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Systemic Challenges To Global Trade Governance – No Way Out?

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Abstract: The short paper sets out to interrogate the major, hydra-headed challenges the world trading order faces from within and without. A good place to begin is with the long list of severe institutional challenges now apparent, which include: institutionalized protectionism sanctioned by WTO rules and the rise of anti-dumping filing by the global South, the decline in the use of the WTO's dispute resolution, the primary interface between law and governance; the geopolitical shift of titanic proportions from the incipient world ambition of China's global infrastructural project – The New Silk Road and Belt to remake the world order in its image. If all of the foregoing weren't enough for a splitting migraine headache, the latest threat comes from the erratic, demagogue Trump, who has told the world media that he is going to ignore any unfavorable ruling by the WTO that stands in the way of making the US 'great again'. So faced with an impossibly complex list of contentious issues – is there a way forward?

Keywords: Antidumping, China's One Belt One Road, institutionalized protectionism, global structural change, populist nationalism, Trumpism, US protectionism, jobs crisis, liberal internationalism, multilateral trading system, privatized investment arbitration, hyperglobalization.

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Abstract:

The short paper sets out to interrogate the major, hydra-headed challenges the world trading order faces from within and without. A good place to begin is with the long list of severe institutional challenges now apparent, which include: institutionalized protectionism sanctioned by WTO rules and the rise of anti-dumping filing by the global South, the decline in the use of the WTO's dispute resolution, the primary interface between law and governance; the geopolitical shift of titanic proportions from the incipient world ambition of China's global infrastructural project – The New Silk Road and Belt to remake the world order in its image. If all of the foregoing weren't enough for a splitting migraine headache, the latest threat comes from the erratic, demagogue Trump, who has told the world media that he is going to ignore any unfavorable ruling by the WTO that stands in the way of making the US 'great again'. So faced with an impossibly complex list of contentious issues – is there a way forward?

Uncertainty And Fear And Anger

In an age of rising anger it is important to isolate the trigger points for so much frustration and scapegoating post-Brexit, the upset election of Trump and the vitriolic resurgence of populist nationalism. The most important normative assumption is what role and standing, if any, does the idea of "we the people" have in the WTO's model of trade governance? The first answer is that unscripted actors and social movements are at the front door of the WTO, the world's most powerful governance institution, banging to get in and so far have no status or standing where it matters 20 years after the battle in Seattle.¹ The second answer no less important about 'the multitudes' and democratic deficit of trade governance is that the asymmetry between erratic agency, actor uncertainty and the iron plated troubled global institutional architecture is casting its long shadow over the present crisis. The noticeable decline of the cycle of global dissent is leading to more deadlock and

¹ Daniel Drache, "What's Next For Global Labour? Power Dynamics And Industrial Relations Systems In A Hyper Globalize World," in Daniel Drache and Les Jacobs eds., *Linking Global Trade And Human Rights*, New York: Cambridge University press 2014.

acrimony. The WTO was at its peak in the early 2000's and since then has stumbled from one crisis to another. It will surely be hitting bottom shortly.²

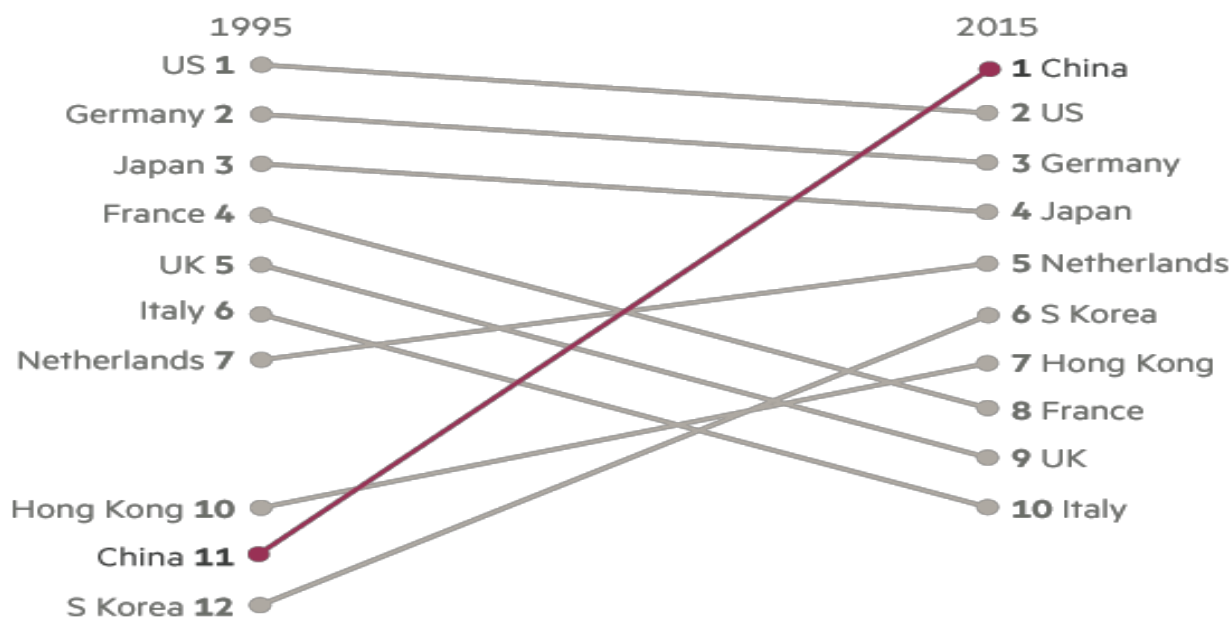
The short paper sets out to interrogate the major, hydra-headed challenges the world trading order faces from within and without. A good place to begin is with the long list of severe institutional challenges now apparent, which include: institutionalized protectionism sanctioned by WTO rules and the rise of anti-dumping filing by the global South, the decline in the use of the WTO's dispute resolution, the primary interface between law and governance; the geopolitical shift of titanic proportions from the incipient world ambition of China's global infrastructural project – The New Silk Road and Belt to remake the world order in its image. If all of the foregoing weren't enough for a splitting migraine headache, the latest threat comes from the erratic, demagogue Trump, who has told the world media that he is going to ignore any unfavorable ruling by the WTO that stands in the way of making the US 'great again'.³ So faced with an impossibly complex list of contentious issues – is there a way forward?

