above demonstrate the success of the WTO in its role to foster trade liberalization. Without the existence of an international institution like this, trade would hardly have become as free as it is today (compared to the period before 1995), and during the 2008 financial crisis this multilateral trading system to a large extent prevented the occurrence of broad protectionist measures as were seen in the 1930s (Ossa, 2015). Throughout the 2008 global financial crisis, trade policy cooperation between members was preserved and there was nothing resembling the Smoot-Hawley Tariff Act (Ruddy, 2010).

1.2 Principles of the WTO

The global trading system consists of different trading regimes. As a consequence of the interaction between various trading agreements, multiple layers of complexity are present in the global trading system. The WTO is the fundamental pillar in the international economic order that provides rules and principles in order to coordinate this multi-layered trading system.

Members of the WTO must respect and follow the specified principles of the organization. The most important principle of the WTO is that there should be no discrimination in the trading system (WTO, 2020). This basic non-discrimination principle is crucial for the purpose of enabling effective and overall welfare-improving international trade relations. Trade discriminatory treatments protect less productive sectors that would not survive otherwise and that leads to distortions in the market. Therefore, it is important to obey the non-discrimination principle.

The WTO promotes the non-discrimination principle through the so called Most-Favoured-Nation (hereinafter: MFN) clause and national treatment principle (WTO, 2020). MFN treatment prohibits WTO members from discriminating between countries. For example, if a member wants to lower a tariff rate for a specific product from one country it must do so for all the other WTO members as well, and special favours to individual countries are prohibited (Drezner, 2007). On the other hand, the national treatment principle prevents WTO members from discriminating between locally-made and foreign-made products (WTO, 2020). However, the WTO permits some exceptions to the non-discrimination principle but only when certain strict requirements are fulfilled.

Four more WTO principles guide the multilateral trading system. Firstly, achieving freer trade by reducing harmful trade barriers (WTO, 2020). Secondly, making the trading system more predictable by standardising the rules of the game and providing certainty in expectations for the future (WTO, 2020). As a result, the trading system becomes more stable, which has a positive effect on investment decisions. Thirdly, encouraging fair international competition where only the most productive producers survive and consumers benefit from potentially lower prices and a greater variety of products (WTO, 2020). Lastly, promoting the development of and helping less developed countries by allowing them more time to adjust to trade obligations (WTO, 2020).

The above-mentioned fundamental WTO principles guarantee that the multi-layered global trading system operates in a way that is beneficial for the overall welfare. Without these established principles it would be hard to coordinate different trading regimes. However, after 25 years of the WTO's existence the organization faces many challenges as the international economic order experiences an upheaval (Kefferpütz, 2019). As a consequence, members have criticized the effectiveness of the organization and its ability to grapple with the situation. Therefore, several members of the WTO strongly believe that the organization needs large-scale reform to be able to successfully function in the future and to retain its important role in governing world trade relations (Balino, 2019).

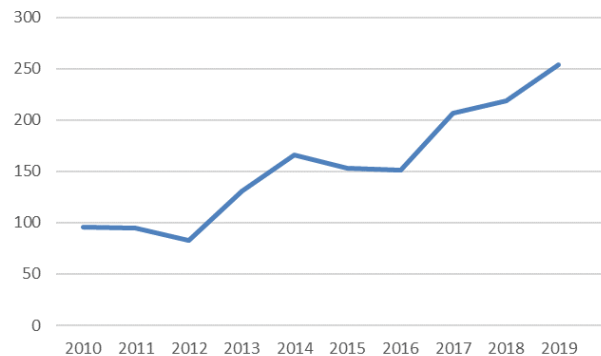
2 CHALLENGES FACING THE WTO

When the WTO was established in 1995 the world was different compared to 2020. Consequently, new rules are needed in previously unimportant areas or in areas that previously did not exist. Furthermore, some agreements need to be updated, expanded and better explained in order to close loopholes that have become evident over the years. As the global economy changes, the international trading system must follow and adjust as new issues are discovered.

2.1 Rising protectionist measures and economic nationalism

The aim of the WTO is to reduce barriers that cause distortion to trade, since such distortions decrease overall welfare. However, according to the Global Trade Alert the number of trade-distorting policies has faced an upward trend over the last 10 years (see graph 4).

Graph 4: Number of trade-distorting global policies from 2010-2019



Source: Adapted from Global Trade Alert (2020).

World events such as the trade war between the US and China, the United Kingdom leaving the European Union (hereinafter: EU) and the rising power of far-right political parties do match this upward trend of new barriers to trade, because one of the reasons why governments use trade-distortive policies is to protect domestic economic activity from foreign competition (Bluth, 2018). Since the aim of the WTO is to promote trade without discrimination such actions put pressure on the WTO's credibility.

The WTO's credibility is also being undermined by US President Donald Trump's actions that reflect his "America First" policy (Lakatos & Dimitrova, 2017). By viewing the international trade system as a zero-sum game, Mr. Trump questions the benefits of multilateral rule-based cooperation and consequently harms seven decades of remarkable trade achievements (Alden, 2019). Because he is the president of the world's largest economy, his public statements have a huge influence on the global economy and on the international trading system. Therefore, by calling the WTO unfair and the worst trade deal ever made, he points out issues that need to be solved in order to preserve the belief that WTO is important for the world trade regime (Armstrong, 2019).

One complaint that is not unique to Mr. Trump, but is shared by other members such as the EU and Japan is that at the WTO there is no agreed upon definition of a developing country versus developed country for members (Felbermay, Larch, Yotov & Yalcin, 2019). As a consequence, countries that claim to be developing receive beneficial treatment and are exempt from some obligations that, on the other hand, advanced economies must follow (Caporal & Gerstel, 2018). The country being criticized the most for taking advantage of its

developing status is China. Attention is drawn to the fact that China's position changed from 2001, when China became a member of the WTO, until now when it is the world's second largest economy (Amaro, 2020). As such, China is capable of taking on fuller agreement obligations and should stop identifying itself as a developing country (Wemer, 2019).

Another challenge for the WTO is brought by China's unique economic system, because the existing WTO rules are unable to effectively deal with non-market trade practices (Bown, 2020). Members perceive China's system with its usage of government subsidies and support for state-owned enterprises (hereinafter: SOEs) as an unfair practice that puts Chinese companies at a competitive advantage compared to foreign market players (Tran, 2019). The Chinese solar panel industry is an example of such practices. Because of the government's direct investment, cheap loans and other incentives, Chinese solar panel producers came to dominate the international market in a relatively short time (Haley & Haley, 2013). Such subsidies are problematic because they lead to overcapacity, increases in exports, and depressed worldwide prices, which can force others (for example, non-subsidized producers in the field) out of the market.

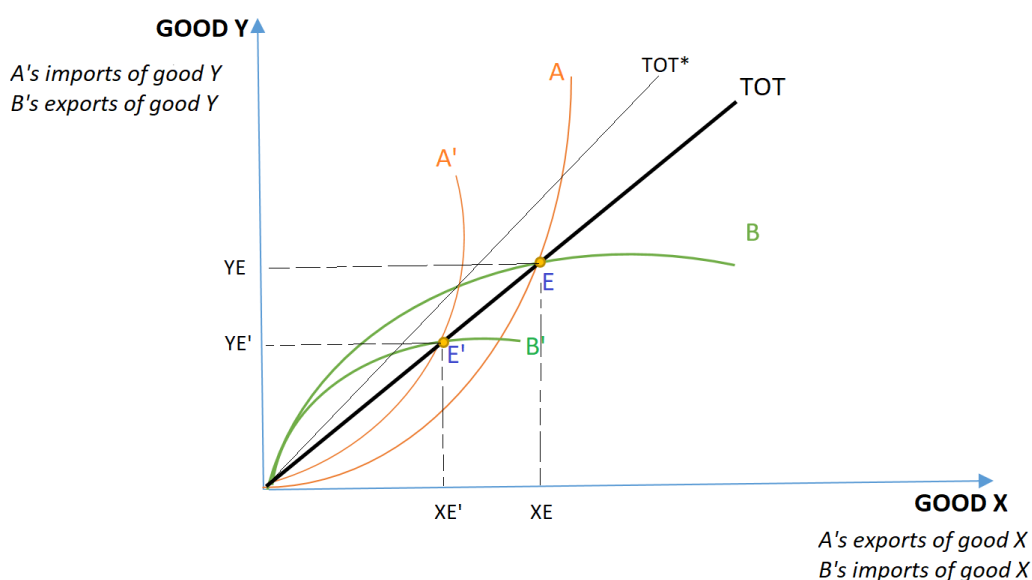
The task of the WTO's rules-based system is to find a solution for these protectionist Chinese trade policies that harm global trade. Some trade experts believe that Mr. Trump started imposing unilateral tariffs on imports from China because of the WTO's inability to properly address China's abusive trade practices (Bacchus, Lester & Zhu, 2018). As a consequence, China responded with tariffs on imports from the US and the trade war escalated. The trade war between the world's two largest economies produced tremendous damage to the economies of each country and had a negative effect on the global economy and future growth (Hamilton, 2019).

The global economy and the international trading system are currently facing an unprecedented disruption caused by the coronavirus pandemic (WTO, 2020). The challenge for the WTO is how to effectively deal with the coronavirus crisis. Global trade flows are facing blockages as many industries have ceased production for a prolonged period of time, and because production is fragmented internationally into different stages, this severely damages the global trading system. Furthermore, many WTO members have started restricting the export of medical products and have used other harmful trade measures to protect their own country from the virus (Evenett, 2020).

