

Building a Fair and Equitable International Economic Order

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We humans are in a stage of continuous evolution, and the world is undergoing major changes. The global challenge facing us today is not only the need to develop and reform the existing international economic rules, but also the question of how to prevent the current international system from splitting, and how to avoid repeating the mistakes of the Cold War. Eight years after the passing of Professor John H. Jackson, we, together with the younger generation of scholars and practitioners of the international laws, are still struggling to create a fair, just and reasonable international economic order, safeguard the rules-based WTO system, and do our utmost to maintain rationality. Only with the spirit of multilateralism can we guide the world towards maintaining peace and protecting the march of human development.

I. GLOBAL CHALLENGES AND THEIR IMPACTS

Firstly, let us honor the great achievements of Professor John H. Jackson under whose name this moot court is organized. With the foundation of a deep learning of his ideals, we can recognize the key issues and potential causes of the present-day crisis.

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A. Honoring the Memory of Professor John H. Jackson

Firstly, please allow me to start by paying tribute to the distinguished late Professor John H. Jackson, who dedicated his whole professional life to promoting a rules-based multilateral trading system. We all benefited from his contribution to the design and founding of the World Trade Organization (WTO), particularly its dispute settlement system. It is never too much for all our generation to pay such a tribute to a man like him. He visited China several times both before and after China's accession to the WTO. He even provided training to young professionals who were involved in the implementation of China's accession commitments. He was highly respected in China's Trade Law community. The memory of him is still admired and cherished by many Chinese scholars and students.

Now, personally, I am also greatly indebted to him for his work which I regularly read and cite while teaching and researching in the field of international trade law and the WTO. I guess he would be very worried and concerned, even very sad, if he knew the current situation of the WTO. Since the end of 2020, when I left the Appellate Body, a major progress made by the WTO has been the election of the new Director-General. Dr. Ngozi Okonjo-Iweala became the first female and the first African Director-General of the WTO. Under her leadership, extensive discussions and negotiations have been undertaken in preparation for the upcoming ministerial conference, which is going to be held in late November of this year. I hope that the WTO members will have a successful meeting, with concrete outcomes achieved by the end of this year, which is much needed by this organization.

While there are hopes that some sort of progress will be made in the matter of fishery subsidies and in other areas during negotiations, it is disturbing that the Dispute Settlement Body has, in practice, been turned into a non-binding one-tier system. The Appellate Body continues to be non-operative with more than fifteen appeals¹ pending before it. It is a big question mark as to how long the system can last with one leg crumbling. So, what is the next step? How to move on? This is the reason I would like to thank the organizing committee of

¹ Currently, there are 29 cases pending in the docket of Appellate Body when this thesis is written.

the John Jackson Moot Court Competition and Dr. Edna Ramirez-Robles for putting efforts into bringing us together to have a dialogue on these issues. For me, it is essential that the world trade communities sit down and talk, even if virtually, because that is the only way that we can find our way out of this current impasse. No other magical means will come to our aid. There's wisdom inside us all. So, let us start talking and communicating on these matters.

B. The Pandemic and the Global Supply Chain Uncertainties

Obviously, the most severe and serious challenge that is indelibly flagging this region is the pandemic. Let me extend the deepest condolences for the lives lost during the pandemic. Now, unlike the financial crisis of 1998 and 2008, which impacted economies and resulted in financial losses, the pandemic was and remains a health-related crisis resulting in loss of human lives and what is most urgent is to save lives. It also affects human life by creating uncertainty in business and economic activities. This is but another example of why international coordination, collaboration and leadership are indispensable when tackling any crisis. Nobody is safe until everyone is safe. I am glad to see that so much help has been offered to the country and the region and I hope that the situation will be under control soon.

Another factor I would like to mention, that casts a shadow in this region, is the supply chain uncertainties caused by the big nation rivalry. Now, people notice that there is a shortage of chips for automobiles even from the European automakers.² This is just one of the many examples of how these so-called measures could impact a certain sector, and not only in this region but also in other parts of the world.