The Reshaping Of The World Economy In 20 Tumultuous Years

² Joseph Stiglitz, *The Price Of Inequality*, New York: Penguin, 2012

³ Peter S Goodman, "Trumps Trade War May Have Already Begun", *New York Times* January 30, 2017, Mark Blythe, "Global Trumpism," *Foreign Affairs*, November 15, 2016.

World ranking by size of merchandise exports



Source: Unctad

FT

Critically we seem to have arrived at an inflection point which I call a Sartrean 'no exit governance bust up;' for the foreseeable future we are all trapped by the system with no clear path forward on the distant horizon. For the time being, the multilateral trading system is being reconfigured in often backward ways.⁴ Here are 7 propositions that demonstrate the linkage between the conceptual and the architectural design of trade governance.

7 Propositions Of A Sartrean 'No Exit Governance Bust Up'

1. The reason for this deep gloom is that we are not sure-footed and confident any longer in the world trading system to be an effective guardian of an increasingly challenged and conflictual world order.⁵ The election of Trump has brought the system to a dangerous boil. The efficacy of trade multilateralism's founding principles of non-discrimination, national presence the persistent dismantling of trade barriers, a godlike belief in comparative advantage and the new evangelical creed in free trade and open markets regardless of cost

⁴ Paul Blyth, *Austerity: The History Of A Dangerous Idea*, New York: Oxford University Press, 2013

⁵ Daniel Drache and Les Jacobs eds., *Linking Global Trade And Human Rights*, New York: Cambridge University press 2014

and consequences has lost much of their intellectual power and perennial glitter well before Trump's contested election. ⁶

Trump has pulled the plug on these fundamental set of first principles because he alleges that the system is 'rigged' against the US by 'dirty players' such as China, Mexico, the EU who have stolen American jobs and cheated the system causing America tremendous damage. The question is should we be alarmed and take his words literally that "American carnage stops right here, stops right now... The time for empty talk is overnow arrives the hour of action." Make no mistake Trump has drawn a red line in the sand and rejected the existing global order. Washington is going to strike out on his own by taking the unprecedented step of dropping out of trade agreements and possibly the WTO. We don't know really what is going to happen but the rationale and the reasons for it are absolutely clear for the new Administration with its inflammatory populist rhetoric: "The wealth for middle class has been ripped from them and then redistributed across the entire world." ⁷ US officials are trying to calm fears among allies. State Department officials are not saying the bad guys are protectionists. US officials are massaging the message saying, "no, no, no, we want free trade but we won't be taken advantage of."⁸

The deeper issue is that the multilateral trade system is rickety and operating out of whack and export-centric policies no longer fuel the great job machine. 28 out of 28 OECD countries have seen a nosedive in mass production over the last 2 decades and even Germany has seen the number of workers employed in mass production industries falling from 42% to about 20% in 2015.⁹ The numbers are depressing because manufacturing employment has largely stopped being the driver of the economy as it once was and all the new jobs are in the service industries. In the advanced capitalist world the wage structure has been compressed downwards in a world where unions are no longer bargaining collectively. We could be looking at long-term structural change and that is an alarming prospect for systemic reasons. The combination of the latest 'Donald' political bombshell

Economic Indicators :GDP Share of World Total (PPP) 2015 Listing

⁶ Wolfgang Streeck, *How Will Capitalism End?* London: Verso 2016.

⁷ Dimitri Sevastopulo, Barney Jopson and Shawn Donnan, and "President Trump Makes Defiant "America 1st Inauguration Pledge," *Financial Times* January 20, 2017

⁸ Sam Fleming, Shawn Donnan and Claire Jones, "Trump's Trade Ethos To Be Challenged At G20 Talks," *Financial Times*, March 13, 2017

⁹ Allen Blinder, "Offshoring: The Next Industrial Revolution" *Foreign Affairs* March April, 2006

GDP Share of World Total (PPP)	Value
Emerging and Developing Economies	57.556 %
Advanced Economies	42.444 %
Major advanced economies (G7)	31.488 %
Developing Asia	30.638 %
China	17.082 %
European Union	16.918 %
United States	15.809 %
Western Hemisphere	8.342 %

Middle East, North Africa, Afghanistan, and Pakistan	7.603 %
India	7.016 %
Middle East	6.728 %
Other Advanced Economies (Excluding G7 and Eurozone)	6.642 %
ASEAN 5	5.338 %
Commonwealth of Independent States	4.6 %

http://www.economywatch.com/economic-statistics/economic-indicators/GDP_Share_of_World_Total_PPP/

Economic Indicators : GDP Share of World Total (PPP) 2000 Listing

GDP Share of World Total (PPP)	Value
Advanced Economies	56.997 %
Major advanced economies (G7)	43.819 %
Emerging and Developing Economies	43.003 %
European Union	23.689 %
United States	20.76 %
Developing Asia	16.729 %
Western Hemisphere	9.163 %
China	7.389 %
Other Advanced Economies (Excluding G7 and Eurozone)	7.183 %
Middle East, North Africa, Afghanistan, and Pakistan	7.098 %
Japan	6.533 %
Middle East	6.353 %