Offer curve can demonstrate why trade distortions reduce overall welfare, and what happens when one country first imposes a tariff and then the targeted country retaliates by imposing a tariff as well. Diagram 1 shows green and orange offer curves that belong to countries A and B (both countries are assumed to be large enough to influence the world price). The offer curve illustrates the quantity of exports and imports that a country is willing to sell and buy on the world market at all possible relative prices (Carbaugh, 2014). Point E represents the trading equilibrium between countries A and B, because at that point the world supply of good X equals the world demand for good X and the world supply for good Y equals the world demand for good Y. This equilibrium also determines the terms of trade (hereinafter:

TOT) for both countries. TOT in diagram 1 represent the ratio between the world price of good X and the world price of good Y.

Diagram 1: Offer curve



Adapted from Appleyard et al. (2020).

When country A first imposes a tariff on good Y, the orange offer curve shifts into A', because tariff causes a country to trade less at any given terms of trade (Krugman & Wells, 2015). As a consequence, the terms of trade for country A improve from TOT to TOT* but at the same time the volume of trade is reduced (it is less than before when it was at quantity XE and YE). So, in the short term increasing tariffs can be beneficial for country A if the gains from improved terms of trade outweigh the cost of distortion caused to production and consumption. But because this tariff damages country B, it is very likely that country B will also put a tariff on good X in retaliation, and its offer curve will also shift into B'. When this happens we get a new trading equilibrium at point E'. At point E' both countries are left worse off compared to point E, because the amount of trade has reduced to XE' and YE', and according to the diagram 1 the terms of trade are approximately the same as they were before country A first imposed a tariff on good Y. Therefore, joint welfare is reduced.

Diagram 1 can be used to show why the WTO is crucial for global trade system. Countries A and B find themselves in a Prisoner's dilemma. By imposing a unilateral tariff, a short-term gain is likely to be made, but it comes at the cost of ending up in a suboptimal Nash equilibrium at point E', where both countries are worse off compared to the point E, which can be understood as a point of cooperation between countries A and B (Davies, 2018).

Cooperation between country A and country B can only be achieved and sustained if there is a binding trade agreement that includes a sufficiently strong punishment against a deviator (Herzing, 2003). That is why rules for international trade were established. Therefore, the WTO helps countries maintain a higher welfare at point E and curbs cheating incentives.

Going from equilibrium point E to suboptimal point E' is exactly what happened as a consequence of the trade war between the US and China (from the diagram 1 country A can be viewed as the US and country B as China). America's trading partners believe the rules of the WTO have been broken and undermined by Mr. Trump's unilateral tariff imposition. However, Mr. Trump justifies his actions by using Article XXI of the WTO treaty. This article stresses the importance of national security and allows any member to raise tariff rates if such actions will protect essential security interests (The Economist, 2018). Nonetheless, Mr. Trump's national security justification is questionable (Armstrong, 2019). Therefore, the challenge the WTO faces is how to effectively prevent members from cheating or sidestepping the rules and in this way help members to stay at the higher welfare point E from diagram 1.

2.2 Dispute settlement system

The dispute settlement system is a crucial pillar of the WTO. Without a system that allows members to settle disputes there would be less stability in the global economy and the effectiveness of the international rules-based system would be undermined since rules could not be enforced (WTO, 2020). One of the reasons why the WTO faces the greatest crisis of its 25-year existence is the fact that new appeals can no longer be heard, because the WTO's Appellate Body (hereinafter: AB) no longer meets the required 3- member quorum (Tirkey, 2020).

The dissolution of the AB, which acts as the supreme court for world trade, is a huge challenge for the WTO. Diagram 1 can again be used to understand the importance of having an effective mechanism to resolve disputes at the WTO. Disputes are usually the consequence of broken promises and not sticking to the trade rules agreed upon by WTO members. In these cases, members have the right to invoke procedures of the dispute settlement system and retaliate if the accused member decides not to comply with the rulings (WTO, 2020). This mechanism is needed to help members stay at the optimal point E from diagram 1 (see diagram 1). Without an effective process to resolve trade disputes, members end up at suboptimal point E' because of the prisoner's dilemma. There is a threat of an outbreak of tit-for-tat tariff wars if members feel that obligations cannot be enforced and that the spirit of cooperation is lost (Beattie, 2019).

Trade war between the US and China already reflects the alarming global situation. Instead of trusting and using the established international system for settling trade disputes, and discussing problems, members acted unilaterally by imposing tariffs towards each other.

Ignoring the WTO rules and obligations poses a big threat to the credibility of the WTO (Pannatier, Hunter & Burke, 2019).

The US *modus operandi* to express dissatisfaction with the functioning of the AB was to block appointments of new judges resulting in the demise of the WTO's dispute settlement system on December 11, 2019 (Tirkey, 2020). To some degree other WTO members agree with the US concerns about the working procedures of the AB. The main issues mentioned are connected to the AB's lack of adherence to the 90-day timeframe for appellate review, the AB engaging in interpretations of rules that go beyond its mandate and thus extending the amount of judicial overreach, continued service by AB members even though their term of appointment has expired, treating AB reports as precedent (case-law practice) and concerns regarding the AB's review of facts and findings about the meaning of domestic legislation (Van den Bossche, 2019).

Settling disputes promptly and according to the specified timeframe is crucial for the stability and predictability of the system. If disputes are not solved according to the planned timeline uncertainty increases as members wait for the rulings to be announced since the outcome will have an impact on their economy (WTO, 2020). Guidelines for the amount of time a specific stage of dispute settlement procedure will last are found in Annex 2 of the WTO agreement (WTO, 2020). Annex 2 of the WTO agreement oversees rules and procedures governing the settlement of disputes (Dispute Settlement Understanding (hereinafter: DSU)) between members.

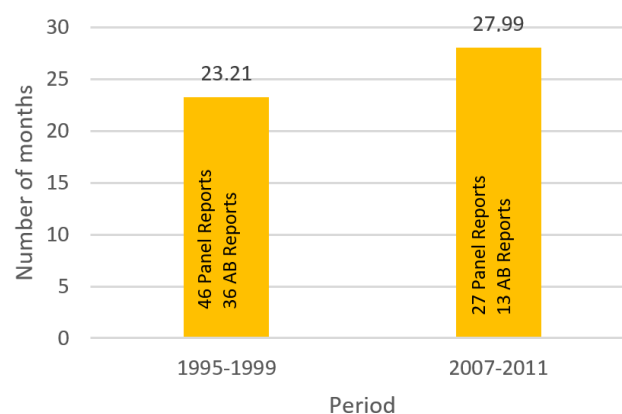
According to Article 4.7 of the DSU the planned time for the consultation phase is 60 days. If members cannot settle their conflict within this period, a panel formation request may be written by the complaining party. The establishment of the panel should be completed in a maximum of 45 days. After the composition of the panel has been determined, the involved parties should normally receive the panel's final report within six months. However, Article 12.9 of the DSU allows this period to be nine months long at most if the panel informs the dispute settlement body (hereinafter: DSB) of an acceptable explanation as to why the report cannot be issued within six months. After the final report is circulated to all WTO members, the DSB shall adopt the report within 60 days. The report will not be adopted if the DSB is notified by one side (or both sides) of a decision to appeal or if the DSB agrees by consensus not to adopt the report (WTO, 2020). Without an appeal of the panel's report the whole process should not take more than approximately 12 months, or up to a maximum of 15 months if the panel uses Article 12.9 of the DSU and prolongs the outcome of its final report (WTO, 2020).

On the other hand, when there is an appeal of the panel's report, Article 17.5 of the DSU requires that the AB provide its report within a period that should never exceed 90 days. When the AB report is finished, 30 days are left for the DSB to accept it. Only by consensus can the DSB reject the panel's report. The whole dispute settlement process that includes an appeal of the panel report, takes a minimum of 15 months to a maximum of 19 months (in cases where the panel extends the time frame) (WTO, 2020).

Based on this, it is necessary to look at the actual WTO data concerning the duration of the dispute settlement process to obtain an understanding of real dispute settlement timelines compared to what has been laid out in the DSU rules. As graph 5 illustrates (see graph 5) the average WTO dispute settlement duration was approximately 23 months in the first five years of the WTO's existence (1995-1999), and around 28 months from 2007 to 2011 (Reich, 2017). Since the DSU rules impose an absolute upper limit duration of 19 months in scenarios that include an appeal, it is clear that the WTO dispute settlement system was, in most cases, unable to resolve disputes within the time frame required by the rules. It is particularly worrisome that over time the average duration necessary to resolve a dispute increased from 23 to 28 months even though the number of panel reports decreased from 46 to 27, so there were fewer disputes to deal with between 2007 and 2011 compared to the WTO's first five years (1995-1999).

