

**IS THE WTO OVER? MEGA-REGIONAL/PLURILATERAL FREE TRADE NEGOTIATIONS: PERSPECTIVES OF MULTILATERALISM IN TRADE****A WTO VÉGE? MEGA-REGIONÁLIS/PLURILATERÁLIS SZABADKERESKEDELMI TÁRGYALÁSOK A MULTILATERÁLIS KERESKEDELMI SZABÁLYOZÁS PERSPEKTÍVÁI****György Csáki****Abstract**

A II. világháború óta a világkereskedelem folyamatosan és igen dinamikusan bővül – különösen igaz ez az 1980-as évek óta eltelt időszakra. Sokan mondják azt is, hogy a világkereskedelem soha nem volt olyan szabad, mint manapság, s tény, hogy ma már 161 ország vesz részt a WTO égisze alatt folyó sokoldalú kereskedelempolitikai tárgyalásokon. Ennek ellenére, a WTO elmúlt két évtizedes története egyáltalán nem sikertörténet – a WTO egyetlen kereskedelmi forduló sem zárt le sikeresen: a Millenniumi Forduló 1999-ben el sem indult, a 2001-ben elindított Doha Fordulót pedig 2006-ban hivatalosan felfüggesztették. Ilyen körülmények között nem meglepő, hogy az elmúlt években sorra indulnak a mega-regionális/plurilaterális kereskedelmi tárgyalások – s a legjelentősebb, a Transzatlanti Kereskedelmi és Befektetési Partnerség nevű, az USA és az EU közötti tárgyalások megindítása nagyban közrejátszott a WTO 9. Miniszteri értekezletének (Bali, 2013. december) viszonylag sikeres lezárásához. Most az a nagy kérdés, melyik mega-regionális zárul le sikeresen, illetve milyen sorrendben zárulnak le, s ez nem jelenti-e a WTO végét, nem szorítja-e vissza a WTO egy nemzetközi kereskedelmi vitarendezési fórummá?

Since WWII a very dynamic expansion of international trade has taken place – it is especially true for the period since the early 1980s. Many says that world trade has never been so free as nowadays, and 161 countries are taking place in multilateral trade talks under the umbrella of WTO. Nonetheless, recent two decades of WTO is far from being a success story – none of the WTO trade Rounds have been completed successfully: the Millennium Round had not even started in 1999, and the Doha Round (launched in November 2001) was officially suspended in the year 2006. Under such conditions, it is not surprising at all that multi-regional/plurilateral trade negotiations were launched – and the most important of those, the Transatlantic Trade and Investment Partnership, that is the US – EU free trade negotiations contributed a lot to the relatively successful conclusion of the 9th WTO Ministerial Conference (Bali, December 2013). Now, the great question is, whether which mega-regional free trade negotiations will be concludes and if more, in what order? Will these mega-regional trade deals mean the end of WTO? Will the WTO driven back to become a multilateral dispute settlement forum?

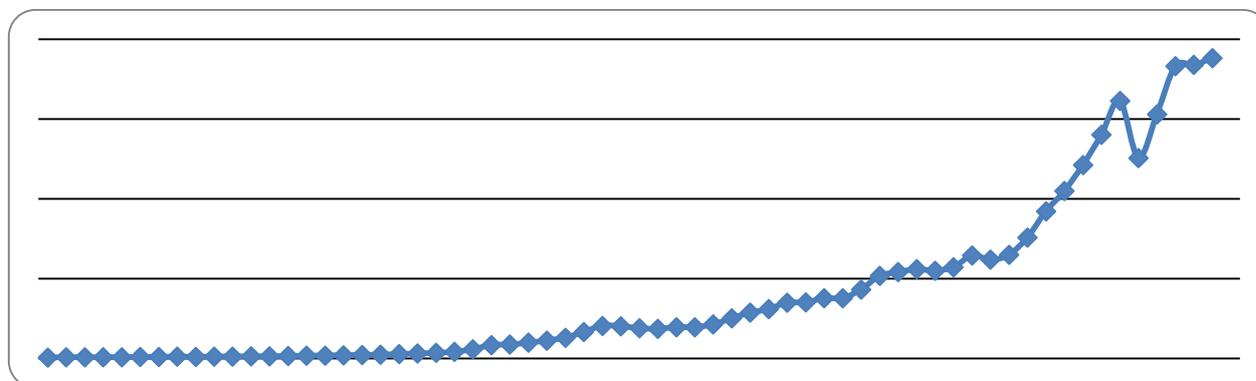
**Keywords:** *international trade, free trade agreements, WTO*

**JEL classification:** *F00, F13*

**Introduction**

Two key developments are the most frequently recurring conjectures of the analyses that accompany the annual editions of both WTO's and UNCTAD's trade statistics. First, the

dynamic expansion of international trade<sup>1</sup> (figures 1, 2), second, the increasing share of developing and emerging economies within total world trade. The main explanatory factor of the above developments is the ongoing trade liberalization that has facilitated the expansion of developing countries' export.



**Figure 1 World trade in merchandise, exports, 1950-2013, million US dollar, current prices & current exchange rates**

Source: UNCTAD:

<http://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=101>.

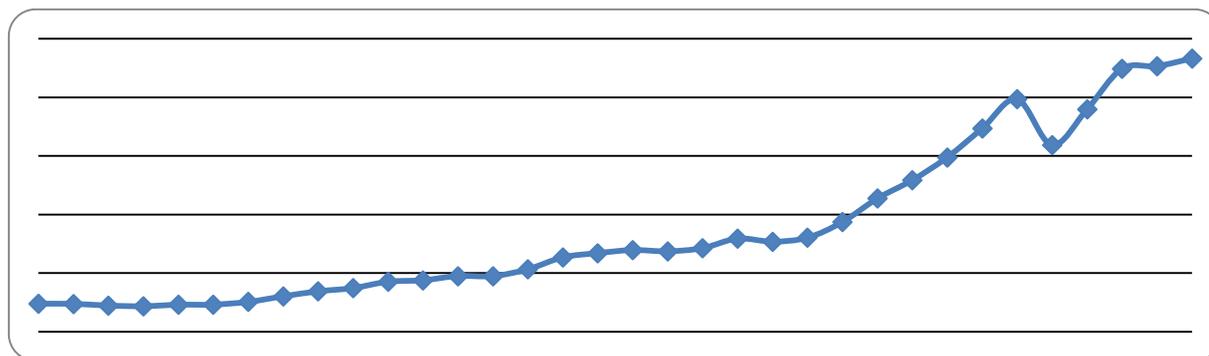
After WWII one of the main tendencies of the world economy has been the extraordinarily dynamic expansion of international trade. While in 1948, the value of world trade in manufacturing equalled to bn 58 USD and in 1970 it was equal to bn 318 USD, in 1980 this value achieved bn 2049. Since then the increase of world trade in manufacturing became “exponential” with its value of bn 3495 in 1990 and had its peak in 2008 with bn 16147 USD (!). In 2009 a dramatic failure took place with bn 12554 USD but in 2011 a new peak was achieved with bn 18329 USD worth of global manufacturing exports. (UNCTAD, 2015/a)