GDP Share of World Total (PPP)	Value
Germany	4.906 %
ASEAN 5	4.316 %
Commonwealth of Independent States	4.293 %
India	4.194 %
France	3.388 %
Emerging and developing Europe	3.324 %
Russia	3.294

http://www.economywatch.com/economic-statistics/economic-indicators/GDP_Share_of_World_Total_PPP/

along with his declaration and embrace of American nationalism has upended a finely tuned institutional order grounded in legal ordering, naked self-interest and designed for collective action and representation in the workplace.¹⁰ It would be a mistake to regard his American First Manifesto as one more crater in the WTO road of failed multilateralism negotiations. Something else has taken place, a shift in power relations that has many ramifications. The US and EU have lost their tight control they once had to set the world trade agenda. The Trump phenomena is qualitatively very different from the imploded Doha Development Round that promised 130 global South countries fundamental reform of the world trade system so that they would benefit economically from opening their markets to goods and services produced in the global North.

¹⁰ Michael Piore and Charles Sable, *The Second Industrial Divide*, New York: Basic Books, 1984

The evidence is that the tariffs the global South encountered were twice as high as compared to the tariffs on many goods faced by Northern exporters. So in trade lingo there is no effective level playing field and the emerging market economies of the global South did not have the same access to global markets as they were promised.. The global South comprises three-quarters of the WTO membership and they grimaced, ground their teeth, grumbled about the lousy deal they were being told to ‘take it or leave it’, a gigantic bluff that blew up in Washington’s face when India and other powerful entities rejected America’s final offer. But most importantly, en bloc the global South members vetoed the Doha Development negotiations because there was no compromise from the US on the key issue of agricultural subsidies and intellectual property rights. ¹¹

This seismic political failure damaged the WTO irreparably and its credibility as the global governance epicenter of the world economy. ¹² So the next best thing is to break the logjam and negotiate outside of the doomed Doha Round transnational regional trade agreements on a whole range of issues, but mainly on investment rights, regulatory harmonization and the future intellectual property rights of biologicals. Trump has rolled a stick of dynamite into these trade deals.¹³

2. Significantly it was completely unexpected for WTO advocates that the global economy could live very well without the Doha Round because until 2008 China, India, and Brazil were pulling the global freight train and between 2008 and 2015.export growth rates were sizzling averaging 12.5% The year-over-year exports were aflame growing in double digit numbers before the global financial crisis while domestic rates crawled along that 2% and 3% for many countries in the lead up to the global financial crisis. Since then the world economy is continuing to be gripped by an unprecedented slowdown. In fact the rapid expansion of global trade has hit the proverbial wall. In 2016, world trade volume expanded by only 1.9%, a record low. This compared with an average growth of about 6% over the preceding 3 decades.¹⁴

For the first time a potent combination of cyclical and structural factors have meant that it is impossible for the pace of growth experienced before the crisis to recover. From a global perspective the world economy has been in a growth nosedive and the most open economies are reflexively vulnerable when they lose their export drivers and the impact on

¹¹ Robert D. Blackwill, Theodore Rappleye, “Fact Checking Trump’s ‘Alternative Facts’ About Mexico, *Foreign Policy*”, March 28, 2017

¹² Jorge Heine & Ramesh Thakur eds., *The Dark Side Of Globalization*, Tokyo: United Nations University press, 2011

¹³ Ian Burma, “The End Of The Anglo-American Order,” *New York Times*, November 29, 2016.

¹⁴ Brendan Vickers, “Revitalizing World Trade: Issues And Priorities For The Commonwealth”, *The Commonwealth Trade Hot Topics*, issue 140 2017

peoples' and communities' incomes and livelihood is immediate and destabilizing. The decade-long slump has meant that poverty reduction and employment, dependent on international trade for a strong growth performance have been hit the hardest. Even China with its slowing economy still has one of the largest impacts on a weak global economy. China will contribute to nearly 39% of the total and it accounts for 73% of growth of the BRICs grouping. If the world was growing at something closer to its longer term would there be a dramatic rise in populist nationalism targeting hyper globalization as the dark nemesis? ¹⁵

This time the US attack on rules-based multilateral system that Washington largely created, nurtured, defended and protected is unprecedented. WTO trade law is blamed by Trump and his ideological band of crusaders as the enemy standing in the way of recovering US jobs and making the US once again the winner in trade negotiations.¹⁶ It should be noted that all this talk about being crucified by the massive US trade deficit with Mexico and China ignores that US has a trade deficit with over 100 countries. American trade promotion and widespread use of buy American programs have not made a dent on American industrial decline that requires a fundamentally different orientation to address the fallout from structural adjustment on its decimated mass production industries such as steel, auto, textiles, a long-term trend occurring continuously across dozens of industries.

Even the dramatic collapse of the American wage structure and the disappearance of collective bargaining from the workplace have not enticed American manufacturers to reinvest greatly in their mass production industries. The gains from automation and the rise of highly efficient global production chains has downsized high-paying industrial jobs which are gone forever. Andre Gorz' prescient 1980s book *Adieu au Proletariat* has lost none of its relevance and its hard-hitting message book-ending the collapse of global Fordism and working-class agency. ¹⁷From a different perspective it can be seen that multilateralism has been structurally damaged by the toxic consequences of global neoliberalism. First and foremost is the collapse of collective bargaining in the workplace across the advanced industrial economies which effectively denies workers the ability to capture productivity gains both from technology and systemic deficiencies resulting from fewer workers producing more goods. The net effect is that wage growth has stagnated particularly in the United States and the UK where the trade union movement, once a

¹⁵ Stephen Roach, "Global Growth" – Still Made In China, *Project Syndicate* August 29, 2016.