It should be clarified that the study cited above by Arie Reich (2017) from the European University Institute (Department of Law) measures the duration of settling a dispute from the date the WTO member requested a consultation up to the date when the DSB adopted the report. Hence, this calculated average duration includes both panel reports accepted without an appeal by the DSB and accepted AB reports (i.e. reports with appeals) by the DSB. This means that out of 46 panel reports from 1995 to 1999 (see graph 5) there was an appeal on 36 panel reports and the remaining 10 reports were accepted without appeal. Similarly, from 2007 until 2011 the DSB accepted 13 AB reports and the remaining 14 were accepted without an appeal. It is important to keep that in mind since cases without an appeal have shorter durations (15 months at most according to the DSU) compared to cases with an appeal (19 months at most according to the DSU).

Graph 5: Average duration of DSU procedure in the 1995-1999 and the 2007-2011 periods



Source: Adapted from Arie Reich (2020).

Against this background, concerns from WTO members regarding the WTO's ability to promptly settle disputes are justified. Furthermore, as Arie Reich notes, the situation is getting worse. In period from 2013 until 15 May 2017 the average duration from consultation phase to adoption by the DSB was 33.83 months from a total of only 8 panel reports (7 of which went to appeal) (Reich, 2017). This average duration is almost six months longer compared to the period from 2007 to 2011, despite dealing with fewer cases. The inability to speed up the process for settling trade conflicts throughout the years adds pressure on the rule-based trading system.

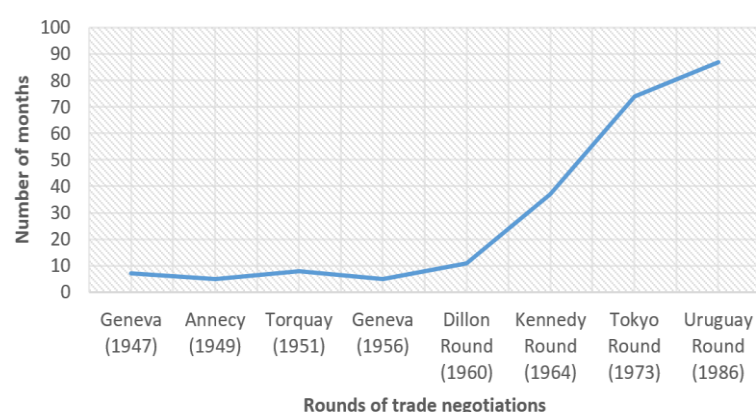
The current crisis within the dispute settlement system is extremely serious. Consequently, the relevance of the whole multilateral trading system is being questioned (Bhatia, 2019). Why would WTO members negotiate new trade agreements if rules cannot be enforced? Binding commitments between members need to rest on an effective dispute resolution mechanism. With the paralysis of the AB, ongoing trade conflicts may be left pending forever because the losing party can prevent a panel report from becoming legally binding by appealing the panel decision (Nakagawa, 2020). Addressing the problems within the dispute settlement mechanism will not be easy. The system has flaws but it is crucial that members seek solutions together instead of abolishing rules that govern global trade. It is important not to forget that the WTO's dispute settlement system became the most used state-to-state international adjudicatory mechanism and was proclaimed the jewel in the WTO's crown (Van den Bossche, 2019).

2.3 Multilateral negotiations and the balance between multilateralism and regionalism

One of the WTO's roles is to serve as a forum for negotiations on trade subjects. Over the past 73 years, 8 multilateral trade rounds were successfully concluded (Bagwell, Bown & Staiger, 2015). These rounds (trade negotiations) were crucial for producing new trade agreements among members that helped to liberalize trade and spread prosperity throughout the world.

Decisions at the WTO are traditionally made by consensus (Steger, 2009a). This working practice can, among other things, explain why the Doha Round (the 9th round since 1947 but the first round held under the aegis of the WTO) failed to be concluded. More than 160 WTO members were involved in trade talks on the Doha Development Agenda compared to 123 members involved in the Uruguay Round (WTO, 2020). As WTO membership increases, the process of reaching consensus becomes harder and requires more time (see graph 6). The Uruguay Round lasted for more than 7 years and the Doha Round (not seen in the graph 6 because it was not concluded) went on for 14 years before being declared dead by many members at the WTO's 10th ministerial conference in Nairobi (Lester, 2016).

Graph 6: Time necessary to conclude WTO negotiations



Source: Adapted from the WTO (2020).

The inability to finish the latest round has had serious consequences for the WTO. Successful negotiations are needed to get new agreements and new rules that deal with new challenges the WTO faces. Without that the progress of the international organization is impeded. As some members in the system gain influence and power globally (for example, China) disagreements between rising powers and major developed members grow and further prevent progress from being made multilaterally at the WTO (Zeneli & Czinkota, 2019).

This deadlock within the negotiation function has brought into question the effectiveness of the WTO as an institution. Trade talks based on a single undertaking (where nothing is accepted until everything is accepted) and consensus norm no longer seem able to produce valuable outcomes for the global trading system (Elsig & Cottier, 2011).

As multilateral trade talks remain locked in a stalemate, WTO members have tried to tackle issues by using alternative negotiation approaches. As a result, incentives for WTO members to negotiate regional trade agreements (hereinafter: RTAs) have grown. The WTO uses the RTA designation for any type and form of economic integration between two or more members (thus, a limited number of participants), even where the countries do not necessarily belong to the same region (Hrovatin et al., 2017). Thus, the RTA designation can be misleading because it includes regional and non-regional agreements and also agreements that go beyond trade (like in the case of the EU). Throughout the years the number of RTAs has risen; there are currently 303 RTAs in force compared to around 50 in 1995 (WTO, 2020).

The challenge the WTO faces is how to reconcile regionalism with multilateralism, since many more RTAs are in the making and the trend towards negotiating RTAs has not seemed to slow down but rather is further increasing. RTAs break the WTO rule, which prohibits discrimination between trading partners (WTO, 2020). Therefore, RTAs are an exception to the MFN treatment because only signatories of the agreement receive more favourable market access.

RTAs are signed between those parties that want to engage in deeper integration and that believe this integration can be achieved more effectively through limited participation compared to multilateral setting (Adlung & Mamdouh, 2017). Therefore, RTAs go further behind the border with the liberalization process and include rules dealing with the domestic regulation of services, foreign direct investment, electronic commerce (hereinafter: e-commerce), the environment, labour standards, gender equality, participation of micro, small and medium-sized enterprises (hereinafter: MSMEs), the competition policy, artificial intelligence, cross-border data flows, data storage, and other issues that are not or are only partially covered by the WTO (Fabry, 2019). These ambitious regional agreements have drawn attention to new 21st century challenges and have helped demonstrate issues that the WTO needs to address more broadly. However, opinions on the proliferation of RTAs and their influence on multilateral trade liberalization vary.

The 2015 Nairobi Ministerial Declaration stressed that RTAs must complement multilateral trading system and not be a substitute for it. Therefore, RTAs could work as a catalyst for greater integration through consolidation (allowing additional countries to join in later to gradually expand membership), and could be used as precedents for multilateral deals. On the other hand, RTAs hasten the fragmentation of the global trading system into many trading zones with overlapping memberships and trade coverage causing potential harm to trade flows as the trading system gets more complex and traders struggle to abide by multiple trade rules (Tran, 2020). Because RTAs can also contain policy areas that are not yet regulated multilaterally, the likelihood of inconsistencies among different agreements increases. Furthermore, by negotiating policies in clubs (meaning within RTAs) attention can be drawn away from issues that require a multilateral approach.

The rise and importance of global value chains (hereinafter: GVCs) over the years has changed the way trade is conducted globally. As a consequence, the fragmentation of production has significantly expanded and stimulated the need for deeper integration among participants in GVCs, because when goods and services cross borders multiple times before their final stage the costs of protectionist measures are amplified (World Bank, 2020). Therefore, the proliferation of RTAs throughout the years can, inter alia, be viewed as a response to more trade taking place within GVCs.

The challenge for the WTO is not only how to deal with rising number of RTAs but also how to adapt trade policy to fit the growing intensity of GVCs since the primary global trading rules were not created in the context of products with a “made across the world” label, but were more or less set up in a time when production was to a great extent national and was not so internationally fragmented (World Bank, 2017).

For GVCs to operate efficiently policies must reduce the costs of trade as much as possible. Therefore, the Trade Facilitation Agreement (hereinafter: TFA) was a major achievement at the 9th WTO Ministerial Conference. The fact that the TFA is the first concluded multilateral trade agreement under the auspices of the WTO reflects members’ recognition of the need for global rules in the trade facilitation area because today’s interconnected global economy

cannot run smoothly without such rules being in force (WTO, 2015). It is estimated that the TFA can potentially reduce global trade costs by an average of 14.3% and increase the volume of international trade by up to 1 trillion USD (WTO, 2020). Furthermore, the TFA helps least-developed countries (hereinafter: LDCs) participate in GVCs, and because developing countries and LDCs face particularly high trade costs they are likely to gain the most from the TFA (World Bank, 2018).

Better market access for the poorest nations was also one of the goals of the Doha Development Agenda (Watkins, 2015). However, negotiations under the Doha Round ended in a deadlock as contradictory views (especially on agriculture) between major developed economies and developing countries became too large (Alden, 2019). When major trading countries hold positions that appear to be far apart it may not be possible to find a solution that works for all WTO members. As a result, the process of setting down the agenda becomes a challenging step at the WTO since countries differ in views on what should be discussed in the future. Some countries want mainly to deal with new issues and others want to focus more on issues left from the Doha Round (Lester, 2016). The potential global welfare gains are lost when issues (new or old) remain unsolved at the WTO.