The concept of "global supply chain" is receiving wide attention. Compared to the previous international trade model, the global supply chain emphasizes the expansive distribution of trade links all over the world.³ By optimizing the distribution arrangement, it improves the efficiency of international exchange. Global supply chains not only increase the participation and inter-dependence

2 Unknown, Chip Shortage Costs European Car Industry €100 Billion, *The Brussels Times* (September 19, 2022), <https://www.brusselstimes.com/292061/chip-shortage-costs-european-car-industry-e100-billion> (Last Visited on July 26, 2023).

3 OECD, "1", <https://www.oecd.org/trade/topics/global-value-chains-and-trade/> (Last Visited on July 26, 2023).

of enterprises from different countries, but also risks among countries.⁴

National security concern is an important factor affecting the stability and predictability of the global supply chain. The global supply chain has promoted the economic and trade participation of countries around the world, but it also puts forward extremely high requirements for the stability and consistency of each link. The negative impact of a break in any of these links will be amplified along the global chain. In this context of close inter-dependence, supply chain stability depends not only on natural risks, corporate management strategies etc., but also on a country's national security strategy. Differences in national security perceptions make the stability of global supply chains precarious.⁵

What ideal will guide the global industrial chain moving forward into the future? Since the financial crisis of 2008, neoliberalism has been questioned, and trade protectionism has been on the rise.⁶ Raising tariffs, providing industrial subsidies to the chip and new energy automobile industries — the economic policies of various countries oscillate between the two endpoints of liberal economy and state intervention economy. The global supply chain should be based on multilateral trade rules which have been widely accepted and implemented by WTO members for decades. Any change and reform of these rules will require the members to work together by incorporating the interest of all stakeholders into a large blue print.

C. Climate Change

I would like to also mention climate change. The target has been set by major economies for achieving neutral carbon emissions, and there are positive signs that the US, China, European Union(EU) and other economies will collaborate in this regard.⁷ A greener recovery might be expected in the future in this area

4 R. Hernández, J. Martínez and N. Mulder, Global Value Chains and World Trade: Prospects and Challenges for Latin America, *Economic Commission for Latin America and the Caribbean Books*, No. 127, 2014, p. 72.

5 K. Aanstoos, Hidden Economic Costs of Geopolitical Disputes for Supply Chains in East Asia, In E. Solingen (ed.), *Geopolitics, Supply Chains, and International Relations in East Asia*, Cambridge: Cambridge University Press, 2021, pp. 96-114.

6 R. Kiely, Chapter 8: Neoliberalism and the 2008 Financial Crisis, In *The Neoliberal Paradox*, Edward Elgar Publishing, 2018, pp. 187-215.

7 R. Black, K. Cullen, B. Fay, T. Hale, J. Lang, S. Mahmood and S. Smith, Taking Stock: A Global Assessment of Net Zero Targets, *Energy & Climate Intelligence Unit and Oxford Net Zero*, 2021, pp. 24-26.

in this regard, though there are challenges to business. I think this also brings opportunities and hopes for the people in general. Technological advancement, the mode of doing business and manufacturing and lifestyle will all change accordingly. But I think it is changing in a more positive direction that could save this planet. So, this is another factor that we must consider that impacts this region.

After the 1994 United Nations Framework Convention on Climate Change, the 1997 Kyoto Protocol and the 2016 Paris Agreement, what principles should global climate governance follow in the future? Faced with new problems, do countries want to conclude new multilateral treaties? What is the reason for the lack of a multilateral treaty? Global attention is now focused on carbon emissions reduction. Disagreements between developed and developing countries need to be further reconciled to avoid climate change related challenges escalating into political issues and trade barriers.

It is necessary to explore the adaptability of the new climate change regulations with the WTO rules system, and even the global trade rules system. The trade measures introduced by various countries to solve the climate related problems test whether WTO can properly resolve the conflict between trade interests and environmental protection, and provide an effective and multilateral platform for global discussion.⁸ The issue of climate change mostly involves standard negotiations, in which how developed countries and developing countries share responsibilities and how standards are defined are the key to successful negotiations.⁹

D. Cutting Edge Technologies

The other one is cutting-edge technology. There are many so-called 21st century technologies such as 5G, AI, cloud computing, quantum computing, autopilot electric automobiles, digital currency, digital economy, etc. I believe these cutting-edge technologies can also bring to this region both challenges and opportunities. I think these factors can impact this region in both positive and negative ways.