¹⁶ For an overview of NAFTA effects, see Robert D. Blackwill, Theodore Rappleye, "Fact Checking Trump's 'Alternative Facts' About Mexico", *Foreign Policy*, March 28, 2017

¹⁷ Andre Gorz, *Adieu au Proletariat*, London: Pluto Press, 2001.

powerful force for the middle class income and style of life, has seen its membership plunge to historic lows.¹⁸

3. It does not come as a surprise to anyone who reads a newspaper or follows news on social media that the multilateral trade governance global order has been overtaken by pop-up mega-regional trade deals beginning with NAFTA, the ill-fated TPP, the now on hold US-EU trade partnership, and the Canada Europe trade agreement (CETA) among others. At one time the WTO was the only trade governance game in the global economy and the go-to forum in the world with its legal rules and imposing trade court. With the WTO needing a 'triple trade bypass' of its architectural design, its unanimity rule -- agree on everything or nothing -- sunk the Doha Round with India and other global South countries opposing the US-EU alliance on agricultural subsidies.¹⁹ Without one, the WTO has lost its claim to universalism -- the hub of global multilateralism with one deal for everyone and one set of conditions. But the WTO faced even larger problems from global neoliberalism which added to its woes in its institutional heartland and whose authority was undercut by the declining number of cases brought to its trade court.²⁰ It faced a growing danger from the uncontrolled growth in institutionally sanctioned protectionism by WTO and the explosive reliance and number of cases brought by states and global corporations to settle their commercial differences outside its jurisdiction by a private arbitration system .

- a. The WTO was marginalized further when its dispute settlement mechanism, a low level court system meant to arbitrate interstate trade disputes. The crown jewel of its jurisprudence declined in importance and wasn't being used very much by its members. Still cases are filed with it but the number of cases have fallen between 8 to 14 per year, a pittance for the world trading system. The simple explanation is that governments no longer see its legal ordering -- legal architecture -- as delivering quickly and efficiently outcomes in strategic areas of state policy and market power. The panels and appellate review suffer from a range of malaise: some experts charge the legal culture and arbitrators are too timid, others allege the rules are too constrained, while others blame its AB decisions as too unpredictable. The one consensus point that everyone can agree on is that the WTO's dispute mechanism resolution is too slow and too costly for

¹⁸ Daniel Drache, "What's Next For Global Labour? Power Dynamics And Industrial Relations Systems In A Hyper Globalize World", in Drache and Jacobs, op.cit., 2014 New York: Cambridge University press, 2014

¹⁹ Sol Picciotto, *Regulating Global Corporate Capitalism*, London: Cambridge University Press, 2011.

²⁰ Daniel Drache, "Anti-Dumping in Dispute Settlement: Shut it Down? The Trade Predator's Persistent Dilemma", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2759974 ; Kara Leitner and Simon Lester, "WTO Dispute Settlement 1995-2016—A Statistical Analysis", *Journal of International Economic Law*, 2017, 20, 171-182.

the global South. It is still the case that 70% of the membership has never accessed the crown jewel! So what has replaced trade dispute arbitration if anything? Are countries going around the WTO's legal authority?

- b. The slack has been more than filled by the rise in antidumping and countervailing suits launched by individual states.²¹ It is a paradox that the WTO has a set of rules regarding antidumping, countervail and safeguard measures that countries can trigger outside of the WTO itself which can be called 'institutionalized protectionism'. There have been over 4000 antidumping filings since 1996 before national boards and tribunals that address global volatility, predatory pricing, employment loss etc. and offer immediate relief with penalties and tariffs against predatory import competition. Countries are required to demonstrate 'trade injury' a complex determination with countries having much experience provided they have economists and trade lawyers at the ready. This option for dozens of states from the global North and global South is a kind of legal kick-in-the-teeth to WTO's narrow legal rules and legal culture offering instead protection from a highly volatile and competitive international economy. The number one target for the advanced industrial world is filing trade injury complaints against China but China has not entered into a retaliatory game but this too may change.

- c. Finally as the vector of trade has become contentiously more about investment rights than eliminating tariff barriers, the private investor state dispute settlement under the auspices of (ICSID and UNCITRAL) has taken off as the primary catchment for global capital with a bone to pick against an aspect of state policy that denies them "fair and equitable treatment" or some other allegedly discriminatory practice. Since 1990s to the present there have been over 700 cases overseen by a tiny roster of lawyers and arbitrators with secret hearings and a privatized system reflecting the norms of commercial law. The Netherlands government commissioned a research report on the 60 Dutch cases brought before ISDS.²² Most claims challenge state conduct that are alleged to violate civil treaty obligations. The treaty provisions most frequently invoked by investors are the following: the prohibition of non-compensated expropriation of investments, the obligation to grant investors and their investment fair and equitable

²¹ Daniel Drache, "The Trade Predators Ball", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2759974, 2016

²² Treaty-Based ISDS Cases Brought Under Dutch IIAS: An Overview An Overview Study By UNCTAD/DIAE, commissioned by the DG Foreign Economic Relations, Ministry of Foreign Affairs, the Netherlands, 2016, <http://investmentpolicyhub.unctad.org/Upload/Documents/treaty-based-isds-cases-brought-under-dutch-iias-an-overview.pdf>

treatment, the prohibition of unreasonable, arbitrary and discriminatory measures, and the obligation to afford full protection and security to invest. The target of private commercial arbitration is to make state regulation more difficult, intimidating and litigious. The arbitrations are always held in secret under rules and practices of commercial law with a small group of lawyers and judges supplying the pool of legal expertise. No wonder public goods and the public sphere are under attack from this quarter that challenge the public regulatory model of national sovereignty.