The turning point for the WTO will be the upcoming 12th Ministerial Conference (hereinafter: MC12) planned to take place from 8 to 11 June 2020 in Nur-Sultan (Kazakhstan) but due to the coronavirus outbreak the meeting might be postponed (WTO, 2020). The pressure to deliver a meaningful document is real. At the event, WTO members aim to reach an agreement on fisheries subsidies in order to protect the environment from degradation (WTO, 2020). Flexibilities for developing countries remain a sticking point in fisheries subsidies negotiations (Reinsch, Caporal & Lesh, 2020). Achieving this agreement would be in line with sustainable development goals set by the United Nations that try to provide welfare improving conditions for people and protect our planet from unsustainable practices. Because international trade has an effect on the environment, people and development, the WTO must operate in a responsible way by reacting quickly and effectively to existing global challenges (climate change, poverty, economic inequality, etc.).

One of the many challenges up for discussion at the MC12 will be connected to e-commerce since a world without digital trade is unimaginable in 2020. An increasing number of internet users combined with rapid changes in information technology have resulted in a virtually borderless international economy where digital trade has replaced the physical trade of goods and services (WTO, 2020). Therefore, a necessity to regulate this area has emerged. Rules on cross-border data flows and data storage are needed to reduce the uncertainty connected to e-trade and e-business. Achieving an e-commerce deal by MC12 may be too ambitious to be feasible because developing and developed countries have different points of view on the subject (Reinsch, Caporal & Lesh, 2020). However, some progress can be made in this area during the MC12 and the goal can be to wrap up an e-commerce deal at the 13th Ministerial Conference (Fabry, 2019).

Clearly indicating the agenda for MC12 is crucial. A successful outcome depends on a results-based, well defined, reasonable and manageable goal. Lessons from the past show that an inadequately set agenda can hardly deliver a meaningful outcome. The Doha Round is an example of a poorly designed agenda, where the first years were more about the agenda than substantive negotiations (Hannah, Wilkinson & Scott, 2016). Because there is not enough time at MC12 to address all of the issues submitted and proposed by WTO members, Director-General Roberto Azevêdo has warned that is important to focus on areas where concrete solutions can realistically be achieved, such as getting an agreement on fisheries subsidies (WTO, 2020). Delivering concrete results at the event is essential for the WTO's future. Success at MC12 will improve the WTO's credibility that was harmed, among other reasons, by the paralysis in the AB, and prove that multilateral rule-making is still possible under the aegis of the WTO (WTO, 2020).

3 REINVIGORATING THE WTO AND MEMBERS' POINTS OF VIEW ON THE MODERNISATION PROCESS

Organisational effectiveness cannot be achieved if the organization itself is not capable of adapting its rules in line with new challenges that emerge in the markets and require a different, updated and pragmatic *modus operandi*. Over the years the WTO's system has helped many countries by reducing poverty, contributing to peace and stability, raising general welfare, promoting economic growth, employment and overall the WTO has brought prosperity to the world (Deere-Birkbeck & Monagle, 2009). Therefore, its value to the international trading system should not be questioned. However, as the world evolved and the original 1995 framework was no longer able to deal with new issues, WTO members have begun to identify areas that need to be updated and discussed.

At the 2018 Group of Twenty (hereinafter: G20) summit leaders reconfirmed the necessity of WTO reform (Borger, 2018). While numerous proposals for improving the WTO system were raised almost from the beginning of the WTO's existence they have never been so crucially required as today when the WTO faces its deepest crisis since its inception. Only when the system is relevant to the current global trading needs will it be used. With three primary WTO functions (arbitrating trade disputes, serving as a forum to negotiate and supervising trade policies) in trouble or unable to deliver valuable outcomes, WTO members question the effectiveness of the system (Caporal & Gerstel, 2018). As a consequence, several WTO members prepared documents that put forward different proposals which could tackle current problems. Whereas there is full agreement that the WTO must be revitalized, there are different opinions about how this should be done (Martinez, 2019). Proposals for the WTO reform mostly focus on its legislative, executive and judicial functions (Hoekman, 2010). Because many specific areas have been mentioned in different proposals, the following sections will focus on those propositions that could help to solve the challenges mentioned in section 2 of this thesis.

3.1 Updating trade rules

The trading system has traditionally formulated the rules of the game and defined national obligations through broad negotiation rounds (Hoekman, 2010). Because the Doha Round failed to be concluded a much needed, wide-ranging update of the WTO rulebook has not been realised. As a consequence, large-scale rules negotiated under the Uruguay Round, which were based on an agenda set in 1986, are still governing today's trade (Baldwin & Nakatomi, 2015). While some limited progress on rules has been achieved (for example, the Bali agreement), there are still many rules left unchanged and these old rules cannot deal with 21st century challenges.

The nature of global trade has become much more complex compared to the 20th century. Therefore, major WTO trading members like the US, the EU, Japan and Canada agree that a detailed review of the existing WTO rulebook is crucial in order to modernize rules and make them suitable for today's trading needs. Areas that are the cause of much frustration between members and which are addressed in many proposals include self-identification by countries on developing status, interventions in markets to support SOEs, insufficient subsidy notifications, required consensus in decision-making process, using Article XXI on national security to justify tariff imposition, discriminatory treatment of foreign investors (forced technology transfers), industrial subsidies and unequal conditions for market access.

Special and differential treatment (hereinafter: SDT) is available to those that claim to be developing countries (WTO, 2020). As discussed in section 2.1, many developed members believe that some countries should not be classified as developing because they are in no need for privileges and they harm those that really need SDT. Therefore, the EU proposed that there should be a system of graduation, which would encourage members to eventually opt-out of SDT. In the transitional period members would make a plan specifying when they expect to be able to fulfil all obligations of the WTO agreement (European Commission, 2018).

Furthermore, the US proposed that an agreed definition should be made that would clearly describe when (under what conditions) a member can and cannot claim developing status. For example, the US suggests that economies belonging to the Organisation for Economic Cooperation and Development, or to the G20, accounting for more than 0.5% of global merchandise trade, or those classified as high income by the World Bank cannot be granted developing status (Suneja, 2019). On the other hand, China, India, South Africa and Venezuela disagree with the US proposal because they argue that self-classification of developing status has been a long-standing practice and best fits with WTO's objectives (Lee, 2019). The white paper on the WTO reform from China repeatedly stresses the importance of safeguarding developing countries and their flexibilities in the context of development goals.

The agreement on subsidies and countervailing measures (hereinafter: ASCM) is used by WTO members to evaluate whether a subsidy granted was legitimate or not (WTO, 2020).

However, many countries emphasize that there are several loopholes and ambiguities in the ASCM which have led to the abuse and misuse of rules and have prevented the system from achieving its goal of fair competition on the market (Wemer, 2019). Therefore, many suggestions have been submitted by members with the goal of curtailing certain practices and improving the effectiveness of the ASCM.

A joint proposal from the US, the EU and Japan focuses on industrial subsidies with regard to the ASCM and addresses the problem of state capitalism trade practices (European Commission, 2020). As was mentioned above in section 2.1, China's unique economic system was not taken into consideration when the rules were made in the 20th century. Consequently, suggestions from the US, the EU and Japan aim to update the ASCM in such a way that will level the playing field. Firstly, the proposal states that Article 3.1 of the ASCM should expand the list of unconditionally prohibited subsidies to additionally include subsidies given to insolvent entities or to entities that are unable to get independent financing, unlimited guarantees and certain direct debt forgiveness (Hogan, 2020). Secondly, in order to stimulate countries to fully notify their subsidies to the WTO, Article 25 of the ASCM should include a general refutable presumption according to which if a subsidy is not reported or is counter-notified, it would be assumed to be a subsidy and repeated non-compliance would be sanctioned (European Commission, 2020). Of course, a distinction needs to be made between those members that miss deadlines to prepare notifications because of limited resources and those that intentionally fail to report their subsidies. Thirdly, more attention should be given to recognizing SOEs and to detecting subsidies that avoid the application of the ASCM because they are granted by private companies that are in reality subject to heavy state influence and are thus not so private (Hogan, 2020). Finally, Article 1 of the ASCM should better clarify what falls under public body, because subsidies must be granted by a government or any public body to be captured by the ASCM, and without a thorough definition of a public body many enterprises avoid proper classification (Baschuk, 2018).

On the other hand, China has used its proposals to target improving and better defining countervailing measures in the agreement, because China's own accession protocol to the WTO in 2001 allows the provision of alternative methods to evaluate countervailing duties (Tran, 2019). Therefore, China suggests that, in order to prevent abusive applications of countervailing duties, their implication should be more transparent, better explained and presented with detailed calculations on how this act will benefit the country imposing it (Qingjiang, 2019).

Unilaterally imposed tariffs on steel and aluminium by the US based on a **national security justification demonstrated that Article XXI** of the WTO treaty can endanger the whole system and prevents members from remaining at the higher welfare point E (see diagram 1). Accordingly, many countries suggest strengthening this rule to curb abuse of the national security exception. A proposal put forward by China intends to enhance notification requirements on actions invoking Article XXI and proposes that all such actions should first

go through multilateral review before being used in reality (WTO, 2019). Multilateral review would help to define which emergencies (besides war) justify national security concerns because Article XXI does not clarify what falls under the phrase “other emergency” mentioned in the GATT 1947. Additionally, prompt and effective remedies should be allowed for members that are being negatively affected by usage of Article XXI (WTO, 2019). The US opposes changing Article XXI, and has argued that only countries can define for themselves what poses a threat to its own national security (Tucker, 2019).