8 WTO, *World Trade Report, 2022: Climate Change and International Trade*, p. 134, https://www.wto.org/english/res_e/publications_e/wtr22_e.htm (Last Visited on July 26, 2023).

9 UNCTAD, *Making Trade Work for Climate Change Mitigation: The Case of Technical Regulations*, p. 30.

The developments in science and technology advanced productive forces. The rapid advancement of information technology, digital technology, AI, quantum science and material science brings about emerging industrial mode, digital economy, network economy, etc. The business communities urgently need a new generation of international economic and trade rules, updating the package of rules from the 1994 Uruguay Round. Therefore, the power of economy (including capital), science, technology and market are the drivers of globalization and the renewal of international economic and trade rules.

II. FACE CHANLLANGES WITH A RULES-BASED SYSTEM

Countries should adhere to their hopes and confidence in multilateralism. In the future, international economic and trade development should firmly follow the path of multilateralism and strive to reduce fragmentation and discrimination. National security exceptions should not disrupt the stable, multilateral, rules-based global trading system and should not be used as an excuse of trade protectionism. Only by upholding the multilateral trading system can we provide a level playing field for all countries.

A. Trade Measures

The next question is — how does the WTO, a rules-based system, address these challenges? These challenges, if they are correctly identified, can help prevent crises or challenges of a comprehensive and complicated nature. We believe that the multilateral trade rules cannot alone tackle these challenges. From my personal perspective, what is needed is comprehensive research and studies on what would be an appropriate approach to address these crises facing human beings.

Human crises can be solved partly through trade with the help of negotiation platforms and rule updating. For example, the pandemic is a priority issue at the WTO and many members address it. There are huge debates and measures have been taken to remove or lift the treaty restrictive measures, such as the export control on vaccines and the raw material for the manufacturing of the vaccine that have been discussed and addressed. Even though it is not clear

as to the extent to which national security issues will play a role within, I think some effective trade measures could address this pandemic better.

As to the crisis for human beings and challenges for the supply chain, I believe it is more trade-related as it is mostly investment-driven given that 70% to 80% of total volume of world trade is among multinational companies.¹⁰ Investment is a wider element affecting trade. The trade rules might have meant that they will be very relevant to changing the state of uncertainty of the supply chain. This is a matter that can be further discussed at WTO.

The national security exceptions contained in Article XXI of GATT are essentially a wartime clause, limited to the exercise of self-determination by a country in special circumstances and should not be used in ordinary times. In peacetime, there are already several grounds for member states to express legitimate concerns about existing rules. If we blindly evolve and interpret the national security clause and expand the flexible space of the national security clause, it will lead to abuse of the discretion conferred by the clause and make the power-oriented elements replace the rules-oriented elements. As a result, the rules-based system is in trouble, national security cannot be maintained, and the multilateral trading system no longer exists.

B. Fair and Cooperative Solutions to the Climate Issues

Climate change is another area that the WTO could address from a rule's perspective. The suggestion of the EU is a "Carbon Border Adjustment Mechanism".¹¹ Personally speaking, there is need for a general comprehensive discussion on the facts of all these taxes related to climate change. What kind of rules will be required in the trade organization to create a level playing field? Is there a need to set up standards to facilitate trade in light of the climate change challenge? Or should the climate related negotiations be put in the goods or services negotiations as a special issue to be addressed? Where should the mandate come from?

Unilateralism is posing challenges to the global trading regime, and the

10 UNCTAD, 80% of Trade Takes Place in "Value Chains" Linked to Transnational Corporations, <https://unctad.org/press-material/80-trade-takes-place-value-chains-linked-transnational-corporations-unctad-report> (Last Visited on July 26, 2023).

11 European Union Taxation and Customs Union, Carbon Border Adjustment Mechanism, https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en (Last Visited on July 26, 2023).

principle of non-discrimination should not be ignored. As for the “carbon neutral” standard, I personally believe a critical perspective should be adopted. After fully understanding that the EU is trying to take systematic measures to achieve decarbonization, it can be said that the CBAM proposals have potential unilateral intentions. In the garb of achieving carbon neutrality, it is unfair to force other countries, especially developing countries, to adopt the same carbon standards as the EU. This ignores the fact that except for climate challenges, developing countries have faced different living and economic challenges.