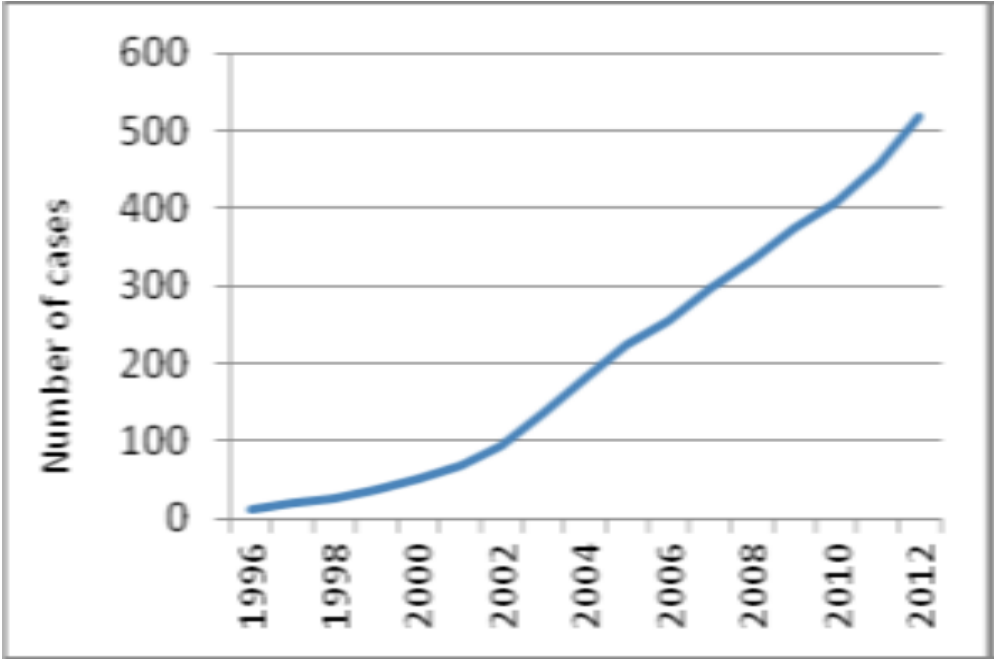
4. When you look at a chart tracking the growth in privatized investment arbitration two things are apparent: in the 90s once state investor agreements were signed, global capital embraced this mechanism. According to UNCTAD, which tracks and monitors ISDS cases resulting from international investment agreements in 2016 investors initiated an additional 62 ISDS cases and this was higher than the 10 year average of 49 cases between 2006- 2015.²³ It should surprise no one that countries with the strongest legal experience file the most cases. Developed countries brought the most cases – 62 – and Holland and the United States investors each initiated 10 cases each followed by investors from the United Kingdom with 7 cases.²⁴ A full listing of the subject matter, disputes, the status of outcomes, awards and decisions issued by tribunals as well as breaches of IIA provisions, arbitrators serving on the tribunal can be accessed at the Investment Dispute Settlement Navigator. Secondly, the important finding of the UNCTAD Monitor is that the popularity and spread of ISDS has weakened government's ability to regulate in the public interest. Arbitral awards are large running in the hundreds of millions of dollars and favor investor complainants in the Dutch study by a ratio of 2 to 1 which underlies how important legal expertise is in using a privatized arbitration commercial model.

So it is possible to see how the WTO has been sidelined by long-term structural changes in the legal ordering culture and frankly its strongest suit is its rule driven system and contrary to what many experts believe governments have been deserting their favorite trade ship for more robust forms of trade advocacy. This includes antidumping suits, a hearty support for a privatized arbitration investment regime and the continuous economic fallout from the global financial crisis accelerating very large shifts in world trade. They also tell an important story about the global shift of economic power from the advanced economies to Asia.

²³ UNCTAD ISDS Trade Monitor, <http://investmentpolicyhub.unctad.org/ISDS>

²⁴ CUTS – Trade Forum, UNCTAD: Global Investment Trends in 2016 and Prospects for 2017, February 10, 2017.

Figure 1.1 ISDS Cases Were Largely Non-Existent Until The Late 1990s And Started To Grow Rapidly From The Early 2000s.All Global Cases



Source: Treaty-based ISDS cases brought under Dutch IIAs: An Overview An overview study by UNCTAD/DIAE, commissioned by the DG Foreign Economic Relations, Ministry of Foreign Affairs, the Netherlands 2016, <http://investmentpolicyhub.unctad.org/Publications/Details/135>

In 2015 China’s share of global GDP was 17%, the EU 16.9% and the US 15.8%. It is an eye-opener to process the fact that emerging and developing economies now account for 57.5% of world GDP compared to 42.4% for advanced economies. Think back to 2000 scarcely two decades ago and the economic geography of the world was markedly different – advanced economies and produced 57 percent of GDP share of world total and emerging and developing economies 43%. During this time the United States was the heavy hitter producing 20.7% of the world’s goods and services and China was far behind accounting for only 7.3%. In 2 decades China has leapfrogged 100 years of history in the Olympic marathon to be number one.