In order to make the WTO more relevant old rules should be improved and completely **new rules** must be established **to regulate important areas that are not yet being regulated in a multilateral framework** (Fabry, 2019). Thus, proposals try to stimulate countries to further work on negotiating an e-commerce agreement, an agreement on fisheries subsidies (supporting sustainable development goals), an environment goods agreement, and a trade in services agreement, and to discuss other areas where the lack of regulation causes discriminatory treatment and impediments to market access (Kawase, 2019). A joint proposal from the US, the EU and Japan draws attention to forced technology transfer practices, where foreign investors must reveal their know-how to local partners in order to get market access (Gao & Zhou, 2019). The WTO provisions in trade-related investment measures, trade-related intellectual property rights, general agreement on trade-in-services and the GATT are not sufficient to address problems like forced technology transfers, joint venture requirements, foreign equity limitations, disclosure of source code requirements and other practices that produce unfair market conditions (Kaukab, 2016). Therefore, the US, the EU and Japan call for new rules in order to better address such distortive practices.

The white paper on the WTO reform from China stresses the importance of preserving a non-discriminatory and open, multilateral trading system. China said it will make continuous efforts to adopt a more open attitude and to improve the protection of innovation and intellectual property rights (WTO, 2019). China’s new foreign investment law came into effect on 1 January 2020 and it promises to prohibit forced technology transfers and allow foreign investors to compete more fairly on the Chinese market (Elen, 2020). Furthermore, some countries believe that in order to reduce uncertainties connected to investment decisions (for example in areas such as foreign direct investments) WTO members should try to achieve a multilateral comprehensive legal framework for investment disciplines (UNCTAD, 2020).

3.2 Revitalizing the dispute settlement system

The relevance of the WTO’s rule-based trading system and its credibility are being undermined as new appeals can no longer be heard by the AB. Consequently, WTO members agree that safeguarding and strengthening the dispute settlement mechanism should be a priority area in the WTO reform. Proposals from members try to solve issues presented under section 2.2 of this paper.

The EU concept paper on WTO reform proposes a comprehensive approach to overcome the deadlock in the dispute settlement system (European Commission, 2018). Proposals found in this paper on resolving the AB crisis and improving the DSU were supported by Canada, Norway, Australia, Japan, Republic of Korea, New Zealand, Switzerland and some other like-minded members participating in the Ottawa Ministerial (WTO, 2018).

Firstly, the issue of maintaining the 90-day deadline in appellate proceedings is addressed with a proposal for a change in Article 17.5 of the DSU (European Commission, 2018). The EU proposes that the article should additionally specify that only when parties agree to extend the required 90-day period could the proceeding take longer. Therefore, it is crucial that the AB discusses the need for an extension with participating parties early in the process if it believes that the report will need more than 90 days to be delivered. If parties do not agree to extend the timeframe the process must be finished in maximum of 90 days. In order to make sure that the report is presented within 90 days the AB should ask parties to limit the number of pages in the paper they submit or that the parties voluntarily narrow the scope of the appeal (European Commission, 2018). Furthermore, the publication of the report could be done only in the language of the appeal so that time is not wasted translating the report into other languages. Translation would then happen at a later date. Additionally, the EU, China and India suggest expanding the AB from 7 (Article 17.1 of DSU) to 9 members, giving more resources to the AB Secretariat and making membership in the AB a full time job instead of a part-time occupation (WTO, 2018). These additional changes could increase the efficiency of the AB and would have a positive effect on the timeframes of appellate review (Caporal & Gerstel, 2018).

The US has criticized the practice wherein AB members finish the appeal even though their term has expired and they do so without getting prior approval from the DSB (Gruszczynski, 2019). According to the US this goes against Article 17.2 of the DSU where only the DSB should have the right to decide if an AB member, whose term in office has expired, should continue serving and that rule 15 (transitional rule for outgoing AB members that gives the AB authority to allow someone who ceases to be a member of the AB the right to continue to be a member of the AB) was not approved by WTO members (Hillman, 2020). Therefore, China, Iceland, Mexico, Canada, India, Norway, the EU, New Zealand, Switzerland, Australia, Republic of Korea and Singapore suggest that the issue regarding the inconsistency between Article 17.2 of the DSU and Rule 15 of working procedures for Appellate Review could be solved by changing Article 17.2 of the DSU to additionally specify that an outgoing AB member shall finish the disposition of a pending appeal in which the oral hearing has already happened (WTO, 2018). Furthermore, China, India and the EU propose that outgoing AB members should continue with their work until they have been replaced by new members but for no longer than two years after their term has expired (WTO, 2018).

The same twelve WTO members that propose to amend Article 17.2 of the DSU also suggest inserting a new paragraph 15 under Article 17 of the DSU (creating Article 17.15) in order

to address the issue of precedent. The proposed Article 17.15 of the DSU would provide an additional channel of communication between the AB and WTO members by requiring WTO members to meet with the AB annually for the purpose of discussing views on adopted AB reports (WTO, 2018). Therefore, WTO members would get an opportunity to point out systemic issues, comment on trends in the jurisprudence and debate AB approaches that are causing concerns (WTO, 2018).

Meetings between the AB and WTO members would require adequate transparency and some basic rules so that any potential pressure on AB members would be avoided and the independence of the AB safeguarded. The EU, China and India believe that the efficiency of the AB could be improved by changing the four-year term of AB members (with an option of being reappointed once) into only one single term that would last longer (6-8 years) (WTO, 2018). Without the possibility of members being reappointed the AB would strengthen its independence and there would be certainty about the duration of one's term (WTO, 2018).

WTO members have expressed concern regarding the AB review of facts in the panel report. Some members claim that the AB adjusts and modifies the analysis of the facts instead of just sticking to the issues of law covered in the panel report (Stewart, 2019). The US pointed out concerns regarding the tendency of the AB to make findings on issues that are not needed to resolve a conflict and its tendency to make conclusions beyond panel factual findings, especially with regard to interpreting domestic legislation (Gruszczynski, 2019). Therefore, the EU concept paper suggests changing Article 17.12 of the DSU to stress that the AB should address each of the issues raised on appeal only to the degree needed to settle a dispute and also suggests modifying Article 17.6 of the DSU to clarify that it is not the role of panels or the AB to interpret a member's domestic law as such, but to include legal characterisation of the domestic measures under WTO law (WTO, 2018).

The WTO oversees many trade agreements and each agreement contains its own set of complex rules and explanations. For example, the provision to judge whether or not product dumping is occurring is more than 1400 words long (Tireky, 2020). Consequently, it can be hard to correctly interpret every single agreement that exists under the aegis of the WTO. Some members (especially the US) have accused the AB of judicial overreach by interpreting the WTO rules in a way that adds to or diminishes the rights and obligations of WTO members (Walker, 2019). Article 3.2 of the DSU prohibits creating liabilities for WTO members that go beyond the text of agreements (Hillman, 2020).

Many WTO appellate judges have admitted that it can be a real struggle to decide on the proper interpretation or application of the relevant WTO provisions in a particular case (Van den Bossche, 2019). Thus, WTO members stress the importance of communication and cooperation between the AB and WTO members to address ambiguities in the agreements. The above mentioned proposal to create a new Article 17.15 of the DSU (obligatory meetings with the AB) would provide a platform for open and candid discussion that could

help to solve the problem of correct interpretation and understanding of the agreement in question.

Whereas many WTO members proposed possible solutions for the purpose of solving current problems, the US has not provided any specific proposal that would deal with its concerns regarding the dispute settlement process and the AB. It seems like the US wants to go back to the pre-WTO dispute settlement system where defendants had an option to block the establishment of a panel or to block the adoption of the panel report – an option that is considered the main weakness of the system that preceded the WTO (Schneider, 2019). Thus far, the US has rejected proposals put forward by some WTO members and it strongly disagrees with those that suggest expanding and strengthening the AB's jurisdiction (Caporal & Gerstel, 2018). Moreover, it is not clear if any reform of the current system will satisfy the US (Van de Bossche, 2019). As a consequence, the EU, China, Costa Rica, Panama, Australia, Canada, Switzerland, Republic of Korea, New Zealand, Norway, Singapore, Chile, Brazil, Colombia, Guatemala, Mexico and Uruguay decided to establish an ad-hoc AB that enables participants to preserve access to a binding and impartial dispute settlement system among them while the AB at the WTO lacks the required quorum to hear the appeals because appointments of new AB members are being blocked by the US (Rios, 2020).

WTO members that agreed on an ad-hoc solution to overcome the US blockage of the international trade dispute resolution system have stressed that this is only a temporary solution, which will be in force until the acceptance of AB reform (Rios, 2020). Furthermore, WTO members emphasized that the AB judges use 20th century rules to solve 21st century issues and this imbalance between legislation and litigation needs to be addressed with a reform that goes beyond the dispute settlement mechanism (Baldwin & Nakatomi, 2015). Therefore, comprehensive rule-updating is crucial in order to prevent WTO system failure.