To solve the climate crisis and other issues, we need to tackle many other issues, such as technology transfer, trade remedy measures, etc., so as to facilitate a global response, and consider to revigorate the green subsidies in the Agreement on Subsidies and Countervailing Measures. In addition, the world is facing many problems besides climate change, so the key is to set up a strong support system to ensure that multilateralism and globalization can continue.

C. Advancing Rules for New Subjects

There are already discussions and developments in the field of e-commerce, but are these enough to address the trade aspect of digital innovations? The latest suggestions from the EU pertain to digital taxes. In order to create a level playing field, it requires a comprehensive study should be initiated before members decide what the measures, policies or rules should be designed. While we welcome the major development in plurilateral negotiation outcomes, such as E-commerce, Domestic Regulation, Investment Facilitation for Investment Agreement, we will need to consider what are the impacts on multilateral negotiations which is the main methods for leading forward negotiation at the WTO. The path of multilateral trade rules negotiations and the implementation of rules have undergone dramatic changes. How we can advance multilateral trade rules is our next question.

1. Plurilateral Negotiations

Firstly, plurilateral negotiations have become an important way of conducting negotiations within the WTO up to now. The General Agreement on Tariffs and Trade (GATT) is famous for its round-style multilateral trade negotiations.

The WTO was established as a result of the eighth round of multilateral trade negotiations, i.e., the Uruguay Round package negotiations, which took eight years to complete. Therefore, multilateral trade negotiations lend vitality to the continuously developing multilateral trading system. After the Uruguay Round, Annex 4 of the Marrakesh Agreement Establishing the World Trade Organization included only four plurilateral agreements: Agreement on Trade in Civil Aircraft, Agreement on Government Procurement, International Dairy Agreement and the International Bovine Meat Agreement. However, the first round of multilateral trade negotiations after the establishment of the WTO, i.e., the Doha Development Round, started more than 20 years ago and has been unsuccessful due to various reasons. Nowadays it seems the package deal multilateral negotiations has not been proved to be effective due to the lack of consensus of WTO Members in major negotiation issues. At present, several ongoing negotiations within the WTO are mostly carried out in a plurilateral manner, including the so-called Joint Statement Initiative (JSI) on e-commerce, investment facilitation, domestic regulation of trade in services, small and medium-sized enterprises, etc. These are initiated by some members who share the same position on a given subject. If the negotiation results reach a critical mass, they will be implemented through multilateral ways, that is, to allow other members to be free riders and the results of the negotiations will apply on MFN basis to all members. Although plurilateral negotiations are a realistic sub-optimal choice for promoting trade liberalization in the background of the difficulties of multilateral negotiations, the legitimacy of plurilateral negotiations within the WTO framework has been questioned by some developing members and WTO scholars.

2. Regional Trade Agreements

Secondly, regional trade agreements have become an important channel for rule development. Since the beginning of this century, the number of bilateral and regional trade agreements has grown rapidly. However, this does not mean that the MFN clause, as the basic principle of the GATT, has been modified or replaced, rather that it has been marginalized in the implementation process, making the exception clause become a general rule to a certain extent, which is still a problem of treaty implementation. This phenomenon reflects that, in the

long-term, given the failure of the Doha Round, the WTO has been unable to initiate and promote the participation of all new members to conduct round-style package negotiations by consensus. Regional trade negotiations have become a realistic option for WTO members to develop free and robust trade.

The large-scale updating of multilateral trade rules that is needed is almost stagnant, and sporadic progress cannot meet the progress of the times and the needs of members. Most of the new market access and the updating of international trade rules take place in the field of regional trade agreements. Several regional trade agreement blocs have been formed in the world, such as the United States-Mexico-Canada Agreement (USMCA), the Regional Comprehensive Economic Partnership Agreement (RCEP) and the Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP), as well as the European Union and the African Continent Free Trade Agreement (AfCFTA), that have all formed a bloc trade pattern. Rules on trade and environment, e-commerce, competition policy and other so-called 21st century trade rules beyond the existing WTO commitments have repeatedly appeared in bilateral and regional trade agreements, becoming a new vane for the development of international trade rules.¹²

3. Unilateralism as a Threat

Finally, the unilateralist actions of members have become the greatest threat to the rules based on the international trade system. The unilateral actions of core members have become the greatest threat to the multilateral trading system. If the development of multilateral trade rules through plurilateral and regional approaches is still a pragmatic and sub-optimal option, unilateralism is the greatest threat and destruction of multilateral mechanisms.