In many spheres of economic life the US continues to be the top dog hegemon. But the fact that the US’ structural share of world trading is shrinking dramatically raises troubling questions about where the world trading system is heading. The US is being squeezed

geopolitically by the competition and no wonder Trump has such a powerful hand of cards with so many aces up his sleeve. Structurally and globally the US is jammed into a powerful vice as the Asian age continues its inevitable rise as its primary tormentor and the advanced capitalist world is on the downswing not absolutely but certainly relatively and in fact sometimes absolutely.²⁵

5. The geometry of trade governance is very problematic because there is really no 'grand' left vision of what a better global system of trade would look like. For many social media actors they are resigned to the fact there is no 'left' alternative. And, on the right, there are two clashing views. The first is the belief that the WTO is about to be reborn because so many countries are going to push back against Trump they will use the WTO as their sword and shield to beat back US protectionist initiatives such as an import adjustment tax. In the disintegrating world order, countries need rules and according Arvind Subramanian, now advisor to Prime Minister Modi of India and a major figure in American economics, has recently made a case that they will beat a path to the WTO for relief from the American protectionism. "The WTO could once again become an attractive forum for trading countries to do business. Make no mistake: there will still be a lot of globalization for the WTO to facilitate and manage..."²⁶ It is his belief that the present order will not backslide into protectionism because of crisscrossing global value chains operating as a powerful brake on Trump's self-proclaimed mandate to dropout from trade agreements.

This is a naïve view out of touch with political and economic reality. Many countries, well before the Trump presidency, were very wary of the WTO as a global governance institution. Foremost are the hundred plus countries of the global South who have had little satisfaction with respect to the conflicted in the Doha Development Round but their dissatisfaction comes from their need deploy state subsidies for strategic goals for their agriculture sectors and on the critical issue of broadening intellectual property rights to make generic drugs more accessible.

The WTO has never shown any interest in managing globalization in any substantial way and the rules-based system only functions as a high-voltage wire when, for example, the EU retaliates against a WTO panel decision that goes against the United States and the US is not prepared to act on a WTO's panel finding such as in the beef hormones case. In the last decade Brazil has spent millions of dollars hiring American lawyers to battle American subsidies to its cotton farmers and in fact were successful because the US offered them a deal they couldn't refuse. US farmers will continue to receive their subsidies despite the WTO ruling. A more realistic scenario is that countries that face discriminatory duties on imports or other measures will retaliate against the US. If the Trump presidency is reckless in its decision to disregard the multilateral trade governance system, there can be no doubt that Washington will be held accountable for trade wars that it initiates. Neither China nor the EU are easily frightened off by the Trump bully pulpit.

²⁵ Jonathan Fendy, *Tiger Head, Snake Tails_China Today, How it Got There and Why it Has to Change*, New York, 2013.

²⁶ CUTS-TradeForum 3 March 2017.

The second view is that hyper-globalization does not offer an easy ride for newly emerging market economies but it also doesn't offer any longer a cushion for the advanced economies in the global North. As the American share of global trade continues to shrink the US is backing itself into a defensive posture. Already there has been a fiery meetings in the white hours between the hard economic nationalists led by Bannon and trades are Peter Navarro on the one hand and moderate pro-free traders from Wall Street. It's anyone's guess who has the inside track but the Bannon Navarro tag-team is closest to Trump's economic nationalist creed. In a recently released policy document "Presidential Trade Policy" it promised to make good all of its campaign promises by nixing the TPP, reopening NAFTA and other bilateral trade deals in imposing unilateral trade barriers in violation of WTO's legal culture of non-discrimination.

Speaking bluntly the Trump administration said through its official spokesperson it would ignore WTO rules and complaints. The US has alternatives namely super 201 of the 1974 Trade Act and super 301 of the 1974 trade act that gives the US the unilateral right to punish countries "that are rigging the rules" echoes of the import tariffs and quotas imposed on Japanese auto producers in the 1980s and steel producers. The act gives the president the authority to take action to impose the penalties on countries to obtain elimination of the practices that impede U.S. exports. The expectation is that these measures would substantially expand U.S. exports. In the 80s the best case scenario happened: US Steel producers and automobile assemblers received immediate relief from quotas against Japanese auto imports but it didn't save American jobs nor many US firms who failed in the 90s. It did get Reagan reelected and it could do the same trick for Trump with his white working class workers electoral base in the Midwest and American South.

This go-it-alone, poke-in-the eye American unilateralism will not stop globalization in its tracks but it does highlight the impossible belief, now ascendant and that has captured Washington's conservative revolution, namely, that the US can only be a winner at the trade game, a logical impossibility in transactional politics. So for all these reasons the WTO faces a precarious future with its legal culture under siege from the global South for one set of reasons and from Trump running wild with his American First Agenda.

The chances of the WTO being reborn in a more muscular institutional coherent architecture are slim to nonexistent. The more likely scenario is that we are going to see a replay of 1970 when Nixon unilaterally kicked out his European allies off of the gold standard. Of course there has been other ruptures and we're in an era when Trump could very well drop out of the WTO in the same way that Nixon unilaterally abandoned the gold standard and kicked his European partners out precipitating a systemic crisis of global proportions that forced the core European countries to accelerate their plans for economic integration and eventual union. Most assuredly it taught them a bitter lesson that they couldn't rely on Pax America to maintain the global financial order when the going got rough and they had to build their own super-power entity.

All these complex events are provocatively analyzed in an excellent book by Yanis Varoufakis, *And The Weak Suffer What They Must*.²⁷ As a parallel to the mad cap Nixon's decision to dump the gold standard system and all his allies along with it, it raises the controversial question are we now at another fork in the road of equal significance where the United States is going to throw out the EU and the rest of WTO members from the multilateral trade governance system? No one knows whether this is the next chapter but it could be before the year is out. The United States has shocked its allies with its penchant for unilateralism at critical moments in the global order. Is the global economy bidding farewell to global trade multilateral?