Very similar general tendencies can be observed concerning world trade in services: literally exponential dynamism since 1980 was interrupted with an important decline in 2009, in the meantime, trade in services proved a much more dynamic recovery in 2010-2013. (UNCTAD, 2015/b) If we take a look at the trade of goods and services, we can realise that the dynamism of trade in services has always been higher than that of goods and its declines in 2001 and 2009 were more moderate and the overall recovery of world trade since 2010 has been less dynamic than its development between 2001-2008. (UNCTAD, 2015/c)

Further two empirical tendencies of world trade are worth to be highlighted:

1. The share of developing/emerging economies has permanently increased in recent decades: this share was 20,21 percent in the 1980s and 27,46 percent in the 1990s, but between 2001-2008 it increased to 34.34 percent and since the crisis it achieved 40 percent;
2. The share of trade in services has also permanently increase since the 1980s: while trade in manufacturing increased eight times between 1980 and 2008, the increase of trade in services increased about twelve times and the recovery after the recent crisis has also been much more dynamic in trade in services. (UNCTAD, 2015/b)

<sup>1</sup> Not only world merchandise export and imports show a non-abating dynamics: the share of traded services also keeps growing. Over the period between 2010 and 2013, trade in services increased at an even more rapid pace than the volume of trade in merchandise goods.



**Figure 2. Exports and imports of goods and services, annual, 1980-2013, million US dollar, current prices & current exchange rates**

Source: UNCTAD:

<http://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=25116>

It can be maintained that world trade is more open than ever: the tariffs of merchandise goods have dropped to a negligible level, quotas have been gradually relaxed; and steel, textile and apparel are not sensitive products any more. World trade is governed by multilateral trade agreements and dominant part of trade is going on between the 161 members of WTO.

The establishment of the WTO signified a major improvement in multilateral trade negotiations: “The GATT was not a multilateral organisation and operated for almost 50 years under the Protocol of Provisional Application (...) the WTO is an international organisation with provision for an institution, a secretariat and a more complex set of rules regarding decision-making.” (Lloyd, 2001: 328) Under WTO rules the feasible goal to insure free trade is the achievement of non-discrimination in all goods and services<sup>2</sup> transactions. The principle of non-discrimination means that subsidies should be treated like tariff in the multilateral trade negotiations. Since tariffs and non-tariff barriers were significantly reduces under the GATT rounds, subsidies and discriminations related to public procurements have become more important as protection against foreign actors. There have been four “new issues” on the agenda of WTO since the beginning: the Marrakesh Agreement (that established WTO) decided to set up a WTO Committee on trade and environment, and the 1<sup>st</sup> WTO Ministerial Meeting in Singapore agreed to examine relationship between trade and investment, trade and competition policy and recognised that core labour standards belong to the competence of the International Labour Organisation. “There has been a tendency to put all new areas into the GATT/WTO, chiefly because it is there and it has a mechanism for enforcing its international law. It has been seen as an expeditious method of getting new rules where there is a perception they are needed.” (Lloyd, 2001: 345) But there is a substantial incoherence in the internal and external architecture of the WTO that has hampered to achieve these goals: the WTO was formed in an ad hoc fashion as new agreements were continuously added to the existing ones.

In the GATT/WTO member countries are obliged to abide by the rules – this is fairly unique among international economic organisations – and violation of those rules is sanctioned following the damaged country’s claim. Dispute settlement is regulated in details and contravention of GATT/WTO rules must be ceased and caused damages must be compensated in no more than 15 months. As of June the 1<sup>st</sup> 2015, 496 dispute settlement have started in the WTO<sup>3</sup> (that is in 20 and a half year time), out of which 94 cases have been settled or terminated,

<sup>2</sup> “The ultimate objective is that residents of different Member countries should be as free to transact business with each other as are residents of the same country.” (OECD, 1990: 13.)

<sup>3</sup> See: [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm).

151 cases are in consultation, in 43 cases decision making panes have been established etcetera.<sup>4</sup> Dispute settlement is obviously the most successful activity of the WTO.

Irrespective of the achievements the two-decade history of WTO cannot be labelled a success story. Compared to GATT's eight successfully concluded rounds of multilateral trade negotiations which resulted in a spectacular reduction of tariff-based trade restrictions, no WTO rounds have been concluded with multilateral agreements: WTO's history is marked rather by failed ministerial meetings, deadlocks and the suspension of the Doha round.

2013 seemed a turn of the tide: the negotiations on the Transatlantic Trade and Investment Partnership (TTIP) and the Bali Ministerial Conference (the 9<sup>th</sup> WTO Ministerial Conference) of WTO bear the promise of opening a new chapter in the history of multilateral trade negotiations.

When it was realized that instead of a multilateral approach to governing world trade, plurilateral trade negotiations were gaining momentum (such as the Trans-Pacific Partnership and, especially, TTIP), these developments exerted non-negligible pressure on WTO stakeholders facing the deadlock of the Doha Development Agenda. TTP and TTIP have made it clear that the failure of a multilateral solution (failure to make a decision based on the consensus of the 161 WTO-members) will prompt powerful actors' shifting to bilateral and plurilateral trade governance.

This was the context of the WTO Ministerial Conference in Bali that resulted in a Ministerial Declaration agreed by consensus, marking the conclusion of the first universal agreement under WTO auspices since the launch of the Doha round.