According to the differences in the purpose and motivation of the members who take unilateral actions, unilateralist behavior within the WTO system can be divided into three kinds: constructive, reconstructive and deconstructive. Deconstructive unilateralism should be condemned, and constructive (trade retaliation without multilateral authorization against defendants who appeal lost cases to the suspended Appellate Body) and reconstructive (such as

12 Richard Baldwin, 21st Century Regionalism: Filling the Gap between 21st Century Trade and 20th Century Trade Rules, WTO Staff Working Papers, 2011, pp. 8-10.

the implementation of carbon border adjustment taxes) unilateral actions should be treated differently from destructive unilateral actions.¹³

However, as per Article 38 of the Statute of the International Court of Justice, and as demonstrated by the history of international law, international treaties, agreements, (whether multilateral or regional, bilateral or plurilateral), international customs developed from common practice of states, principles of international law, international judicial precedents and works of well-known international jurists can all be used by the International Court of Justice as sources of international law. From natural law as international morality to positive law, the path of development of international law can be described as all-encompassing, and not just a single path nor a straight forward line. Historically, through state practices, the system of international law has been composed of various international rules and it seems like a thousand streams flowing into the ocean, and multilateralism will remain the best future course of choice for mankind.

On the one hand, we should actively promote the development and reform of international economic rules at the multilateral platforms. On the other hand, we should face up to the current difficulties of the development and reform of international rules, especially paying attention to the influence of the leading countries of international-law-making in formulating new domestic laws in new fields through unilateral actions.

III. DISPUTE SETTLEMENT MECHANISM

As the Appellate Body has been shut down due to the obstruction of the selection of judges, cases cannot be heard and the dispute settlement mechanism has suffered serious damage.¹⁴ The discussion on the reform of the dispute settlement mechanism has not stopped in the past three years, but the rules of procedure, on which the dispute settlement is based, namely the Understanding on Rules and Procedures Governing the Settlement of Disputes, have not been

¹³ Geraldo Vidigal, *The Unilateralization of Trade Governance: Constructive, Reconstructive, and Deconstructive Unilateralism*, *Legal Issues of Economic Integration*, No. 1, 2023, pp. 3-7.

¹⁴ US Refusal to Appoint Members Renders WTO Appellate Body Unable to Hear New Appeals, *American Journal of International Law*, Vol. 114, 2020, p. 518.

amended. Therefore, apart from the addition and revision of sporadic rules in individual fields, the main substantive and procedural parts of the multilateral trade rules governing the WTO have not been changed greatly.

History of human civilization always requires certain sort of dispute resolution. The progress of human civilization is both a history of development, and a history of resolving disputes unstopably, which makes dispute settlement an eternal theme of international law.¹⁵ More precisely, the founder of modern human rights law, Louis Henkin, has written that “in relations between nations, the progress of civilization may be seen as movement from force to diplomacy, from diplomacy to law”.¹⁶

There are multiple contradictions and backgrounds to WTO dispute settlement mechanism reformation, including hegemony crisis, struggle between old power members, inevitable geopolitics between developed and developing countries, challenges brought by changes in the international order (supply chain, national security, finance, regional conflicts, etc.). The impact of the Appellate Body paralysis on the WTO’s dispute settlement mechanism has left disputes in legal limbo, and there has not been a drastic drop in the number of disputes brought to the WTO for resolution in the past years. Moreover, it is a significant weakening of the rule of law in world trade for it opened the doors for unilateral actions and the danger that “festering” trade disputes can escalate into trade wars.

Abandoning the WTO dispute settlement mechanism is impractical. There is little dispute resolution under all but a few RTAs and the process thereunder tends to lack experience. As to alternative dispute settlement methods, though there are options like mediation and conciliation, they have not been used much formally. As for abandoning the appellate review under Article 17 of the DSU, or designing a WTO dispute settlement mechanism without an appellate review process, we may need to deal with issues of less legitimacy, authority and acceptability of dispute settlement outcomes, not to mention that the “losing” parties are unlikely to agree to being denied the opportunity of appellate review.

