The fear of fragmentation

Alan S. Alexandroff

University of Toronto

The multilateral trading and investment system

G20 leaders have acknowledged the critical role that trade and investment plays in a full recovery from the global economic crisis. As G20 leaders stated in the recent St Petersburg Declaration, ‘[w]e stress the crucial importance of [a] strong multilateral trading system’. They called on World Trade Organization (WTO) members to successfully conclude multilateral trade negotiations.

For the most part, however, these leaders have largely limited themselves to a standstill declaration that commits G20 countries to avoiding trade protectionist measures. At more recent leaders’ summits, the leaders have committed to not only maintaining the standstill, but to rolling back trade protectionist measures that they had implemented as a result of the global financial crisis. But the question remains whether these declared commitments to refrain from protectionist measures, and the repeated calls to conclude the Doha development round (DDR) of multilateral trade negotiations at the WTO, are sufficient. Will the failure of the DDR at the WTO threaten global economic growth? Does the proliferation of preferential trade agreements (PTAs), especially the ‘mega-PTAs’ – the Trans-Pacific Partnership (TPP), the Transatlantic Trade and Investment Partnership (TTIP) and the Regional Comprehensive Economic Partnership (RCEP) – challenge global trade, as many trade experts have warned? Does the continuing fragmentation of investment, as well as the growing fragmentation of trade arrangements, pose a threat to the multilateral trade regime? What might G20 leaders do to arrest these developments if they in fact threaten the growth of global trade and investment?

At the St Petersburg summit

Once again at the St Petersburg summit G20 leaders called for the oft-repeated trade standstill commitment:
Free and rules-based trade fosters economic opportunities. We stress the crucial importance of [a] strong multilateral trading system and call on all the WTO members to show the necessary flexibility and reach a successful outcome in this year’s multilateral trade negotiations. We extend our commitment to refrain from protectionist measures and aim at enhancing transparency in trade, including in regional trade agreements.

And this preambular statement was followed by paragraph 44 of the Declaration, in which the G20 leaders added:

We recognize the risks of economic slowdown and trade weakening posed by protectionism. We extend until the end of 2016 our standstill commitment; being fully committed to further progress in removing barriers and impediments to global trade and investment, we reaffirm commitment to roll back new protectionist measures.

But success in the multilateral trade regime has not been defined only in terms of anti-protectionist declarations. The leaders, concerned over the stalled WTO negotiations, have urged that for the successful functioning of the multilateral trade system it is important to see a successful outcome to the WTO Ministerial in Bali. In the Declaration, the leaders stated that they were prepared ‘to make significant contributions’ to these negotiations. A success in Bali, it can be assumed, might mean that the WTO members could build momentum toward a successful conclusion to the DDR. And finally, leaders acknowledged the importance of the overall trading system of regional trade agreements (RTAs) – though, as is evident above, experts frequently refer to these arrangements slightly more pejoratively as preferential trade agreements, or PTAs. With respect to these agreements, the leaders declared (at paragraph 47 of the Declaration):

Realising that enhancing transparency in RTAs and understanding of RTAs and their effects on the further development of multilateral rules are of systemic interest to all G20 members, we are committed to continue our work on RTAs in the WTO, and share our approach for Advancing Transparency in Regional Trade Agreements (Annex).

This statement builds on the WTO’s efforts to enhance notification procedures, ensuring consistency of RTAs with WTO principles and rules, and transparency with respect to these RTAs under the WTO Transparency Mechanism for Regional Trade Agreements.

**Separating the global trade and investment from the multilateral trade regime**
Many conflate the multilateral trade regime, the WTO system, and especially the ongoing Doha round of trade negotiations, with global trade. Since the global financial crisis in 2008, experts have raised the spectre of protectionism as a continuing threat to the global trading system. The Global Trade Alert project, and its principal, Simon Evenett from St Gallen, has reported repeatedly (the project has published 14 reports) on the failure of the G20 countries to adhere to their own standstill pledge. In its most recent report, Evenett reported, ‘What is striking is that, on all but one criteria, the performance of the G20 members is not markedly better than the next 10 mid-sized trading nations.’