The Bali package (the Ministerial Declaration and 17 decisions)<sup>5</sup> the most prominent of which is the Agreement on Trade Facilitation (addressed already by the Doha Development Agenda). The Declaration ends with a brief section on 'Post-Bali Work' that reaffirms the signatory parties' commitment to global trade negotiations and to the Doha Development Agenda. The Ministerial Conference called on the Trade Negotiations Committee "to prepare within the next 12 months a clearly defined work program on the remaining Doha Development Agenda issues". Though this concluding part of the Declaration reflected optimism and commitment,<sup>6</sup> its wording cannot conceal the parties' deep distrust in the future of multilateral/global trade negotiations. Hence, the post-Bali future of global trade negotiations and of WTO's competence, i.e. of its multilateral rule-making power are more ambiguous than ever.

The post-Bali agenda of multilateral trade negotiations has at least two pillars: "proper closure of the Doha Round is necessary before one can move onto a new round. Attaining this closure at the earliest should be the main item on the WTO's post-Bali agenda, to exploit the present negotiating momentum and hard-won zeal for cooperation and compromise. (...) The new trade liberalisation agenda should recognise the centrality of global value chain production and trade patterns when (re)designing global trade governance rules in order to reflect new business models and trade trends." (Karmakar, 2013:4 and 6)

Many expert say that WTO's major problem lies in its inability to reflect 21<sup>st</sup> century trade issues such as corporate restructuring (that is deindustrialisation in the developed world), the

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<sup>4</sup> [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_current\\_status\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_current_status_e.htm).

<sup>5</sup> Decisions are listed at: [https://www.wto.org/english/thewto\\_e/minist\\_e/mc9\\_e/bali\\_texts\\_combined\\_e.pdf](https://www.wto.org/english/thewto_e/minist_e/mc9_e/bali_texts_combined_e.pdf)

<sup>6</sup> With the benefit of hindsight it is clear already that optimism was hurried and the instruction has not materialized.

existence of industrial supply chains as well as the emerging wave of protectionism following the crisis of 2007-2009 –although the above mentioned issues have changed the landscape of world trade. “But many export-oriented farmers still face foreign trade barriers and subsidised rivals. And plenty of manufacturers’ export plans are frustrated by tariff peaks and many more by a bewildering array of foreign regulations and procedures. Moreover, the distinction between 21st century and earlier forms of commerce can be somewhat misleading. While it is true, for example, that the existence of international supply chains alters the interpretation of trade data and potentially national commercial policy priorities, it is worth recalling that what is ‘supplied’ in supply chains are goods and services, for which longstanding multilateral trade disciplines exist. For these reasons, the reality is that what might be referred to as 21st century commerce matters, but so does the commerce of yesteryear.” (Evenett – Jara, 2013: 5)

If Bali really was an opening, this unique opportunity must be seized, but ‘liberalisation-lead negotiations’ will not guide to the end of the Doha Round and will not provide an effective future for the WTO. One of the major open questions is whether multilateral negotiations should provide the necessary framework for all that. The uprising of mega-regional trade negotiations should mean some question marks on that.

### **Mega-regional free trade agreements**

In addition to their WTO-membership countries tended to sign bilateral or regional trade agreements (RTAs) agreeing either on free trade or creating customs unions.<sup>7</sup> Above and beyond the proliferation of these agreements, recently countries initiated negotiations on the formation of larger-scale RTAs. Some of the recently formed comprehensive RTAs are bound to be of outstanding importance from the point of view of both size and impact on the world economy. They are referred to as *mega-regional trade agreements*. This section will analyse three of them.

#### ***Trans-Pacific Partnership (TPP)***

The origin of the negotiation series on the expansion of trade relations of countries in the Asia Pacific region was the Trans-Pacific Strategic Economic Partnership (TSEP), a free trade agreement signed by Brunei, Chile, New Zealand and Singapore in 2005. The TPP is a more comprehensive partnership agreement, including 12 countries. Its significance rose especially after the U.S.’ joining the negotiations in 2010.<sup>8</sup>

According to official U.S. documents the objective of the TPP is to enhance trade linkages among TPP partners, boost investment, intensify innovation and economic growth and facilitate job creation and retention.

Since the 19 rounds of TPP negotiations (between the U.S.’ joining the negotiations in 2010, and 2013) were all behind closed doors, little information is available about the agenda, the results and the controversies. The secrecy of the negotiations is internationally criticised for

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<sup>7</sup> Currently 174 RTAs are listed at WTO’s website (<http://rtais.wto.org/UI/PublicAllRTAList.aspx>). Preferential trade agreements (i.e. partial and unilateral preferential reductions of trade barriers under WTO auspices) constitute a different category.

<sup>8</sup> In addition to Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the U.S. and Vietnam Korea and Taiwan have expressed interest in joining the negotiations. Furthermore, additional countries, including Bangladesh, the Philippines, Indonesia, Cambodia and Laos might attend as well. Even China and India have declared their interest in the TPP.

lack of transparency and accountability. According to some leaked information, the U.S. proposals on reinforcing intellectual property right protection encountered serious controversies among TPP negotiators.<sup>9</sup>

Observers/stakeholders (domestic NGOs, such as AFL-CIO, and Public Citizen) tend to oppose the TPP for a range of issues, the most prominent of which is TPP's investor–state dispute settlement mechanism.

According to critics, investment provisions cannot be reconciled with environmental, human right and public welfare regulations. Critics fear that the TPP will relax signatory states' labour protection regulations, and the privileges provided to foreign investors will threaten environmental obligations and work safety. Additionally, since the TPP simplifies outsourcing and foreign direct investment, NGOs expressed concern about jobs, and U.S. workers' wages.<sup>10</sup> Conversely, U.S. scholars (Moran-Oldenski, 2015. and Petri-Plummer, 2012.) argue that the TPP will boost inward investment in the U.S. by TPP country firms, and will thereby contribute to job creation, increased R&D and value added. U.S. firms' investment in TPP countries will increase these firms' competitiveness, which benefits consumers.

Since TPP negotiations have been going on in secrecy, their fate and impact are unpredictable. There are abundant open questions: whether the TPP will be concluded at all, or be transformed in a series of bilateral deals (e.g. between the U.S. and Japan); whether the U.S. will be able to implement its interests (pushed for already in the course of WTO negotiations); whether India or China will join – this would greatly alter both the configuration and the impact of the TPP.