15 Bruce D. Bonta, Conflict Resolution among Peaceful Societies: The Culture of Peacefulness, *Journal of Peace Research*, No. 4, 1996, pp. 406-408.

16 Louis Henkin, *How Nations Behave: Law and Foreign Policy*, Columbia University Press, 2nd Edition, 1979, p. 1.

How can we reform the Appellate Body and the process of Appellate Review? For me, the starting point is the Draft General Council Decision of October, 2019, which considers issues like the scope of appellate review, advisory opinions, regular dialogues with DSB, extension of term in office of outgoing Appellate Body members, etc.¹⁷ Other scholars also raised points of setting more deferential standards of appellate review, including no full and *de novo* review of panel findings, and standard of reasonableness. Also, we need to reconsider the flexibility regarding the time frame for appellate review. It is possible to have an indicative time frame of 90 or 120 days, enlarge the Appellate Body and strengthen its independence, and adjust the number of Appellate Body members, and their terms of office and employment.

Right now, one hundred and twenty-one members are calling for the selection process to be resumed. Personally, I think MPIA is useful as a plurilateral approach to settle disputes with the two stages according to the DSU. But there are also many challenges and the future of it bears a question mark. How long could the situation last? If a case was appealed, it will remain pending unless the two parties accept the panel report as final. The question is the number of members that will be open to a renegotiation.

IV. STRENGTHENING THE RULES-BASED SYSTEM

The evolution of law is closely related to human history. No matter how international law evolves, it always bears the distinct characteristics of the times.¹⁸ The epidemic in the 21st century, the military conflict between Russia and Ukraine, the revolutions in science and technology, and the competition among big countries have all exerted profound influence on international political, economic and legal relations. The reasons, contents, methods and supporting theories of international rules reformation are all in transformation.

17 WTO General Council, Agenda Item 4 Informal Process on Matters Related to the Functioning of the Appellate Body — Report by the Facilitator, H. E. Dr. David Walker (New Zealand), 2019, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/GC/222.pdf> (Last Visited on July 26, 2023); WTO General Council, Draft Decision on Functioning of the Appellate Body, 2019, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W791.pdf> (Last Visited on July 26, 2023).

18 P. B. Stephan, *The World Crisis and International Law: The Knowledge Economy and the Battle for the Future*, Cambridge University Press, 2023, pp. 1-5.

A. Dual Fronts of the Multilateral Rules-based System

The first question is: What missing element strengthens the rules-based system? In my personal view there are two fronts: the negotiating front and the dispute settlement front. The negotiating front is for setting up rules and updating the rule book. Yet without enforcement, there will be less credibility of the rules. The negotiating front and the dispute settlement front go hand in hand and neither of them can be disregarded.

Also, multilateral rules matter. Why is it critical to have multilateral rules? The answer is equivalent to why it is critical to have international law — because it does not consist only of trade rules. The challenges of a crisis are all the factors that create uncertainty. What is suffered by the region and the world alike is the uncertainty caused by these challenges or crises. A rules-based system is about removing uncertainty and producing predictability and security. That is why the rules-based system matters and is critical. It is indispensable and can be called the highlight of human civilization. It is the software through which human beings could achieve so much wealth creation and so many physical achievements.

The multilateral international trade rules system, especially with GATT/WTO at its core, is particularly noticeable in the international law system for its systematic, innovative rules and binding dispute settlement mechanism. It has made outstanding contributions to the prosperity of nations through facilitation of international trade, the promotion of global economic growth and global poverty reduction. This led to a relatively stable period of the international economic order and great developments in international economic rules.

However, since the beginning of this century, especially after the global financial crisis in 2008, populist forces have risen in developed countries due to the intensification of domestic polarization between the rich and the poor. The question of anti-globalization is in front of everyone. The trade policies, once the promoters of free trade, are increasingly turning to trade protectionism. In addition, due to geopolitical disputes and fierce competition among big powers, the global economic and trade rules system is undergoing unprecedented shocks and adjustments.

