

AWRN 2020 Web Conference Agenda

Date: November 21st (Sat), and 28th (Sat)

Time: 6:00~8:30 (Geneva)/10:30~13:00 (New Delhi)/12:00~14:30(Jakarta)/13:00~15:30(Singapore, Hong Kong, Taipei & Beijing)/14:00~16:30(Tokyo & Seoul)/16:00~18:30(Sydney)

Date: November 28th (Sat)

Time: 6:00~9:00 (Geneva)/10:30~13:30 (New Delhi)/12:00~15:00(Jakarta)/13:00~16:00(Singapore, Hong Kong, Taipei & Beijing)/14:00~17:00(Tokyo & Seoul)/16:00~19:00(Sydney)

Each presentation will be 20 minutes, followed by 15 minutes' discussion.

November 21st, “Post-Trump World Trade Order”

Dukgeun Ahn, “Post-Trump World Trade Order (or, “Still-Trump World Trade Order”)

Abstract:

During the past four year of the Trump administration, the US government has clearly shown its preference of trade bloc as opposed to the WTO system that has been maintained as the core of the world trade order. In addition to relying on FTAs with key trade partners to strengthen economic integration and develop new trade rules, it undermined the core function of the WTO system by blocking the Appellate Body procedure. Moreover, in the process of WTO Director-General selection, the US government again hugely damaged the integrity of membership by challenging the “consensus” building practice.

The current situation raises various fundamental questions for the fate of the world trade order that has been built and articulated since the inception of the Bretton Woods system. How could the WTO regain the trust for the dispute settlement system? Whether can the WTO function as the platform to liberalize the global market? What can resuscitate the multilateral trade negotiation to restructure the outdated WTO rules?

Another dimension of the current challenge is to find a way to embrace structurally different economic systems in the WTO system. It is true that the communist economies centered on the Soviet Union were mostly separated or excluded from the market economy systems during the entire GATT period. Accession of many non-market economics since the inception of the WTO has caused systemic conflicts in the WTO system due to the lack and confusion of trade rules dealing with non-market economic situations. Disputes over subsidies and state-owned enterprises of China highlight this systemic challenge. This problem will get more serious when economic influence of China, and possibly Vietnam and Russia in the future, continues to grow in the coming years.

Does the WTO need to amend the rules to accommodate currently significant economic stake holders based on different economic foundations? Or is it the WTO members' duty to restructure

their economic systems to comply with the WTO obligation?

Now how should we assess the result of the US presidential election? Do we have more promising future for the world trade order, or more devastating one? What will be necessary to regain the global trust for the world trade order?

R.V. Anuradha, “Trade Wars & Paper Victories”

Abstract:

While the WTO’s Appellate Body has been dysfunctional since December 10, 2019, there is no corresponding reduction in the pace of disputes being filed at the WTO. Four new consultation requests have been initiated in the period after December 2019; and several others filed prior to that, have been steadily progressing either at the consultation stage, or establishment of panels, or hearings of the panels. Panels hearing disputes also publish their rulings. What happens thereafter will determine whether these remain paper victories; or the trigger to exert bilateral pressures and extract concessions; or, wondrously get adopted.

It isn’t impossible to imagine adoption of panel reports without a challenge; Australia for instance, did not appeal an adverse panel ruling in *Australia — Anti-Dumping Measures on A4 Copy Paper* (DS 529), and consequently the WTO DSB adopted the ruling in January 2020. But a few other panel rulings have been appealed “into the void”, i.e., into a non-existent AB.

On September 15, 2020, a WTO panel held that certain tariffs unilaterally imposed by the United States against China, pursuant to investigations under Section 301 of the U.S. Trade Act, 1974, are inconsistent with the principles of the WTO. The USTR’s reaction to the panel ruling was to reiterate the Trump administration’s grievance that “*the WTO is completely inadequate to stop China’s harmful technology practice*”. It is likely that the U.S. will file an appeal to ensure the ruling is not adopted.

The trigger for the WTO panel ruling was a s.301 investigation by the U.S. on China’s laws and practices affecting intellectual property rights and technology transfer, pursuant to which the U.S. started imposing retaliatory tariffs in an incremental manner beginning June 2018. China did not play by the WTO rules either, and returned the favour with counter-tariffs on imports from the U.S. The relations between the two countries has been a hectic spate of tit-for-tat tariffs, bilateral trade negotiations and conclusion of a “phase I trade deal”, while continuing with the retaliatory tariffs. China also initiated a WTO dispute in August 2018, which resulted in the current panel ruling- one that is likely to remain a paper victory for China.