3.3 Strengthening the WTO's regular working practices

Improving regular working practices at the WTO is important in order to make the organization more operational and effective. Day-to-day activities are undertaken by different WTO bodies. The WTO's councils and committees play a vital role in performing regular work and by assessing on a committee-by-committee level how their daily functions could be more efficient would help to reinvigorate the WTO.

3.3.1 Consensus

The reason the AB is unable to fill its vacancies is the WTO practice of consensus. This practice of consensus is deeply ingrained in the WTO system and provides an equal opportunity for all members to express their point of view (Bertelsmann Stiftung, 2018). This practice ensures that no WTO member can be forced into accepting decisions that may

be detrimental to their interests (Hoekman, 2010). Whereas developing countries strongly support this working practice given the large asymmetries in power and size across WTO members, many developed countries warn that this practice is making the WTO inefficient, because consensus is not only used in negotiations but also applies to the normal operations of the WTO (Bertelsmann Stiftung, 2018). Therefore, many proposals for WTO reform focus on the consensus norm and try to find solutions which would make the WTO more functional.

One proposed solution to the problem of a small minority blocking the majority from moving forward is to request written explanations from the opposing members of the reasons behind their decision to prevent progress (Sutherland et al., 2004). Furthermore, opposing members should present desired changes to the deal and show their readiness to stop the impasse if amendments are made (Torres, 2017). This requirement could help to solve the AB crisis because the US has explained its reasons for blocking the appointment of new AB members but it has not submitted acceptable solutions to stop the blockage and which could indicate the willingness of the US to overcome the problem.

Problems connected to the practice of consensus could potentially be solved by adopting a plurality criterion or by creating an executive board or committee (Elsig & Cottier, 2011). In the case of a plurality measure, the minority could not block the adoption of a proposal when some critical mass of countries (e.g. an overwhelming majority of countries) supports the change (Hoekman, 2010). The reason for establishing a board could be to emulate the International Monetary Fund or World Bank model, where 20 to 30 officials make decisions, or to use the board as a consultative body which helps with possible solutions when WTO councils or committees fail to agree (Steger, 2009b). Developing countries strongly oppose the idea of creating an executive board and most developed countries are also against this suggestion (Sutherland et al., 2004). The critical mass approach and the approach of asking members to explain the reasons for blocking the deal and to propose possible solutions are more acceptable to members (Hoekman, 2010). However, the practice of consensus increases the legitimacy of agreements reached and because this practice is a part of the WTO culture many countries aim to preserve consensus and work on the interpretation of it (Torres, 2017).

The working practice at the WTO is to understand consensus as a universal right to veto that allows any member to block even exploratory discussions on some proposed trade policy-related matter (Baldwin, 2014). Blocking substantive deliberation is harmful to the collegial spirit that should exist in international cooperation. Because this is making the system dysfunctional, consensus should be viewed as a right that entails the obligation to strive for collegial interests (Torres, 2017). Therefore, consensus should not be used to stop subsets of WTO members from discussing issues of common interest.

It appears as though the outcome of the 11th Ministerial Conference (hereinafter: MC11) in Buenos Aires confirms countries' efforts to stop the use of consensus as a constraint to prevent others entering into talks, because at MC11 different groups of WTO members

launched discussions on e-commerce, investment facilitation, MSMEs and domestic regulation in services (Hannah, Wilkinson & Scott, 2018). Moreover, at the 2019 World Economic Forum in Davos, 76 WTO members agreed to start negotiations on rules that govern e-commerce and cross-border data flows (Foroohar, 2019). These actions support some proposals found in papers on WTO reform and demonstrate that some progress is already being made to improve the WTO working practices.

Allowing a group of WTO members to discuss specific issues at MC11 favours the suggestion found in the paper submitted by the EU and Canada to create a new mechanism at the WTO called open plurilateral agreements (hereinafter: OPAs) that are a form of critical mass agreements (hereinafter: CMAs) (WTO, 2018). In addition to CMAs, a group of WTO members can collaborate on a policy area under the aegis of the WTO via Plurilateral Agreements (hereinafter: PAs) under Article II:3 WTO (Hoekman & Sabel, 2019). While both PAs and OPAs are domain-specific, the difference between PAs and OPAs is that PAs are applied on a discriminatory basis but OPAs are not and that is why OPAs do not require the approval of all WTO members to be incorporated into the WTO (Bertelsmann Stiftung, 2020). Therefore, the probability of achieving new PAs is very low since consensus allows any member to block the incorporation of the new agreement.

OPAs provide an opportunity for WTO members to freely debate different topics, to address regulatory differences for the purpose of reducing trade costs, to examine spill-over effects, to address coordination failures, to encourage mutual review, to talk about recent trade tensions, to support learning from each other, and most importantly OPAs create a platform for open cooperation (Hoekman & Sabel, 2019). Recognizing OPAs as WTO-conforming would demonstrate that the WTO is no longer a hostage to the consensus of its members but rather a partner in articulating it (Bertelsmann Stiftung, 2020).

The final result of four joint initiatives that were launched at MC11 and are now being pursued at the WTO will be important for the future of the OPA model and for the way the WTO operates. These initiatives resemble OPAs among a group of WTO members and show the opportunity for the gradual multilateralization of OPAs through the provision of technical support to candidate members (Hoekman & Sabel, 2020). Furthermore, actions under the OPA type do not match the practice of a single undertaking (package deal) approach to trade negotiations (Bertelsmann Stiftung, 2020). Because negotiating comprehensive trade deals (like the attempt at the Doha Round) has failed, some WTO members (Canada, the EU, China) proposed moving away from package deals and instead working on achieving OPAs that focus on specific areas (WTO, 2020). On the other hand, India and some African countries do not support this suggestion because they argue that a “two-speed” WTO system will occur, where a subset of WTO members would move forward on an issue and others would be left behind (Jones, 2010).

3.3.2 Monitoring function and transparency

Different submitted papers on WTO reform stress the importance of having a transparent rule-based trading system, where relevant information can be found and this availability of reliable data improves the understanding of practices and helps to generate effective discussions at the WTO. Therefore, six members (Canada, Argentina, Costa Rica, Japan, the US and the EU) propose to improve the WTO monitoring function, enhance transparency and strengthen notification rules under WTO agreements (WTO, 2018).

WTO councils and committees regularly monitor the implementation of WTO agreements by reviewing countries trade policies and practices (WTO, 2020). The monitoring function cannot be successfully preformed if WTO members do not make their trade policies transparent by complying with notification obligations. Therefore, six WTO members (mentioned above) agree that in order to improve transparency the work of committees needs to be carried out more effectively because current reviews do not reach their full potential (WTO, 2018).

Firstly, they suggest that committees should learn from each other because some are more successful in generating relevant information compared to other committees (Elsig, 2016). Therefore, conducting more workshops and informal discussions at the committee level would boost cross-committee coordination and help to identify good working practices (WTO, 2018). Secondly, members should face a new requirement to explain reasons for delays in preparing notifications because under the current system members face no consequences if they fail to meet deadlines (WTO, 2018). Furthermore, if a member fails to deliver a complete notification within one year from the deadline and it has not requested help from the Secretariat, then under new proposed rules that member would suffer the consequences (TWN, 2019). Proposed sanctions include the inability to preside over WTO bodies, larger contributions to the WTO budget, exposure and criticism in meetings and in written reports, non-compliant member questions during trade policy peer reviews would not have to be answered and delinquent members could be marked as inactive WTO members, which would hurt that member's public reputation (WTO, 2018). Such sanctions aim to stimulate countries to submit full notifications on time and ask for assistance if they experience difficulties while preparing notifications. While many developed countries like Australia and New Zealand endorsed the idea of punitive measures, six developing countries (South Africa, India, Cuba, Nigeria, Tunisia, Uganda) strongly opposed this proposal (TWN, 2019).

Significant resources already exist at the WTO to help those that experience capacity constraints (WTO, 2018). WTO members have additionally proposed that committees should collaborate more with the Secretariat and with the Institute for Training and Technical Cooperation (ITTC) in order to produce useful recommendations for countries that struggle to achieve notification obligations (WTO, 2018). Committees should also require members to provide substantive replies within specific timeframes to written questions for the purpose

of clarifying different concerns (WTO, 2018). Prompt and adequate answers from members would give committees the information they need and could help to improve trade policy reviews.

The EU has proposed to strengthen the trade policy review mechanism by changing the structure of the report submitted by the Secretariat to additionally include a section on members' notification performance (WTO, 2018). For each review on a member's trade policies and practices two documents must be prepared at the WTO and one of them is written independently by the WTO Secretariat (Zahrnt, 2009). The report by the Secretariat currently includes four main sections (economic environment, trade and investment regimes, trade policies and practices by measure, trade policies by sector) that do not evaluate the completeness and timeliness of the member's notifications (WTO, 2020). Therefore, the EU suggestion is to allow the Secretariat to go further in assessing members' notification performance and to create a new chapter in the report where information on notifications can be found. This new chapter could also show how the member's notification performance has evolved since the last review, which helps to expose best practices and create peer pressure (WTO, 2018). Additionally, the US, Japan, Canada, Costa Rica and Argentina argue that preparing more joint counter-notifications (where members submit notifications on behalf of another) could help to fill in the remaining gaps (TWN, 2019).