International economic rules are produced to increase the stability and

predictability of the international economic environment. Though many international economic and trade customs are different, binding modern international economic and trade rules have been unanimously recognized by many countries all over the world. The objectives stated in the preambles of charters such as the GATT and the Marrakesh Agreement Establishing the World Trade Organization have a profound impact on a country's domestic economic and trade rules.

International law can provide a stable and predictable order for international economic exchanges, but is this order fair and just in a universal sense? In other words, although legal rules can create a certain order, the results of evaluations of this order may be different for different parties, and the realization of fairness and justice needs to be considered constantly. A fair, just and reasonable international order is a higher ideal goal pursued by international law. This is also in line with the human "rationality" pursued by natural law as "moral norms in international relations".¹⁹

Currently, the rules-based system is being threatened. It is dangerous and we should pay attention to it. In my view, the Asia Pacific region has its particularities that there's a reason for it to support multilateralism and take responsibility. Compared with uncertainties, there are some things more certain underlying. This region enjoys the size of the economy as it does at present, the robust demand, the rising middle class, the high savings rate, the well-educated and self-disciplined population of skilled and diligent people, and the business-friendly environment to attract foreign investment. These factors will benefit the region from a higher amount of FDI inflow. Under these circumstances, this region should take more responsibility to promote multilateralism to support the strengthening and improvement of multilateral rules.

B. Cooperation: The Basis of International Trade Rules

In my view, there are many challenges facing mankind in addition to the pandemic, the environment, the threat of climate change and financial market bubbles. No international organization has been able to address a single crisis comprehensively. We should think in terms of the shared future of all human

¹⁹ Edgar Bodenheimer, *Jurisprudence: The Philosophy and Method of the Law*, Harvard University Press, Revised Edition, 1974, pp. 214-222.

beings. The earth is our common village and we must establish a shared international community.

What is my suggestion? I believe it is all about changing mentality so that there is more collaboration rather than competition. The current civilization of humans was achieved due to the collaboration of people on this planet. International law is not only a tool to create the framework for peace and security, but also the basis for collaborations, trust, and wealth creation. That is why we could develop as a species. Trade is unlike other subjects. We have some long-standing rules. The optimal choice is upholding multilateral rules as they are the most cost-effective way to have collaborations.

When we emphasize on the need for a fair, just and reasonable international economic order that serves the interests of all mankind, some people may question whether there even is a common interest of all mankind.

Firstly, the deepening of economic globalization has laid the economic foundation for the common interests of all mankind. As opposed to the early history of human beings, when there was little interaction between different civilizations, the super-economic globalization since the end of the 20th century has increased the interdependence among countries. Complex transnational economic activities require mutual coordination and cooperation among countries (including through international organizations and international economic rules) in order to provide a stable framework for international trade, investment and financial activities. The international community has never been more in need of a robust and predictable international economic order and set of rules.

As noted by David Held: “In this post-Westphalian order, there is marked shift towards heterarchy — a divided authority system — in which states seek to share the tasks of governance with a complex array of institutions, public and private, local, regional, transnational and global, representing the emergence of ‘overlapping communities of fate’ ”.²⁰

Because of the nature of economic exchanges and intensive personnel and cultural exchanges, all countries in the world have become intertwined into an

20 D. Held and A. McGrew, *The End of the Old Order? Globalization and the Prospects for World Order*, *Review of International Studies*, Vol. 24, 1998, p. 221.

inseparable community of interests and destiny. From the perspective of human rationality, it is the mission of the times and an undeniable reality that human beings have common interests, including that of managing the future of globalization. Although there are political differences, the challenge we face is in learning how to overcome them and achieve our common interests, which is a test of human wisdom and rationality.

Secondly, our mutual response to the global crisis has become a realistic demand for the common interests of all mankind. A series of global crises, such as climate change, epidemics, economic crisis, energy crisis, etc., cannot be faced by any single country alone. These global crises have closely linked the destiny of all mankind as never before. Only by facing them together and taking collective action can mankind survive and realize sustainable development, which is not only the call of human rationality, but also the solid foundation for pursuing common human interests.