### ***Regional Comprehensive Economic Partnership (RCEP)***

RCEP a negotiation on a free trade agreement and economic cooperation among 16 countries, gathering ASEAN member countries and the 6 countries (Australia, China, India, Japan, Korean Republic and New-Zeeland) having FTA with them. The sixteen negotiating countries have more than 3 billion inhabitants, USD 21 000 billion aggregated GDP and they represent 27 percent of world trade. According to estimation based upon general equilibrium model, RCEP would lead to about USD 260-640 billion income gains in the world economy. (Wignaraja, 2013) RCEP negotiations were launched in 2013 in Brunei and are to be completed till the end of 2015. 6 rounds of negotiations were taking place so far.

RCEP's "Guiding Principles" states as follows: "1. The RCEP will be consistent with the WTO, including GATT Article XXIV and GATS Article V. 2. The RCEP will have broader and deeper engagement with significant improvements over the existing ASEAN+1 FTAs, while recognizing the individual and diverse circumstances of the participating countries. 3. The RCEP will include provisions to facilitate trade and investment and to enhance transparency in trade and investment relations between the participating countries, as well as to facilitate the participating countries' engagement in global and regional supply chains." (RCEP, 2012)

RCEP negotiations cover six topics, such as trade of goods, trade in services, investment, economic and technical cooperation, competition rules and dispute settlement. In a very optimistic view, RCEP could lead even to the establishment of a "Free Trade Area of Asia-Pacific" (FTAAP), but for the time being negotiations are very difficult: participants are aware

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<sup>9</sup> There is substantial intra-TPP heterogeneity in the effective level of intellectual property right protection (e.g. with respect to patent rights or in the degree of copyright protection) and enforcement.

<sup>10</sup> <http://www.citizen.org/TPP>. <http://voxeu.org/article/tpp-fdi-and-good-jobs-us>.

of the advantages of free trade, but some of them are facing strong domestic pressure of market protection. In the case of India, Indonesia and Singapore difficulties will be faced even in the case of market access. It is a further difficulty that the establishment and operation of a common market type integration is particularly hard among countries of different level of development: such an integration can impose a heavy burden on the less developed participants. Beyond these difficulties, “ASEAN should remember that the RCEP agreement is not the only option available for Asia Pacific regionalism. The ongoing TPP negotiations can also serve as an FTAAP model, giving the US a lead role in setting the agenda for a future regional architecture.” (Das, 2014:2)

RCEP may help to regionalise global production networks what can create Asia even more the industrial workshop of the world, it can reduce overlaps among Asian free trade areas as well as chaotic multiplicity of trade rules. A comprehensive agreement could abolish Asian trade restriction – in accordance to the WTO rules. In the area of investment, where there is no WTO agreement, RCEP could facilitate FDI flows and technology transfer of transnational corporations. The outcome of RCEP negotiations is as uncertain as that of the other mega-regional trade negotiations – but it is obvious that WTO must enlarge its scope if it wants to preserve its global importance.

**Box 1.****RCEP and TPP – alliance or rivalry?**

Although RCEP and TPP have similar objectives in terms of trade liberalisation and economic integration, there are signs that the two RTAs are far from being complementary and synergistic.

The most conspicuous difference is in terms of leadership. ASEAN is the orchestrator of RCEP,<sup>11</sup> while the TPP is driven (and its agenda determined) by the U.S. The second difference is in terms of the presence of a key world trade actor: China. China is included in RCEP but not in the TPP. The third difference concerns the envisaged depth of the integration. Although RCEP is envisaged to be deeper and more comprehensive than the existing (overlapping) free trade agreements (FTAs) in the region, the commitments required from TPP-members are more comprehensive (WTO + issues) than those expected from RCEP participants.

The exclusion of China from the TPP means that the outcome of the U.S. – China rivalry is bound to influence the development of the two RTAs. At the same time TPP is bound to divide ASEAN since not all RCEP-members participate in TPP. Malaysia, Singapore and Vietnam are bound to support the TPP and other ASEAN members will probably focus rather on the development of RCEP (Pakpahan, 2012). This division and the U.S. – China rivalry may undermine ASEAN’s leadership in the regional trade architecture as well as in the regional political landscape. In order to preserve its central role as facilitator of economic and political arrangements in the region, ASEAN should play a proactive role in RCEP negotiations, and maintain its own unity and coherence (Fukunaga, 2015. and Hamanaka, 2014). These arguments make it clear that international trade negotiations are impregnated with geopolitical rivalry among major economic powers.

Another interesting feature shaping the rivalry between RCEP and the TPP is India’s increased interest in the mega-regional trade agreements (Singh, 2015). After decades of passivity, India has become increasingly active and communicates its determined position in international trade negotiations. India’s significant weight in global trade can be illustrated with the fact that the Bali Package at WTO Ministerial Conference was signed only after an agreement was reached between India and the U.S. (one day after the expected conclusion of the Conference in Bali) that took India’s domestic concerns on food security into account (Lehman–Fernandes, 2014).

India’s interests and ambitions are not surprising if we take into account that it is member neither of the TPP, nor of TTIP or APEC. With the conclusion of the TPP India may face not only trade diversion effects but may at the same time become disadvantaged when trying to plug in multinational companies’ global value chains in manufacturing and in services. Several of TTIP’s provisions have a

<sup>11</sup> RCEP includes ASEAN and its FTA partners: China, Korea, India, Japan, Australia and New Zealand.

similar effect. For example, TTIP may trigger convergence in the regulatory environments of the U.S. and the EU, which increases pressure for conformity by third parties. The only way to proceed in the light of these developments is to adapt India's domestic regulation (e.g. its standard regime) to become consistent with both TPP and TTIP.

According to (Lehman–Fernandes, 2014), if the mega-regional agreements are concluded, given the US involvement in both, they will create common regulatory sets across the Atlantic and the Pacific. This will foster regulatory convergence and co-operation among member countries. If India remains excluded from the two mega-regionals its role will be confined to a rule taker rather than a rule maker (see also Singh, 2015).