3.3.3 The role of the WTO Secretariat

Recognizing that there are shortcomings in the regular operations of the WTO made some members propose that the WTO Secretariat should be given more authority for the purpose of making the system more effective (Toohey, 2014). The Secretariat is given very little formal power because the WTO is seen as a member-driven organization where all decisions are made by members (Lamy, 2013a). However, this member-driven process should not prevent the Secretariat from obtaining a more active role in the system. Currently the role of the Secretariat is to support the members, to give developing countries technical assistance, to prepare different documentation, to organize some meetings, to oversee developments in world trade, to advise governments that want to join the WTO and to provide information to the public (WTO, 2020).

Revitalizing the role of the Secretariat could make the WTO system more functional (Elsig, 2016). Permitting the Secretariat to have a more proactive role by undertaking policy analysis, tabling proposals, conducting more research on trade issues, having a role in rules reform, identifying potential violations by evaluating members' policy compliance with WTO rules and taking the lead when the membership is unable or reluctant to move forward would help to reinvigorate the WTO from the inside out (Toohey, 2014).

Empowering the Secretariat to conduct all or some of the above-mentioned activities would facilitate the work of WTO members (Lamy, 2013b). Members require relevant and up-to-

date information in order to have effective deliberations and using the Secretariat more proactively by allowing it to collect more information itself or to collaborate more with other international organizations would produce knowledge that is needed (Bertelsmann Stiftung, 2018). Knowledge and analysis are especially important for the OPA type of cooperation that was proposed by some WTO members (Hoekman & Sabel, 2020). Therefore, the Secretariat could provide intellectual leadership and close the remaining gaps.

The EU's concept paper on WTO reform supports the idea of strengthening the role of the WTO Secretariat in favour of various negotiating processes and in the implementation and monitoring functions (WTO, 2018). The US, Canada, Japan, Costa Rica, Argentina, Australia and New Zealand especially support the idea of making the Secretariat more active when it comes to the evaluation of members' notification compliance (TWN, 2019). However, when it comes to the suggestion of giving the Secretariat a greater overall role in the system these same seven countries have different opinions on whether expanding the role of the Secretariat is desirable for the purpose of making the WTO more functional (Bertelsmann Stiftung, 2018).

China's paper on the WTO reform suggests that the Secretariat should be encouraged to conduct more research on economic and trade issues, to provide more intense help to developing members in order to solve specific trade concerns at regular meetings and to cooperate more with other international institutions because all of this would improve the efficiency of the WTO (WTO, 2019). Furthermore, China proposes to increase the representation of developing members in the Secretariat in order to achieve greater Secretariat diversity (WTO, 2019). On the other hand, India disagrees with the idea of giving the Secretariat more voice because that would go against the member-driven character (Suneja, 2018).

WTO members agree that the Secretariat can never replace members but there are different opinions on how strong the role of the Secretariat should be in order to make the WTO system more functional and effective (Lamy, 2013b). Preparing guidelines on how to potentially bolster the role of the Secretariat while ensuring its neutrality and independence could help to address some concerns of WTO members about granting the Secretariat wider opportunities to support the work of the WTO (Bertelsmann Stiftung, 2018).

Strengthening the WTO's regular working practices is crucial if the organization wants to operate successfully in the future. Daily activities at the WTO are guiding the organization's development and improving the effectiveness of such activities can make the WTO more resilient. The future of the WTO looks dark if the process of reinvigoration fails because new global challenges will only get more complex and if the WTO wants to solve new problems it must become fully operational, adaptive, relevant and effective again. This will only be possible when members show willingness to cooperate, talk and make an effort to find a workable solution together out of the current WTO crisis.

CONCLUSION

The need for the WTO reform has never been as urgent as now when the WTO faces its deepest crisis since its inception. The credibility of the WTO has been called into question as the system struggles to successfully deal with new challenges. Doubts about the WTO's effectiveness and relevance have been raised as a result of its current inability to move forward and deliver a meaningful outcome to the global trading system. The survival of the WTO is under threat as the AB paralysis endangers its ability to enforce rules when a member fails to comply with its obligations. Despite the fact that the WTO has brought substantial achievements to the global trading system, its value to the world can be lost if the WTO does not improve its functions and adapt to new trading needs that are quite different from the time when the WTO was established.

The WTO has not seen a wide-ranging rulebook update since 1995 because the Doha Round of negotiations failed to be concluded. As a result, the WTO is to a large degree outdated. The rules negotiated in the 20th century are unable to deal with complex 21st century challenges. Consequently, new rules are needed to solve problems connected to e-commerce, to GVCs, to cross-border data flows, to sustainable development goals and to other areas mentioned in this paper. Furthermore, the WTO must adapt to China's economic expansion and deal with its non-market trade practices in order to preserve fairness in the system. Therefore, loopholes in the WTO rulebook must be closed in order to maintain a credible rules-based global trading system.

Current world events are additionally making the WTO less stable and threaten the system's survival. Rising protectionism and nationalism are harming the spirit for international cooperation and curb the attempt to further liberalize trade. The Trump administration has brought a lot of uncertainty to international trade and has undermined the WTO's reputation by starting a trade war with China. Moreover, the US used its veto to block new appointments of AB members leading to the AB's inability to hear new appeals; solving this problem is an unprecedented challenge for the WTO. Existing rules and working methods need to be updated in order to make the WTO fully operational again.

The US decision to prevent the majority from moving forward in appointing new AB members showed that the consensus practice can be a source of inefficiency and stalemate in the WTO. Therefore, proposals have been made to change the practice of using consensus as an absolute right to veto into viewing consensus as an obligation to strive for collegial interests. As a result, members should work together more actively to discuss and analyse problems, and to find possible solutions, and substantive deliberations could no longer be blocked by others. Thus, proposed OPAs can produce a platform for cooperation and can reduce the need for members to negotiate RTAs. The number of RTAs has increased over the years and challenged the WTO to harmonize regionalism with multilateralism.

Harmonization is also required between members' points of view on the way the WTO should be reinvigorated. Tensions and disagreements on the WTO reform proposals seem to

be the strongest between developed and developing countries. Developing countries can claim exemptions to obligations and this is one of the main reasons why tensions between WTO members occur since nothing defines when a member is considered to be developed or developing and members self-identify their status. Developed countries proposed a new rule that would define when (under what conditions) a member can claim developing status and that the goal for a developing member would be to eventually opt-out of this status. This proposal tries to address the issue of a rising China that still claims to be a developing member even though its power and role in the world has changed dramatically since it entered the WTO in 2001.

Achieving an agreement between major trading countries seems like mission impossible. Collaboration between two incompatible economic systems (market economy vs state capitalism) is extremely difficult. Members will have to find a workable solution so that the coexistence of two different economic systems stops endangering the WTO. It is possible that a stronger role for the WTO Secretariat could help, but opinions again differ on this proposal. The upcoming 12th Ministerial Conference will be essential for the WTO's future as members will try to experiment with new negotiating approaches (like the proposed OPAs) in order to stop the WTO impasse.

The thesis has presented different reasons for the current WTO impasse. Challenges faced by the WTO today will require a lot of effort, cooperation and willingness from members to engage in open discussions in order to find a workable solution out of the current crisis. This paper provides different proposals on possible solutions that could solve the challenges discussed and presents members' points of view on the WTO reform. Therefore, research questions have been answered. The WTO's survival depends on its members' readiness to improve the system and make it more suitable for the 21st century. Therefore, it is important to remember what the WTO has already done for the global trading system and that the world would be left worse off without the existence of the WTO.

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APPENDIX

Appendix 1: Povzetek (Summary of the thesis in Slovene language)

Diplomska naloga govori o trenutni krizi Svetovne trgovinske organizacije (nadaljnje: STO) in predstavi glavne razloge za trenutno, skrb vzbujajočo situacijo. Predstavljeni razlogi posledično nakažejo potrebo po reformi STO. Reforma STO je ključna, če želi organizacija ohraniti svojo pomembno in učinkovito vlogo pri mednarodni menjavi. Predstavljene so možne rešitve, ki bi lahko pomagale pri trenutnih težavah in razložena so stališča držav članic glede reforme STO.

Namen diplomske naloge je, da pripomore k razumevanju težav STO in k spoznanju, zakaj je reforma STO nujna za njen nadaljnji obstoj. Pri pisanju sem si postavila naslednja raziskovalna vprašanja: »Kateri so glavni izzivi STO?«, »Katere so možne rešitve, ki bi lahko rešile trenutne težave STO?« in »Kakšna so stališča držav članic do reforme STO?«. Z željo po iskanju odgovorov na zastavljena vprašanja sem se odločila za teoretični pristop k pisanju diplomske naloge ter s pomočjo branja različne literature pridobila potrebne informacije, ki sem jih nato uporabila pri pisanju. Diplomsko nalogo sem vsebinsko razdelila na tri dele. Prvi del predstavi mednarodni ekonomski red in razloži vlogo STO. Drugi del predstavi glavne izzive STO, zadnji del pa možne rešitve in stališča držav članic do procesa modernizacije STO.

Modernizacija STO je ključna za nadaljnji obstoj organizacije, saj je organizacija trenutno zastarela z vidika obstoječih pravil. Pravila niso bila obsežno spremenjena že vse od leta 1995, ko je STO nastala. Razlog za neuspešno posodobitev pravil je v nesposobnosti držav članic, da bi soglasno sprejele nov paket obsežnih pravil. Države članice so se štirinajst let pogajale, da bi sprejele nov paket pravil iz tako imenovanega Doha razvojnega programa (Doha Development Agenda), ki bi prispeval k znižanju trgovinskih ovir in bi tako pripomogel k nadaljnji liberalizaciji mednarodne trgovine.