As an important part of the global order, the common interests of all mankind served by the international economic order exist objectively. The ideal and goal of building a fair, just and rational international economic order in line with the common interests of all mankind has a realistic basis. Of course, it must be acknowledged that it is challenging to overcome the conflict of interests among countries and it is a long-term plan to achieve these goals without specific international rule-making and cooperation, but from the perspective of human reason, such ideals and goals must exist and should be adhered to jointly.

C. Equality: The Way Forward for International Trade Rules

What is the way to build trust and have the desired collaboration? The answer lies in the mindset of equality among nations — everyone is equal. All nations, big or small, are equal. Only mutual respect can be the basis for mutual cooperation and collaboration, regardless of different level of development and diversity of cultural tradition. According to John Rawls' *A Theory of Justice*, the international economic order and legal system should be free and fair first. All countries have the basic rights of equality and free participation.²¹ It is in line with the principle of legal equality of large and small countries as stipulated in

²¹ John Rawls, *A Theory of Justice*, Harvard University Press, Revised Edition, 1999, pp. 3-6.

the UN Charter.

From the course of international economic development and national practice after the second world war, and since the founding of the United Nations, the “new international economic order” pursued by developing countries sought to get rid of colonialism, safeguard national sovereignty, strive for independent economic policies, and fair and just development rights.

Therefore, I emphasize that the development and reform of the international economic rules need to aim at building a fair, just and reasonable international economic and trade order. It should be built for the peace and development of all mankind, serving the overall interests of a majority of the people in the global village, and not just for the special interests or for specific groups.

As the United Nations Declaration on the Establishment of a New International Economic Order (1974) solemnly proclaims:

“our united determination to work urgently for THE ESTABLISHMENT OF A NEW INTERNATIONAL ECONOMIC ORDER based on equity, sovereign equality, interdependence, common interest and cooperation among all States, irrespective of their economic and social systems which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations ...”

After more than half a century of struggle, including the inclusion of a new charter on economic development in the Havana Charter establishing the International Trade Organization (ITO) in 1947, the Bandung Conference, the Non-aligned Movement, the Asian-African Conference, the establishment of the United Nations Conference on Trade and Development (UNCTAD) and the Doha Development Agenda of the WTO, the pursuit of a fair, just and reasonable international economic order by developing countries has had its ups and downs, but it has always been the goal pursued by the United Nations and its members. As reaffirmed in the landmark 2000 United Nations Millennium Declaration’s Article I, “... [o]nly through broad and sustained efforts to create a shared future, based upon our common humanity in all its diversity, can

globalization be made fully inclusive and equitable. These efforts must include global policies and measures, at the global level, which correspond to the needs of developing countries and economies in transition and are formulated and implemented with their effective participation”.

We can draw a preliminary conclusion that the basic criteria for a fair, just and reasonable international economic order contains ideas of universal participation, substantial benefit and narrowing of the wealth gap. First, the order should be inclusive and universally beneficial to all members, and must follow the principle of freedom. All participants in the new international economic order should have the right to participate freely, relevant multilateral mechanisms should be open to all members, and the rules supporting the international economic order should not set thresholds and conditions based on politics, culture (including civilization level and values), ideology, race and nationality. The second is the “difference principle”, that is, according to the principle of “to the greatest benefit of the least-advantaged members of society”, the weak and backward members of society should be taken care of, and all members should benefit universally, so as to realize the goal of truly serving all mankind in the new international economic order. The gap between rich and poor members should be narrowed rather than widened, and people’s living standards and well-being should be generally improved.

In revitalizing and reforming the WTO, we should not easily decouple and split. The interdependence among countries is widespread; and the multilateral trading system is the mainstream of international trade. At present, the WTO is still making small progress and achieving results. Its basic principles, such as non-discrimination, are valuable parts of the international economic and trade system. More importantly, the WTO provides a platform for countries around the world to participate fairly in international economic and trade development.

In the future, when developing and reforming the WTO, the international community should not ignore cooperation and fairness, and take the spirit of multilateralism as the background for reforming the WTO. The international community must reflect on the lessons and experiences of past wars and conflicts, cherish the hard-won achievements of current multilateralism, overcome

the nature of conflict and struggle, and promote the future development of human economic and trade system towards cooperation, inclusiveness and fairness.