

## **Luís Máximo dos Santos: New challenges facing the multilateral trading system**

Opening address by Mr Luís Máximo dos Santos, Vice-Governor of the Bank of Portugal, at the Symposium "New challenges facing the multilateral trading system" of the Institute for Legal Research, University of Coimbra, Coimbra, 15 November 2018.

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1. Let me start by thanking, on behalf of Banco de Portugal, Rui de Figueiredo Marcos, the Director of the Law Faculty of University of Coimbra (FDUC), José Aroso Linhares, the Chair of the Institute for Legal Research, and Luís Pedro Cunha, the Chair of the Symposium's Organising Committee, for inviting me to participate today. I am also grateful to be joined in this excellent and timely initiative by all these other distinguished speakers and participants.

Participation in FDUC conferences is always a source of pleasure and a challenge for any jurist. I took part several times when on the staff of the University of Lisbon School of Law and so I wanted to express my particular pleasure in associating myself with the work of this Symposium.

2. The 70-year anniversary of the introduction of the General Agreement on Tariffs and Trade (GATT) on 1 January 1948 is very important at several levels.

Portugal became a contracting party of GATT on 6 May 1962 as part of the opening up of the economy in the early 1960s. The decision was consistent with our membership of the International Monetary Fund and World Bank in 1960, and an indirect result of joining the European Free Trade Association (EFTA), following the signing of the Stockholm Convention, also in 1960.

As is known, this opening up of the Portuguese economy was key to Portugal's fast economic growth up until the 1973 oil crisis.

Then, on 1 January 1995, Portugal became a founder member of the World Trade Organization (WTO). In other words therefore, Portugal has a long history of participating in the multilateral trading system.

However, unfortunately, the subject of the multilateral trading system and international trade in general has never had the appropriate profile in Portuguese public and political debate given its exceptional economic and social importance.

Undoubtedly there is important academic research on the topic and it is right to mention in this regard the long tradition of the law schools of the Universities of Coimbra and Lisbon among several others, now with a new generation of excellent academics.

But that academic work has only had a minimal impact on public debate. Certain factors explain this. On the one hand, there is the highly technical and complex nature of the topics surrounding the multilateral trading system and its functioning, which are difficult to condense into sound bites. On the other hand, the common commercial policy is the exclusive competence of the European Union, leading – wrongly, clearly – to the assumption that somehow it is a topic about which we have little to say.

Perhaps the difficulties facing the multilateral trading system at least have the virtue of pushing lively debate of international trade topics higher up the agenda. The initiative to hold this Symposium therefore could not be more timely and fitting.

3. The success of GATT has been talked about for a long time in the literature, but it is worth

repeating, so great is its originality.

It arose as a clever solution to address the weakness of the Havana Charter – not ratified by the United States – and the resulting failure to create the International Trade Organization. It came into force with a ‘provisional’ status for nearly half a century (1948–1995), through the Protocol of Provisional Application. Having started with 23 contracting parties, on the date the Agreement establishing the WTO entered into force there were already 128.

However, it is more important to emphasise that GATT was undoubtedly successful in its core mission. Indeed, with a minimalist constitution and without the legal and institutional basis of a true international organisation, but with a clear definition of the core principles and provision for suitable waivers to bring it flexibility and pragmatism, GATT created an international framework that led progressively to a huge reduction in customs laws and to the combating of non-tariff obstacles, thereby contributing to the expansion and promotion of international trade.

In other words, if the ambition behind its origin might have been modest, the results achieved by GATT were impressive.

We should remember that GATT also represents the ability, through international cooperation, to create a mutually beneficial international order, as was the case under the Bretton Woods system. That is a lesson that cannot be forgotten nor should be underestimated in any way.

It is important to recall that the Bretton Woods system contributed to the perfect integration of the two great losers of the Second World War, Germany and Japan, into the international economy, thereby showing an ability to learn from post-First World War mistakes. It brought prosperity to the countries that took part in it and showed from the outset an ongoing capacity to expand, even though it has only become truly universal from the 1980s, following the total collapse in 1989 of the economic system aiming to rival it, based on the centralised planning of the economy.