Propadlo obsežno trgovinsko pogajanje v okviru Doha kroga je nakazalo, da je soglasje težko dosegljivo, če v pogajanju sodeluje več kot 160 držav članic. Praksa STO namreč zahteva, da je za sprejem novih pravil oziroma odločitev potrebno soglasje med vsemi članicami. Trenutno je teh članic 164 in zaradi razlik v njihovem razvoju, moči, političnih sistemih, ciljih in interesih je pridobitev soglasja med njimi velik izziv za STO. Soglasje je tako eden izmed razlogov za stagnacijo STO in ogroža temeljno funkcijo organizacije, katere naloga je, da zagotovi državam članicam učinkovit pogajalski forum. Diplomaska naloga tako predstavi možne rešitve kot na primer večinsko glasovanje, ki bi lahko rešilo problematiko glede soglasja, ki trenutno onemogoča napredek organizacije.

Napredek organizacije ovira tudi trenutno dogajanje po svetu. Z vzponom protekcionizma in nacionalizma v pomembnih državah sveta se je izgubil interes po nadaljnjem sproščanju mednarodne trgovine in zasledovanju ciljev proste mednarodne menjave. Z analiziranjem vloge STO v diplomski nalogi pripomorem k razumevanju, da je cilj STO nadaljnja liberalizacija mednarodne trgovine in odprava trgovinskih ovir, ki zmanjšujejo dobrobit večine. Tako postane očitno, da je trenutni porast protekcionizma in nacionalizma po svetu škodljiv za uspešno delovanje STO. Trgovinska vojna med Združenimi državami in Kitajsko

je odraz Trumpove protekcionistične politike, ki povzroča nestabilnost pri mednarodni menjavi in negativno vpliva na STO.

Trumpova politika je 11.12.2019 zadala hud udarec STO, saj je preprečila imenovanje novih sodnikov oziroma članov in posledično je pritožbeni organ ostal z enim sodnikom, kar pa je premalo za uspešno delovanje sistema, ki razrešuje spore. Zakon namreč zahteva, da so potrebni vsaj trije aktivni člani v pritožbenem organu, da se lahko pritožba države članice oziroma držav članic obravnava. Tako je glavni izziv za STO, kako rešiti trenutno ohromitev sistema, ki razrešuje mednarodne trgovinske spore med državami članicami. Zgodi se namreč lahko, da trgovinski spori ostanejo nerešeni in tako se pravila mednarodne trgovine ne morejo uveljaviti, saj pritožbeni organ ne more razsoditi primera. Ena izmed ključnih funkcij STO, da zagotovi državam članicam mehanizem za razreševanje trgovinskih sporov, je tako izgubljena. Nekatere države članice vidijo rešitev v spremembi obstoječih zakonov, da bodo le-ti boljše in natančneje definirali postopke, ki se zgodijo v procesu razreševanja spora.

Funkcionalen mehanizem za razreševanje sporov je ključnega pomena za uspešno delovanje STO, saj pravila ne veljajo veliko, če ni v ozadju sistema, ki bi zagotovil, da bodo kršitelji ustrezno kaznovani. Nefunkcionalen pritožbeni organ je tako postavil pod vprašaj kredibilnost organizacije. Z analizo ponudbene krivulje v diplomski nalogi razložim, zakaj je STO pomembna pri mednarodni menjavi in zakaj je ravno uspešno delujoč pritožbeni organ ključen, da ohranja države članice na višji ravni blaginje, ker bi drugače bile nagnjene h kršenju mednarodnih pravil. Kršenje mednarodnih trgovinskih pravil povzroči izgubo blaginje za večino vpletenih v mednarodno trgovanje in naloga STO je, da prepreči takšna ravnanja.

Naloga STO je tudi, da se zna prilagoditi na spremenjeno globalno vlogo Kitajske. Kitajska je s pomočjo članstva v STO postala svetovna velesila in največja izvoznica na svetu. Očitno je, da se je njena vloga od leta 2001, ko je vstopila v STO, drastično spremenila in da je njen hiter ekonomski razvoj izziv za STO. Razvoj Kitajske je pokazal pomanjkljivosti v obstoječih pravilih STO in pravični pogoji menjave so postavljeni pod vprašaj. Kitajski ekonomski sistem temelji na močni vlogi države, ki posega v gospodarstvo. Veliko prostotržnih gospodarstev meni, da netržne kitajske trgovinske prakse izkrivljajo konkurenco in da je STO neučinkovita pri reševanju in reguliranju netržnih trgovinskih praks. Potreba po spremembi sporazuma o subvencijah in izravnalnih ukrepih (ASCM) je ključna, če želi STO ohraniti načelo pravičnosti v mednarodni trgovini.

Praksa STO, da se vsaka država članica sama odloči, ali je država v razvoju ali je razvita, še dodatno postavi pravičnost trgovinskega sistema pod vprašaj. Država, ki si izbere status države v razvoju, ima namreč določene koristi, saj si lahko pravila igre prilagaja, ker ji njena slabša razvitost onemogoča, da bi upoštevala vse obveznosti tako hitro in učinkovito kakor razvite države. Težava nastopi, ker določene države članice resnično potrebujejo dodatno pomoč, določene države članice pa so skozi leta članstva tako napredovale, da več ne potrebujejo te pomoči, a jo kljub temu še vedno izkoriščajo. V diplomski nalogi je tako predstavljena možna rešitev, in sicer, da bi STO določila pravilo oziroma bi definirala, kdaj (pod katerimi pogoji) lahko državi pripada status države v razvoju ter da bi cilj vsake države

v razvoju moral biti, da čez čas opusti ta status in prevzame status razvite države. Izziv za STO je ponovno Kitajska, ki še vedno zahteva status države v razvoju z vsemi privilegiji, kljub temu da se je njena vloga od leta 2001 (vstop v STO) do leta 2020 drastično spremenila.

Izziv za STO predstavljajo tudi spremembe na področju tehnologije, umetne inteligence, načina trgovanja (na primer e-trgovanje), spremembe glede varovanja okolja in potreba po upoštevanju ciljev iz programa Združenih narodov za trajnosti razvoj do leta 2030. Ključno je, da se STO pravočasno odzove na potrebe modernega sveta in uvede nova trgovinska pravila na področjih, ki so trenutno aktualna oziroma bodo v prihodnosti pomembno vplivala na mednarodno trgovino. Države članice bodo uporabljale pravila STO, kadar bodo ta relevantna in bodo zadostila potrebam mednarodne menjave. Porast števila registriranih regionalnih trgovinskih sporazumov pri STO nakaže, da je v sistemu prisotna želja po globljem sodelovanju in da trenutno STO ni zmožna zadostiti aktualnim potrebam mednarodne trgovine, saj države članice v ožjih krogih pogajanj iščejo rešitve. Izziv za STO predstavlja uskladitev regionalnih trgovinskih sporazumov z multilateralnimi dogovori. Rešitev bi lahko bila v novem mehanizmu odprtih plurilateralnih sporazumih (OPAs), kjer bi države članice brez zadržkov razpravljale o novih trgovinskih problemih in iskale potencialne rešitve. Odprtost takšnih pogajanj bi omogočala, da se vsaka članica pridruži kadarkoli želi in tako bi lahko postopoma takšen sporazum postal multilateralen.

Prihajajoča dvanajsta ministrska konferenca v okviru STO bo pomembno vplivala na prihodnost organizacije. Države članice bodo razpravljale o novih problemih in iskale skupno rešitev za predstavljene težave. Uspešno zaključena konferenca bi STO pomagala dokazati, da multilateralna pogajanja še lahko učinkovito delujejo kljub pestrosti in raznolikosti držav članic. Močnejša vloga sekretariata znotraj STO bi lahko pomagala državam članicam, da v okviru dvanajste ministrske konference dosežejo konkreten rezultat, ki je nujen za napredek organizacije in bi pozitivno vplival na trenutno stagnacijo STO.

Diplomska naloga razloži, kaj so glavni izzivi oziroma problemi STO, ki onemogočajo napredek organizacije in tako povzročajo trenutno krizo. Razumevanje izzivov in delovanja STO je ključno za odkrivanje potencialnih rešitev, ki bi lahko pomagali STO iz krize. Z analizo možnih rešitev je diplomska naloga odkrila nasprotujoča si stališča držav članic glede procesa modernizacije STO. Reforma STO bo tako zahtevala ogromno razprav, časa in truda držav članic, da skupaj modernizirajo STO tako, da bo le ta učinkovitejša in odzivnejša na potrebe mednarodne trgovine. Pomembno je razumevanje, da ni namen STO samo strogo določanje pravil za mednarodno menjavo, ampak da organizacija s svojim obstojem pomaga ohranjati mir in stabilnost med članicami, pomaga pri razvoju držav članic in zmanjšuje nivo revščine, spodbuja gospodarsko rast ter zvišuje standard življenja. STO tako povečuje blaginjo držav in dejstvo je, da bi svet ogromno izgubil, če STO ne bi obstajala. Diplomska naloga je zato aktualna z vidika današnje krizne situacije STO, saj je reforma nujna za nadaljnje učinkovito delovanje organizacije.