Considering that both the U.S. and China are important trade partners for India it seems obvious that India should focus on reinforcing its position within RCEP

### ***Transatlantic Trade and Investment Partnership (TTIP)***

Exceeding 2 billion euros a day, the EU–U.S. trade relationship is the largest volume bilateral trade in the world. Although the two transatlantic actors are each other's key trading (and investment) partners, they are the ones that submit the most complaints to the WTO about each other's breach of obligations. The most contentious conflicts included the steel dispute (where WTO found that the U.S. imposed illegal safeguard measures in the form of temporary tariffs on steel in 2002)<sup>12</sup> and the Airbus-Boeing dispute where it was established that over the period between 1989 and 2006 the U.S. granted to Boeing WTO-incompatible subsidies worth USD 5.3 billion.

In the context of these developments, the initiation of EU–U.S. negotiation series in 2013 with the objective of concluding a comprehensive free trade agreement was a surprising development. The TTIP negotiations<sup>13</sup> aim to reduce the tariff- and non-tariff barriers to trade in goods and services, facilitate trade-related investment regulations, and promote regulatory cooperation. It is obvious since the launching of TTIP negotiations<sup>14</sup> that this agreement, in case of being successfully concluded, would provide a blueprint for global trade rules for the coming decades. Exactly how this would come about has not been expressed by governments of the two sides of the Atlantic, but it could involve TTIP's rules eventually being adopted in a new set of accords at a reinvigorated World Trade Organization (WTO). In such a long term outcome, much more is at stake than making free transatlantic trade and investment. „The motivations behind TTIP will shape the outcome. The EU negotiating mandate, which reflects in part objectives shared with the US, was released to the public by the Council of the European Union in June 2013.<sup>15</sup> In market access, the objectives are to remove import duties on goods and restrictions on services, open up government procurement, and facilitate investment. The mandate also calls for improved regulatory coherence and cooperation through dismantling unnecessary regulatory barriers. On rules, the parties seek to improve cooperation in setting standards. Taken at face value, this constitutes an “ambitious, comprehensive, and balanced”<sup>2</sup> enterprise aimed at raising income and creating jobs on both sides of the Atlantic. To date no provisions allowing third parties to join TTIP are envisaged, thereby limiting those parties’

<sup>12</sup> The EU estimated that it was entitled to around €2.4 billion per annum for the lost value of trade concessions resulting from the imposition of the U.S. steel safeguard.

<sup>13</sup> Parallely, a Canada – Europe Trade Agreement (CETA) has been concluded. See: Consolidated CETA Text. Published on 26 September 2014. Source: [http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc\\_152806.pdf](http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf)

<sup>14</sup> Ten TTIP rounds have taken place so far – the recent one was concluded in Brussels, on the 17 July 2015.

<sup>15</sup> About the EU's negotiation mandate, see: *European council of the European Union, 2013, 11103/13 DCL 1*. Source: <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>

options and shifting the focus to TTIP's likely impact on outsiders." (Akman – Evenet – Low, 2015: 5.)

Negotiations cover the following chapters:<sup>16</sup>

- Market access: above and beyond cutting and harmonising customs duties, removing barriers that affect goods and services trade and simplifying rules of origin, TTIP aims to improve the parties' access to the bilateral public procurement market.
- Regulatory cooperation - including technical barriers to trade in a number of sectors. Regulatory cooperation proposes to review existing regulations that affect bilateral trade and investment, develop new regulations jointly; systematically exchange information on regulatory issues, and create relevant institutions responsible for the implementation of this objective.
- Rules, e.g. on energy and raw materials, sustainable development, SMEs, investor–state and government–government dispute settlement, competition, intellectual property & geographical indication.

According to an oft-cited study by Francois (2013) the dismantling of trade barriers will result in an annual gain of €119 billion for the EU, and €95 billion for the U.S. The potential annual gain for the rest of the world is estimated at around €100 billion. Given the low average level of customs duties in EU–U.S. trade (around 2%)<sup>17</sup> the greatest gains stem from the elimination of non-tariff barriers, for example regulations that involve unnecessary costs and duplications. The approval of drugs is a good example of the gains that can be derived from the harmonization of regulations. Previously pharmaceutical companies had to carry out, among others, clinical trials twice, if they wanted to have the product approved in both the U.S. and the EU. Here EU-US cooperation e.g. in terms of the harmonization of each other's approval procedures has reduced unnecessary duplication.

The proposed TTIP is bound to become the largest free trade area in the world dismantling the barriers to trade between markets of a population of 500 million and a 300 million respectively. This would be a great leap forward towards a free world trade: an objective that has been pursued for 70 years now. However, the consequences of TTIP conclusion for the rest of the world are ambiguous. For developing countries TTIP seems exclusionary: they might be excluded from this huge "unified" market. Will this bilateral treaty jeopardise multilateralism, i.e. the multilateral trading system the reinforcement of which has been on the agenda since the establishment of GATT in 1947?<sup>18</sup>

The EU's goals concerning trade in goods and customs duties (tariffs as it's best known) is very simple: although industrial tariffs are generally fairly low (less than 2 percent in average in the EU-US trade) and over half of the transatlantic trade is not subject of duties/tariffs, but the rest faces extremely different duties/tariffs, some other duties/tariffs are even prohibitive.<sup>19</sup> In some cases, EU and US duties/tariffs are largely different even on the same products/group of

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<sup>16</sup> The three main chapters consist of 24 trade and investment issues. The European Commission "as part of its latest transparency initiative" has already published 27 fact sheets (2 page long each), 15 EU position papers ("these set out how we'd want a final deal to read, line by line") as well as 12 EU textual proposal ("what we want to achieve in a chapter". See: *European Commission, 2015*.

<sup>17</sup> Though some customs duties are much higher e.g. for clothes and shoes ~30%; for raw tobacco around 350%.

<sup>18</sup> Note that negotiation practices for tariff reduction under GATT were also mainly bilateral and commitments were based on reciprocity. (*Morin, J. F., Meunier, S., Novotna, T., Ponjaert, F., & Telo, M., 2015*)

<sup>19</sup> For example, the US duty on raw tobacco is 350% and over 130% for peanuts.

products.<sup>20</sup> “The EU wants to remove these duties and other barriers to trade, such as lengthy administrative checks, that increase the cost of trade in goods.” (Fact Sheet on Trade in Goods and Custom Duties) According to the EU’s intention concerning the 1<sup>st</sup> Chapter of the TTIP agreement “would remove nearly all customs duties on EU-US trade This would result in immediate savings for EU companies, create 'spill-over' effects – benefits not directly related to trade; for example: scrapping tariffs would lower the cost of the goods we export which would increase sales, which would mean more jobs to enable firms to produce more and would boost demand from people filling those new jobs for other goods we produce. Encourage trade in goods between the EU and the US.” (Ibid.)