While most countries faced the brunt of U.S. unilateralism on steel and aluminum tariffs under s.232 of the Trade Expansion Act; many are now facing the threat of unilateral actions under S.301 of the U.S. Trade Act, along the same lines that China did.

The upending of rules of the WTO has already unleashed increased pressure for bilateral negotiations, and this will exacerbate with unenforceable WTO rulings as the recent one. My focus in this session will be to address 4 questions:

1. How can bilateral deals be used to creatively enhance and engage global inter-connectedness?
2. Can bilateral and plurilateral agreements ever fill the void that an unenforceable WTO system has created?
3. Can the WTO sustain existence merely as a coalition of the willing?
4. In the long-term, do countries need to resurrect multilateralism under the WTO for their own sakes?

Bryan Mercurio, “Multilateralism in a G-Zero World: Threats and Opportunities”

AWRN 2020 Business Meeting

November 28th, “COVID-19 and the WTO”

Jaemin Lee, “Trade Agreements and COVID-19 – A Survey of Trade Measures and Implications”

Abstract:

The WTO and WHO are both important international organizations, and they are tasked to perform important function/role during a pandemic. To coordinate the work, the two organizations conduct mutual discussions and information sharing as well. At the same time, however, there does not seem to be a systematic cooperation scheme in place. Nor is there a provision in the WTO Agreements as to how to regulate trade in the situation of a pandemic. There are general provisions applicable to emergency situations – such as Article XX of the GATT – but they are not fine-tuned enough to cover a pandemic situation. Likewise, the WHO Constitution (or IHR 2005) contains provisions relating to a pandemic, but it does not contain provisions on how to cooperate and coordinate with the WTO regarding possible trade implications. As such, I would like to discuss this issue at the AWRN meeting in November.

Heng Wang, “COVID-19 and the World Trade Order: China, the US and Beyond”

Abstract:

COVID-19 is a pressure test for governments and international order in ways never seen before. What are the future paths of China to international trade after the return of (geo)politics? I argue that there are two major new trade paths of China: selective engagement and selective reshaping, which reflect the rationale behind the US-China trade tensions and China-led Belt and Road Initiative (BRI)

respectively. The US-China trade war and the BRI profoundly affect China's trade approach and more broadly the multilateral trading system. Behind these two paths, China has to search of balance between competing value and objectives.

One trade path of China is [selective engagement](#) as reflected in the US-China tension. Selective engagement features selective focuses, which are highly mutable. Selective focuses reflected in the 2020 US-China Economic and Trade Agreement are: (i) an unprecedented emphasis on market access, and (ii) unilateral enforcement. The WTO-consistency issues of the Phase One agreement also attract attention.

The other trade path of China is [selective reshaping](#), under which China "uploads" its preferred standards to international level and develops China-led international institutions (like the Asian Infrastructure Investment Bank). This is the case with the BRI. Notably, China is facing pressure and concerns as it does not pay sufficient heed to non-economic values (like environment, labour, and other social issues). It is yet to be seen whether and how China would respond to such criticism. Tension exists between selective engagement and selective reshaping. Essentially, the search of balance after the return of (geo)politics is the key. There is a need to balance between competing values and objectives of China and other parties (particularly the US). Moreover, there is a need to balance between IEL and the sphere of sovereign control, which involves data, national security, to name a few. First, selective engagement and selective reshaping are driven by the US and China respectively. The reliance on binding rules under selective engagement, which emphasizes the greater sovereign control (such as that over trade deficit). This contrasts sharply with China's preferences of non-binding rules and China-led institutions under selective reshaping. Here China focuses on initiating BRI projects and broader participation in the BRI. Second, selective engagement highlights rigid outcomes (including WTO-plus and WTO-extra obligations), while selective reshaping features maximized flexibility with binding obligations developed in subsequent secondary agreements (e.g., project performance contracts and underlying financing contracts). Third, the role of government has been strengthened in both the US and China, but their positions are radically different on sovereignty control. Selective engagement and selective reshaping move towards delegalization. Multilateralism faces an increasingly grave risk, and decoupling will accelerate. The WTO plays a weak role in the US-China relations (e.g., the lack of capacity of addressing US-China disputes) and COVID-19 crisis (e.g., protectionism).