If there is a common thread among all critics excluding Trump's American exceptionalism it is that for the WTO to be more functional, less intrusive about investment rights and private investor state rights arbitrations, more innovative, and more a manager of globalization in many areas such as food security, labour standards and global warming and less a passive onlooker you need a rejigged form of trade governance that is slimmer, more fleet of foot, smaller in its legal reach but much more focused on areas that preoccupy the lives of "we the people".

No one knows how it can be all these things but not so long ago in the aftermath of the great war, the Allied powers and a majority of countries including the Soviet Union and its socialist partners of the time including a significant group from the global South countries agreed on a very different trade organization, the International Trade Organization which in retrospect was like a beacon on the hill from today's perspective. It succeeded in institutionalizing a balance of power system having laboriously arrived at an equilibrium point between the social market, the interests of the people, freeing markets from the interwar high tariff system and broadening access to international markets. We're not going back to that time but as an intellectual exercise, it demonstrates that shock therapy of the 30s led to a need for countries to establish and shape the multilateral trade system as the alternative.²⁸

6. It is now often forgotten that protectionism comes in many different forms and for a multitude of reasons. Every country has a protectionist gaze for good reason and bad. Sometimes it's to protect jobs and employment from being burned at the stake of international competition and on other moments, the protectionist gaze helps emerging 'infant' industries to survive behind tariff walls because global competition from your rival and competitor is too strong, more sophisticated with deeper pockets and more sophisticated technology.²⁹ Often times, the competition receives special treatment from its home state state in the form of subsidies, tariffs or increasingly since the 1980s, export

²⁷ Yanis Varoufakis, *And The Weak Suffer What They Must*. London: Bodley Head, 2016.

²⁸ Daniel Drache, "The Short but Significant Life of the International Trade Organization: Lessons for Our Time" , CSGR Working Paper No. 62/00 November 2000 , http://wrap.warwick.ac.uk/2063/1/WRAP_Drache_wp6200.pdf

²⁹ Ha-Joon Chang, *Kicking Away The Ladder, Development Strategy In Historical Perspective*, London: Anthem Press, 2003

oriented sectors and firms are able to take advantage of a weak currency to boost exports and reduce costs. The international success of Japanese, German, South Korean, Chinese, Indian, Brazilian firms and industries from state industrial strategies underscores just how irrelevant the grand theory of modern economics is in practice. The *bête noire* of standard trade theory argues very forcibly that any form of protection undermines the smooth efficient functioning of markets. It violates two of the canons of international law: the nondiscriminatory principle and the sanctity of national presence and treatment as explained in WTO jurisprudence. Countries that violate these principles are bad, very bad to reprise the well-known thermonuclear trade insult “termites of the system”!

In the real world the principles of comparative advantage and letting market Darwinism are sub optimal policy choices and don’t work all that well because governments find that it is acceptable to bend the high principles of liberal trade theory when need dictates. In trade politics and in trade theory the protectionist gaze is always present and a powerful incentive problem solving option for countries who have no hesitation to make their deal with the devil. United States is a protectionist abuser relying on defense contracts, American First provisions, massive hundred billion dollar plus subsidies for its agricultural industries, monopoly copyright protection for big Pharma and more generally, intellectual property rights reducing ‘fair access’ provisions for the cultural commons. The EU has many programs that involve state aids and other kinds of extensive financial support to regions and industries, the most important being structural funds for development in southern Europe and the central European economies.

At the level of state policy we know that Trump presidency poses new dangers and threats. Are there any historical examples of how countries and the global governance system respond to new protectionist threats? In the 80s faced with stiff import competition from Japanese automakers, Washington forced these auto producers to accept quotas and tariffs. Japanese automakers were just too strong for the US big three auto assemblers and were gobbling up in ever larger share of the US market. It is worth recalling that the US consumer preferred better engineered, smaller Japanese cars with better mileage than the clunkers produced by Ford and General Motors. In the software and lumber wars between Canada and the United States and one of the longest trade wars to date, in violation of NAFTA Washington unilaterally imposed quotas on Canadian softwood producers even though four different trade tribunals found that the US allegation was without substance. Canada was a fair trader and violated no rules. It did not damage American industries but Washington ‘stuck’ it to their NAFTA pal and collected hundreds of millions of dollars in punitive duties. In April 2017 Washington has filed a new petition to impose 20% tariffs on Canadian software exports.

The European Union has also had bouts of the protectionist gaze. In the EU a decade ago Chinese lingerie manufacturers were on steroids increasing their year-over-year sales by

250% because their industries were too efficient and lowballed the competition. Tens of thousands of jobs were being lost because Chinese producers were too efficient driving down the price that found favor with European women consumers. So when the dispute blew up China and the EU negotiated a market sharing agreement, another example of a grey governance zone. When the existing rules don't work for one reason or another, in a grey zone of governance you either make new rules or ignore the existing convention.

On another occasion Chinese solar panel manufacturers swept the market in Europe and drove down the price of solar panels so much so that solar panel and green energy strategies took off. The result was that the EU facing market disruption on an unprecedented scale challenged China's solar panel producers with dumping and predatory pricing! Another grey zone and another market restraint agreement.

Canada is often at the receiving end of the protectionist nasty gaze. Ontario's green policies have also been a target for European producers who charge Ontario with violating national presence and non-discrimination with its program to support with tax incentives Canadian green energy manufacturers. The aim of the government in Ontario was to use industrial targeting to develop a domestic industry to respond to the government initiative to promote Canadian firms to produce solar panels and other forms of green energy products as an alternative to continued reliance on fossil fuel. Trade governance always has so many legal traps that allow competitors to challenge the development of strong purposeful industrial policy initiatives because of the principle of non-discrimination that in many instances undermines the strong regulatory presence of the state. The dispute between Canada's and Brazil's short takeoff and smaller aircraft produced by Bombardier of Canada and Embraer of Brazil falls in this category with both governments offering rich incentives to develop a domestic industry. In this instance one wonders why the two countries instead of going to the WTO didn't negotiate an agreement between them to settle their differences.