**Box 2.**

**A hot issue: the impact of shared standards on the rest of the world.**

TTIP does focus mostly on non-tariff barriers, since tariffs on goods are very low both in the US and the EU but important differences of trade regulatory measure, technical rules, fito-, animal and human sanitary regulations etc. hinder free trade. These differences hamper a lot market access for third parties, mostly for developing countries. There are three main types of agreement of technical barriers to trade: - mutual recognition of existing standards, when countries provide unrestricted access of their market to products that meet any participating country’s standards; - certain degree of harmonisation as a precondition for countries to allow products of other countries to access their markets; - mutual recognition of each other’s testing of each other’s standards - conformity assessment. (Matto, 2013) The US and the EU should make two important steps in order to avoid harmful impacts on third, mostly developing countries: first, mutual recognition would be preferred, which is a quite powerful form of liberalising and does not impose restrictive rules of origin. In that case, not only US and EU producers could supply both markets fulfilling either the European or the American standards, but third countries would do the same. Second, in case of harmonisation of standards, the less stringent one would be preferred. “With these two commitments in place, the rest of the world could follow the EU and US negotiations with hope rather than trepidation.” (Ibid.)

As far as trade in services is concerned, the EU “want to make sure make sure EU services companies can compete in the US on the same terms as US firms and safeguard EU governments' right to run public services just as they wish.” (Factsheet on Services in TTIP)

The field of public procurements has always been a central topic of EU-US trade disputes that is easily understandable if we take into account that the EU and the US have the largest public contracts markets all over the world and both parties have rules aimed at ensuring public money is spent in a transparent, efficient and non-discriminatory way. Nevertheless, companies have faced several and some times impenetrable obstacles in winning public contracts on the other side of the Atlantic. Sometimes, they are not even allowed to bid for a contract. The TTIP would provide an opportunity to remove remaining obstacles and this further market opening across the Atlantic would be fairly helpful for both negotiating parties. The European Commission wants “to open up public tendering markets on the basis of rules on transparency and nondiscrimination similar to those that apply under EU law. TTIP will not affect public authorities’ ability to choose to outsource a public service or produce it in-house (and) capacity to choose goods, services and works that promote environmental protection, social progress and labour law enforcement.” (Factsheet on Public Procurement in TTIP)

According to an official EU paper (European Commission, 2015/b: 4-5.) that provides an overview of the EU’s position on regulatory cooperation, this cooperation will/would outcome to several important mutual benefits: 1.) since the costs of transatlantic trade will become lower,

<sup>20</sup> For cars: EU duty on imports from the US is 10% and US duty on imports from the EU is only 2.5%. For train carriages the US imposes a 14% duty on imports while the EU charges only 1.7% on imports from the US.

companies will acquire new customers and expand their businesses – creating growth and all the above will create new jobs and result higher wages. 2. If and when the US' and EU's regulation will be more compatible with each other, consumers will have more products to choose. 3. "TTIP will not mean lower levels of protection or safety (...). On the contrary, where TTIP boosts regulatory cooperation, consumers are likely to have better guarantees that they buy safe and legal products. (...) Regulatory cooperation means sharing that pool of talent, experience, and scientific knowledge, to the benefit of both sides. It will also mean stronger enforcement of rules, which is a key challenge for public authorities. Where TTIP removes unnecessary duplication (as in factory inspections for medicines and medical devices) it will free up resources for more worthwhile tasks" (Op. cit.: 5.) 4. A more effective regulatory cooperation between the EU and the US could contribute to the development and implementation of international regulatory rules and standards. If the US and the EU agree on an shared standard, there will be a much greater chance of being adopted by third countries. This kind of partnership will only become more important over time as emerging economies will play a greater global role in international trade governance. Increased EU-US regulatory cooperation will lower trade barriers across the whole world and it will help ensure that international rules provide the highest possible levels of protection of the rule of law globally.

The TTIP text on regulatory cooperation starts with general regulatory issues, the eventual operation of an international regulatory cooperation body and technical barriers to trade – plus sanitary and phytosanitary measures. Sectoral provisions of the EU's textual proposal on regulatory cooperation covers the following sectors: chemicals, cosmetics, engineering, medical devices, motor vehicles, pharmaceuticals, services, textile and clothing – and this chapter is concluded by the issues of regulatory cooperation and the SMEs. Since regulatory issues are hardly discussed by the European public, EU chief negotiator, Ignacio Garcia Bercero has considered necessary to emphasise that "regulatory discussions are based on very clear principles: • Nothing that we will do in the regulatory areas will reduce any of our high standards of consumer, health, labour or environmental protection. On the contrary, we will uphold them and, where possible, reinforce them. • Regulatory cooperation must be based on mutual interests and be lead by the regulators from both sides. • Our regulatory process is not going to change because of TTIP. So, any future decision will be adopted according to the domestic regulatory frameworks of each side." (EC, 2015/d: 3.)

The 3<sup>rd</sup> chapter on rules starts with trade abs sustainable development and in this field "The EU has developed a consistent practice (...) aiming at ensuring that increased trade is mutually supporting environmental protection and social development, and does not comes at the expense of the environment or of labour rights." (EC, 2013: 2.) EU's endeavour to set up a common energy policy is in line with its negotiating positions in the TTIP negotiations. Customs and trade facilitation in TTIP intend not to lower tariffs (it is worthless in today's environment of low duties) but to make it easier for companies trading to get their goods through customs in both sides of the Atlantic, to continue to ensure firms can only export goods which meet common rules. Such a common practice could protect people and the environment. A separate issue is the promotion of 20 million SMEs of the EU member countries in order to help them both to export and import and enable them to take full advantage of TTIP and to grow their business. In terms of competition policy the main objective is to promote free and fair competition that includes harmonised rules to stop large firms abusing market power, ensuring private firms to compete state-owned ones and making state subsidies transparent. Intellectual property rights (IPR) is a real hot potato of international trade negotiations and so it is in TTIP talks especially because of the high sensitivity of the US. The EU's position in this field is "to set out a jointly agreed interpretation, implementation and/or practice in relation to certain IP

issues debated in the international framework. The goal is to find a common denominator between EU and US rules, without modifying them, in jointly identified areas, thus increasing legal clarity and certainty for transatlantic trade. A non-exhaustive list of subjects to address could include: • Anti-bad-faith registration of trademarks; • Customs enforcement, including of counterfeit goods in small consignments; • Recalling established practices on patent procedures and patentability criteria including regarding secondary use or incremental innovation; interference of regulatory entities; provisional protection of patent applications.” (EC, 2015/c: 1.) As far as Government-to-government dispute settlement (GGDS) in TTIP is concerned, the mutual aspiration is to base on a system already in place at the WTO.