What identifiable consequences for global trade arise from the persistence of protectionist measures since the global financial crisis? Below is a table that sets out world total value for imports (on the left) and exports (on the right) in US$ trillions, from the global financial crisis to 2012:

<table>
<thead>
<tr>
<th>Year</th>
<th>IM / EX</th>
<th>Year</th>
<th>IM / EX</th>
<th>Year</th>
<th>IM / EX</th>
<th>Year</th>
<th>IM / EX</th>
</tr>
</thead>
</table>

While the data reveals that there was a clear contraction of global trade following the onset of the global financial crisis, that decline has been eliminated, and global growth, measured in terms of exports valued free on board (FOB) at the border, has increased significantly. There has been a significant increase in total trade, with 2012 showing an increase of 3 per cent compared to the previous year, and 2011 showing an increase of 19 per cent from 2010.

The growth of global trade is a clear success story – though the WTO negotiating regime might not be. And the two should not be confused. As identified by UNCTAD, global trade as a share of GDP has increased from 40 per cent in 1980 to 63 per cent in 2011. HSBC forecasts that global trade should expand at about 5 per cent per annum through to 2030. While protectionism and increasing fragmentation may yet distort and impede trade growth, this is not evident to date.

**Fragmentation and coordination**

Trade and investment experts have for some time raised the issue of ‘fragmentation’ in the global trade and investment regimes. Particularly in the case of major plurilateral trade
negotiations – the TTP, TTIP and RCEP – there are concerns that the trade rules will become increasingly Balkanised and unequal through the growing list of PTAs. There will be confusing rules of origin, IPR protection, state-owned enterprise (SOE) disciplines, etc. The preferences offered by most-favoured-nation (MFN) status will be permitted to plurilateral members only. The failure of MFN status to be provided multilaterally will distort trade. One of the most severe critics of these PTAs, Jagdish Bhagwati of Columbia University in New York, has argued:

Now, however, with the era of multilateral trade rounds and system-wide rules behind us, the PTAs are the only game in town, and the templates established by the hegemonic powers in unequal trade treaties with economically weaker countries will increasingly carry the day. In fact, such templates now extend beyond conventional trade issues (for example, agricultural protection) to vast numbers of areas unrelated to trade.6

It is evident that the G20 effort to advance transparency in RTAs is a measure to limit the possible damage to the multilateral trade regime. In the Annex to the Declaration Advancing Transparency in Regional Trade Agreements, the G20 leaders recommend that the WTO retain its central role in multilateral trade and that RTAs ‘remain complementary to, not a substitute for, the multilateral trading system’.

If there is a growing risk of damage to global trade through these PTAs, the global investment regime is, and remains, highly fragmented. There are currently thousands of international investment agreements – both bilateral and plurilateral. Many of the PTAs include investment protection clauses and dispute resolution protections. Efforts to develop a multilateral regime at the WTO – the agreement on trade-related investment measures, or TRIMs – and the earlier OECD effort to conclude a multilateral investment agreement (MIA), have proven to be ineffective.

One view is that the multiplicity of investment agreements has not undermined the protection of investment, but the contention over investment protection provisions in countries such as Argentina, South Africa and Australia suggest that investment protection needs to be addressed.

If, in fact, efforts should be made to address the growing fragmentation of trade and investment to ensure continued growth in global trade and investment, then what could G20 leaders usefully do?

While the G20 promotion of transparency is fine in principle, it fails to address possible conflicts between agreements. In that regard, G20 leaders could propose the following:
• Establish an organisation with separate panels for trade and investment that could represent the equivalent of the Financial Stability Board in finance. This organisation could be linked to the WTO, but remain independent. These independent standard body panels would be charged with the development of model clauses, treaties and practices for trade and investment agreements.

• Such model clauses and agreements could include the key trade and investment improving principles.

• The model agreements could reflect the different characteristics of members – both developed and developing.

These standards and models could provide a means to coordinate and harmonise agreements over time in a fragmented world of trade and investment. Progress would require G20 leaders to acknowledge the value of, and then commit to implementing, such standards in their bilateral and plurilateral agreements.

Notes

1. Director, Global Summity Project, Munk School of Global Affairs, University of Toronto.
3. *International Trade Statistics Yearbook* (2012), Table A.