So we don't know what line of attack the Trump presidency will follow. It has a number of unilateral choices to force on countries. The most obvious are voluntary export restraints, quotas and punitive tariffs. Trump has already announced his intentions to ignore WTO judicial rulings that go against it. It has other options including it can sign more bilateral deals, the go to policy option for an aggressive US unilateralism. Rest assured it will bring its protectionist gaze to US industries offering them unprecedented deal-making subsidies and even more tax concessions. It isn't realistic to think China, India and the EU are in any mood play along with Trump's populist nationalist agenda. They have their own publics to answer to and no country wants to be seen to be weak and not using its trade arsenal to reply in kind. So there will be a lot of boat rocking and shoving as countries find the best way to defend themselves in the coming trade wars.

7. If the whole system is jammed up and blocked, we need to come to terms with China's ascendant role in the global economy. Theoretically it can be seen that a rising power could create a parallel global order with new global financial institutions, a new model of development, bags of money, initiate and organize a regional free-trade alliance and collective security agreement. China's new Silk Road globalization infrastructure initiative is the largest infrastructure project in the world with 60 member countries in its coalition from Europe, Eastern Europe, Russia, South East Asia, Central Asia and Africa. China spends the most of any country on global infrastructure – more than the World Bank, Asian Development Bank, the European Development Bank, USAid combined. China's focus on infrastructure-led development domestically became the pivot in its rapid industrialization and ascendant rise as regional hegemon in the last 30 years. Amartya Sen offers a critical insight into China's unique developmental trajectory since it became part of the world economy in the late 80s:

Why is China ahead of India? One answer is that India has paid inadequate attention to the lessons of Asian economic development, which gives a crucial role to the rapid expansion of human capability as a part of pursuing fast economic growth. A critical part of that strategy has been the use of public revenue, itself expanded by economic growth, to remove huge deficiencies in social, educational and health services, and to meet the growing demands of social and physical infrastructure, while making public services more accountable and efficiently organized. (21/06/13)

For two decades the developed countries have not invested in their own infrastructure and have given a pittance to the global South to build clean water facilities, sanitation plans, stable electricity for hundreds of millions of people as underlined by the 2017 Asian Development Report. It warned that the globe faces a global infrastructural deficit of \$3.3 trillion. The goal of the One Belt One Road Initiative is to provide energy security and access to global markets for China and China has delivered on building high-speed railways, deep water ports, highways, windfarms, pipelines, energy grids and diversion of river to enhance immigration in water supply.

Infrastructure can be transformative giving a landlocked countries access to markets and changing the grooves of geography in profound ways. Critics charge that this is a form of 'blind development' and that countries themselves are worried about becoming too dependent on China's development machine. The question is should they take the deal when there is no other source of funds for development? The strategic vision behind it is complex but as we enter further into the Asian age, China's goal is not only to increase trade by \$1 trillion, build a bridge to Europe in a way that never before has dreamed possible, but sees itself at the head of its grand coalition establishing in the process an

alternative global system to US centric one to contain China's rise. Is that the world of tomorrow looming on the global horizon?

The world needs to invest \$3.3 trillion in economic infrastructure annually through 2030 to keep pace with projected growth

Average annual need, 2016–30
\$ trillion, constant 2015 dollars



1 The estimate of total demand is lower than the \$57 trillion projection in previous MGI research. It has been adjusted for the following reasons: it covers a 15-year period (2016–30) rather than an 18-year period (2013–30); lower water capex due to changes in the exact category definition; updates to estimates by Global Water Intelligence; base year prices have been revised from 2010 to 2015; and GDP growth forecasts have been downward by IHS.
NOTE: Numbers may not sum due to rounding.

A return to a period of highly unstable trade politics where every country sees an advantage in going for the commercial jugular is a distinct possibility. From the Chinese perspective, the OBOR is a radical departure from the crude mercantilism of 'my country first' trade governance. The only question is whether another 30 or 40 countries will take 'the deal' Beijing has put on the table and negotiate the best terms possible? What then? Are there another 40 countries in the wings to join the global infrastructure initiative? Will they become part of China's coalition of the willing? Will China deliver clean, green energy, commercial opportunity, clean drinking water, sanitary systems, high-speed trains, roads and ports and windfarms? Will the new world order with its AIIB and BRIC Banks, Regional

Economic Trade Initiative be framed by China as its 'community of destiny'? Will Beijing see the advantage of a global dispute resolution forum with its own legal culture and laws?

Trade Multilateralism After Bretton Woods? Chinese Multilateralism. Anyone?

Something so unexpected should not be dismissed off hand. China has enormous financial shock absorbers such as its \$3 trillion in foreign reserves, billions in annual tax revenues and 3 out of the top 5 banks in the world with assets twice as large as the biggest US and foreign banks to carry it through the peaks and valleys of a volatile global economy. Beijing has been quietly adopting new standards for its banking sector based on the financial oversight regulation of the Bank of International Settlements and other foreign regulatory agencies. So bureaucratic China may not be surefooted but it is nimble and flexible to the surprise of many. The question is, in the rapidly changing global world order, can China become the global leader and hegemonic power of the Asian Century and world order? Or will it remain a unique epi-center with a growing sphere of influence and core interests to counterbalance balance US power and might?