### ***Trade in Services Agreement (TiSA)***

General Agreement on Trade in Services (GATS) is a part of WTO (as GATT is) but has had no major operation so far. It is fairly contradictory if we take into account the extremely dynamic growth of international trade in services since the 1980s/1990s. The two main service sectors that are generating most of this growth are financial services and telecommunication. This contradiction resulted the start of a new plurilateral trade negotiation on free trade in services, that is TiSA. For the time being, there are 24 countries participating in TiSA. TiSA was born in consequence of two immanent problems of WTO: first, trade in services has always been captured by trade in agriculture and since the failure of the Doha Development Agenda was due to the lack of agreement in agricultural issues, it restrained an agreement in services; second, single undertaking has excluded any partial agreement, therefore, after the Ministerial Meeting of late 2011, Australia proposed to launch a plurilateral trade negotiation on services. The 24 participating countries represent 70 percent of world trade in services – although Brazil, India, China and the ASEAB-countries have not joined TiSA so far.<sup>21</sup>

TiSA negotiations are based on the GATS’ rules, so this way any WTO member country can join – that is even easier since negotiations take place in Geneva. In consequence of that, if TiSA enlarged enough, that is the majority of WTO member countries joined it, TiSA would be transformed into a wider WTO agreement and then every WTO member country should enjoy the fruits of TiSA. Negotiations started in early 2013, 10 round took place since the end of 2014 – there is no designated closing time.

According to the estimation of the EU Directorate-General for External Policies, TiSA would result USD 15,6 billion income gain for Europe and a further USD 10,4 billion for the US. (De Micco, 2013: 1.) Beyond that TiSA has an extreme importance due to the fact that because of the inactivity of GATS, it is the first really important negotiation on free trade in services since more than twenty years. There are a lot of Preferential Trade Agreements (PTAs) in services among the 24 negotiating countries, therefore, therefore the enlargement/generalisation of the best practices of PTA-commitments would generate important benefit – mostly in terms of stability and predictability (especially if TiSA will contain an adequate dispute settlement mechanism as well).

Since the beginning of the TiSA negotiations, the US has preferred an agreement outside WTO, while the EU has advocated an agreement in conformity with the GATS that is an agreement within the WTO framework. A future plurilateral agreement on free trade in services agreement can be connected to GATS, and so to the WTO through different legal mechanisms.

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<sup>21</sup> China has already signed officially its interest in participating the negotiations.

**After Bali: multilateralism versus plurilateralism**

It was clear for trade experts, in early 2013 when the 9<sup>th</sup> WTO Ministerial Conference was convoked that the WTO was at a crossroad: since early 2013 WTO has had a new leader, the Brazilian trade diplomat Roberto Azevedo, the Doha Development Agenda negotiations were at an impasse, there are many pressing new issues and challenges confronting the WTO (such as, for example, the trade consequences of global value chains) etcetera. There seemed to be two options prior to the 9<sup>th</sup> Ministerial Conference that was held in Bali, in November – December 2013: “to step back from Doha altogether or to take the realistic steps necessary for Doha’s re-birth and survival.” (Cantore – Marhold, 2013: 2.)

Formerly bilateral and multilateral trade negotiations were distinguished, where ‘multilateral’ automatically meant that every WTO members participated and the multilateral negotiations took place in the WTO framework. Following the start of TTIP, TPP and RCEP, a new special term was established: plurilateral trade negotiations which provide negotiation forum for a group of countries. It is very likely that plurilateral trade negotiation will be appreciated and it will probably lead to the marginalisation of multilateral trade negotiations and deals that is WTO is likely to lose a great part of its global importance.

After the “Informal Ministerial Meeting” of July 2008, in Geneva, the Doha Round didn’t worked furthermore and the 8<sup>th</sup> Ministerial Meeting in 2011 declared that the Doha Round was “deadlocked”. Negotiations were restarted in early 2013 when a “mini package” and an “early harvest” were envisaged. “In contrast to analysts’ wishful claims, however, WTO members have repeatedly stressed that any early package would not be the end of the line, but rather a milestone to gather momentum for the full conclusion of the Doha Round.” (Karmakar, 2013: 4.)

There are a lot of pessimistic experts saying “Doha is outdated” and a new Round must be launched in order to address the real challenges of our time. The Doha Round started at an extremely sensitive moment, only three month after 11/9 and aimed at the increasing of developing countries trading positions – in parallel with the priority of agricultural trade liberalisation. Since 2001, several developing/emerging economies have developed much more dynamically than most of the developed countries and were able, at the same time, to increase spectacularly their export performances. Under these conditions The United States and the European Union have had more and more interest towards bilateral and plurilateral trade negotiations.

Most problems and discussions are concentrated around agricultural issues (as it has been the case, by the way, since the establishment of GATT...) Developing countries are criticising agrarian protectionism not only in general, but they have a lot of concrete claims on the correction of differences of subsidies in agriculture at the developed and developing countries. Because of recent CAP-reforms, however, the EU is seemed to be better placed than the US and the EU may be more proactive and is more ready to attempt a resolution in possible post-Bali agricultural negotiations.

However, a solution to the Doha Round impasse cannot be found within the agricultural negotiations alone. Also key from a developing country perspective is putting to rest the unfinished business of industrial goods liberalisation, especially the persistent protection in developed countries of key labour-intensive manufactured goods of export interest. Some researchers have proposed that a conditional offer of reduction in tariffs be made in return for

opening negotiations in other areas, to be otherwise revoked by the countries concerned if sufficient progress is not seen. However drawbacks remain from the same unresolved special and differential reciprocity problem which has dogged the Doha Round negotiations. (Karmakar, 2013: 6.)