Based on the above, it will further explore the future of China's trade pathway and world trade order in the post-COVID19 and post-Trump era. How will a growing awareness of the vulnerabilities caused by globalization, exacerbated by geopolitical tension and COVID - 19, affect China's policy? How would this affect the WTO? Will this lead to reasserting sovereign control over trade and investment policy? How to address the lack of common language of WTO members in balancing competing values and objectives and in balancing trade law and sovereign control?

Chin Leng Lim, “COVID-19 and the Languages of Trade Law and International Law”

Abstract

In this very brief 15-minute presentation, I propose to raise for discussion amongst ourselves the present situation where we have trade rules but apparently no properly functioning adjudicative and remedial system. I would like to discuss how international lawyers might look at this from the perspective of rules such as art 55 of the Articles on the Responsibility of States for Internationally Wrongful Acts, recalling as well that line of authorities involving the decision of the art 22.6 arbitrator in Brazil Aircraft, the arbitrators in US-Upland Cotton, and the Appellate Body’s rulings in cases such as EC-Bananas III and US-Line Pipe. I shall discuss all this against the backdrop of Covid with the focus being now on the stability of supply chains, export restrictions and the lurking possibility of vaccine nationalism.

Fernando Diaz Simoes, “COVID-19 and Freedom of Movement”

Abstract:

Historically, governments confronting a pandemic tend to over-react by imposing travel limitations or even outright bans. This time-honored tradition was taken to unprecedented levels in response to COVID-19. Travel contributes significantly to the propagation of infectious diseases. However, contrary to common perception, travel restrictions are not effective and at most delay the peak of a pandemic by a few days to weeks. In addition, they have disastrous economic effects, hamper the flow of medical supplies and health workers, and affect the rights of migrants and refugees. The International Health Regulations seek to strike a balance between the protection of public health and the maintenance of international mobility. News of a disease outbreak trigger a sharp reduction in international movement as people voluntarily refrain from traveling and airlines adjust to new market conditions. However, the measures imposed by governments all around the world are a self-inflicted wound that only adds to the economic and social disruption caused by the pandemic. Over the last months, ‘social distancing’ became a household expression. This article argues that the almost universal implementation of travel restrictions during the COVID-19 crisis is also a symptom of a different, equally challenging type of distancing – that of states from their international law commitments and, therefore, from each other.

Deborah Elms and Aisuluu Mambetkazieva: “The role of the WTO in enabling the participation of MSMEs in international trade during and after the COVID-19 crisis”

Abstract:

Micro, small and medium-sized enterprises (MSMEs) account for more than 96% of all Asian businesses. Not only do they comprise the bulk of economic activity in Asia, they also drive growth,

innovation and employment, especially of women and youth.

Yet, despite their importance, MSMEs have remained on the side-lines of trade policy at almost all levels - national, regional and international. Even before the onset of the COVID-19 pandemic, MSMEs were struggling to integrate into the global economy. Obstacles that continue to limit their participation in international trade range from lack of access to finance and information to non-tariff barriers, including cumbersome border procedures. The pandemic has only further exacerbated these challenges and exposed MSME vulnerabilities.

Recent global events have demonstrated that MSMEs are disproportionately affected by economic shocks, such as the COVID-19 pandemic and its repercussions. This is the case due to MSMEs possessing limited financial resources and borrowing capacity, as well as being over-represented in sectors that have been hit particularly hard by the pandemic. According to a survey of the Korean Federation of MSMEs, for example, of the 407 surveyed SMEs, 42.1% could continue business for no more than three months under quarantine conditions, and 70.1% for no longer than six months. Similarly, a survey by Tsinghua University and Peking University of 995 SMEs in China found that 85% could not survive quarantine conditions for more than three months.

In light of the above, the aim of this paper is to explore ways in which the multilateral trading system can help MSMEs navigate the COVID-19 crisis and enable their survivability during and after the pandemic. Taking into account the current state of play at the WTO, the paper will focus on practical recommendations as to how the WTO and its Members can advance the long-overdue MSME agenda. In doing so, it will draw attention to the importance of implementing the WTO Trade Facilitation Agreement, advancing the e-commerce agenda at the WTO, engaging the MSMEs in the rule-making process, as well as adopting the “Think Small (First)” approach in the application and design of trade rules.