Although the Bali Ministerial Meeting helped to avoid the visible collapse of WTO, one can not declare that the WTO has regained its central role in international trade negotiations. It is obvious, that the progression of mega-regional/plurilateral trade negotiations represents the greatest ever challenge for WTO: governance of international trade negotiations easily slip out of WTO control. The Doha Development Agenda has been a clear failure and it is more and more obvious that WTO has not been able so far to follow a new trading program adequate to 21<sup>st</sup> century's challenges. "The successful conclusion of the Bali Ministerial Conference and its terrific reception in the international press and from government leaders means that the WTO now has the opportunity to restore its fortunes. Talk of the WTO's demise as a negotiating forum has been set aside, at least for now. If, in the coming months, the WTO membership takes the right decisions concerning its near-term work programme and assiduously follows up, then such talk might be banished for good. For sure, the Bali deal addressed only part of the Doha Development Agenda and was sealed after its fair share of drama. Still, the run-up to Bali and the Ministerial Conference itself showed that creative solutions could be found, that the membership is prepared to rally around them, and ultimately, that the prospect of another damaging deadlock was unacceptable." (Evenet – Jara, 2013: 1.)

Bali has proved once again that the WTO's main strengths are concentrated in organising multilateral negotiations as well as in dispute settlement. In recent years WTO has developed a lot in terms of transparency incentives, permanent control and supervision: these are values that can provide basis for a stable future. Along with the above mentioned points, it is sure that WTO has been unable to progress more and the DDA has become a failure because it has removed more and more from the realities of 21<sup>st</sup> century's trade issues. It is obvious that the enlargement and differentiation of global value chains as well as the expansion of electronic trade have influenced a lot the 21<sup>st</sup> century's international economic relationships – and one can not forget the negative trade effects of the global crisis of 2007-2009 either. It is a fact that new trade methods have not liquidated old fashioned protectionism. "Indeed, the distinction between 21<sup>st</sup> century and earlier forms of commerce can be somewhat misleading. While it is true, for example, that the existence of international supply chains alters the interpretation of trade data and potentially national commercial policy priorities, it is worth recalling that what is 'supplied' in supply chains are goods and services, for which longstanding multilateral trade disciplines exist. Moreover, since optimising supply chains implicates many different types of government policy any future WTO initiative on such matters may need to cut across existing 'silos' of the multilateral architecture as well as addressing some matters that have hitherto lay outside the WTO's remit." (Op. cit.: 5.)

### **Mega-regional/plurilateral trade negotiations – end of multilateralism? Is it the end of the WTO?**

The surveyed trade negotiations make it clear that global trade governance is getting more complex than what a bilateral multilateral dichotomy could describe. An in-between category needs to be included that can be referred to as plurilateral, multi-actor negotiations that exclude however some of WTO members. These plurilateral negotiations frequently involve actors from several regions, hence they are also referred to as mega-regional trade negotiations.

It seems obvious that the proliferation of mega-regional approaches are the reaction to a two-decade series of failures of WTO to reach an accord on certain issues: plurilateral negotiations are issue-based (Nakatomi, 2014), and these issues are identical to the ones that remained unsolved by WTO, such as non-tariff barriers; agreements on trade in services; on global non-discrimination; on the alignment of investment promotion and trade policy instruments; on intellectual property related commercial issues; on the intertwining of trade and sustainability; on access to peers' public procurement markets, etc.

Nevertheless, the emergence of mega-regional / plurilateral trade negotiations as alternatives of WTO raises some important questions. Will it put an end to the multilateral approach to trade governance? Will WTO's role be confined to that of a dispute settlement body?

If the ongoing plurilateral / mega-regional negotiations are successfully concluded, what will their implication be for third countries that are not included in the negotiations? Can two-thirds of the world, mainly developing countries, be excluded from meaningful international trade negotiations?

Is TTIP a reasonable deal after all? Can a plurilateral agreement on trade and investment protection be effective if it excludes the BRIC countries, especially China and India?

If one or several of the ongoing plurilateral / mega-regional negotiations are concluded with an accord their timing and outcomes will have crucial implications for participants' world economic positions. What will the consequences of the failure of one or several ongoing negotiations be from the point of view of world trade?

Shared standards (the mutual recognition of standards) will constitute an important step forwards in the dismantling of non-tariff barriers – but what about its implications for non-participants? How will it influence the export and market access opportunities of developing countries? Will shared standards denote a mutual recognition, a harmonisation of standards, or conformity assessment? The answer will define whether third parties, mostly developing countries, will gain or lose on mega-regional trade deals?

While talking about the future of international trade negotiation, one must keep in mind the two major developments that characterised world trade since the founding of WTO (in 1995) and the launch of Doha Development Agenda (DDA, in 2004): a) the sustained high growth rates in many developing countries, especially in the emerging market economies such as China, India, Brazil, South Korea etc. and b) the increasing share of world trade involving supply chains (global value chains) and firms located around the globe being specialised in specific activities and tasks that are part of a global value chain. This latter modify the very term 'market access' and produced a great variety of trade problems related to 'behind the border trade policies'. "Many of the relevant policy areas – including investment, certain subsidies, environment, procurement, data protection and privacy policy – are not on the table in the DDA. Many of these policy areas are the subject of negotiation in PTAs, including the TPP and TTIP. Time will tell whether mega-regional agreements will make substantial progress in crafting disciplines in such areas. Brazil, India and China have yet to conclude a deep PTA with another large economy, developed or developing. The large emerging economies have not been active in negotiating deep PTAs with each other or with large OECD nations. This suggests that the WTO will remain an important vehicle to engage on and address trade issues, both as regards market access for goods and services, and for potential new policy areas." (Hoekman, 2014: 61.)

Not everybody is so optimistic about the future of WTO as Bernard Hoekman's in his above quotation, but it is for sure that the Bali Ministerial Conference has prevented WTO's Doha Round from becoming an outright failure, but it has not contributed to preserving WTO's traditional role as a platform for multilateral rule-making. „The WTO has so far failed to deliver any significant multilateral trade liberalisation. (...) the conclusion that the WTO is a failure would clearly be premature. Its punchline is that the WTO's success at preventing trade wars far outweighs its failure to promote trade talks. Overall, the WTO is therefore much more successful than the ailing Doha Round suggests.” (Ossa, 2015: 1. – italics added by Gy. Cs.) Let's try it not to take as a joke!

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