The Bretton Woods system was also able to overcome the challenge posed by the project (or rather, the utopia, perhaps) of the ‘new international economic order’, put forward by the developing countries, following their political pronouncement at the Bandung Conference, which would gather great international prominence in the 1960s and ‘70s as a result of the work of the United Nations Conference on Trade and Development (UNCTAD) and the political backing of the United Nations General Assembly.

GATT faced this challenge without overlooking the importance of its central underlying theme – the specifics of the developing countries’ situation – and was even able to adapt, as shown for example by the addition of Part IV to GATT and the acceptance of the Generalized System of Preferences created under UNCTAD.

However, all this was done without compromising the core validity of its founding principles.

While reforming the monetary system proved impossible – and the Bretton Woods monetary system collapsed irreversibly in 1971 – reform of international trade was nevertheless achievable, shown by the creation of the WTO at the Uruguay Round.

The creation of the WTO, as I wrote about many years ago, was an ending as well as a beginning.

An ending, in that it marked the completion of a long journey and the ultimate materialisation of the vision of the Bretton Woods ideologues, who did not manage to build the International Trade Organization in their time.

A beginning, since the defining of a single institutional framework to administrate trade relations between members in domains as vast as those covered by the set of agreements concluded under the Uruguay Round in fact marked the start of a new phase. For example, the path was

cleared for the first time for financial services to be included in a multilateral trading system, through the conclusion of the General Agreement on Trade in Services (GATS).

In turn, the strengthening of the Dispute Settlement System increased expectations of the prevalence of law over sheer power, also helping to depoliticise and dedramatise matters of international trade.

It was a new framework, therefore, that justified high expectations, but also held significant risk of disappointment, in a context in which the great changes, at all levels, in world trade were just appearing on the horizon.

4. Heralded as the first international organisation with a universal vocation for globalisation, the WTO's creation and the overall outcome of the Uruguay Round added optimism to an already very optimistic environment.

In November 2001, the Doha Round began in Qatar, focusing on the developing countries' problems. As is known, it has still not been possible to complete those talks.

Also in 2001, on 11 December, the People's Republic of China became a member of the WTO, which was clearly an enormously important moment for the world economy. By benefiting from WTO rules, China enjoyed even more favourable conditions for its rise in the international economic context. And it has used them very successfully, creating a new geoeconomy and a new geopolitics in a few years, which in itself is a rare historic event.

It is clear that the inability to complete the Doha Round has weakened the multilateral trading system, not only due to the objective meaning of that inability but also due to the great disappointment that it signified compared to initial expectations.

But that is not the key factor of its crisis.

In truth, as the 21st century has advanced, it has become apparent, to paraphrase Mark Twain, that reports of the death of the nation state have been greatly exaggerated.

On its own that might not be a grave problem. And we can agree that the weakness of states beyond certain limits is in itself problematic. The real problem is that there are those who seem to believe that returning to a position focused on the exclusive defence of the national interest, a position imposed unilaterally if necessary, might solve countries' problems. Given the current nature of the world economy, this does not seem possible, even for the largest powers, whichever they may be.

The multilateral trading system today is under pressure. But it is not moribund.

The international financial crisis and the Great Recession it caused had immediate repercussions on international trade, which in 2009 contracted for the first time in several decades. But thereafter it clearly recovered. Many countries continue to be deeply committed to the goals of the multilateral trading system.

Some problems are old and relate to familiar international trade themes: how to view preferential trade agreements, which have proliferated relentlessly; how to assess the effects of economic regionalism, with the establishment of economic integration zones; and are these circumstances positive or negative for the expansion of international trade?

Other problems result from more recent developments in the nature of international trade. What are the conclusions that we should draw, in terms of trade policy, from the fragmentation of the production chain, and the emergence of global value chains, as they are known? As a result of these developments, to what extent are we obliged to revisit more thoroughly the principles and concepts we took as given?

And lastly, are the trade policies of the multilateral system fully correct from the viewpoint of the new industrial revolution under way, structured around the digital transformation, which changes the way we produce and consume, changes firms' business models, and ultimately changes the modern way of life itself?

In this regard, asking questions is not as easy as it may appear, as it is important that we ask the questions that really matter. In any case, answering them is clearly harder.

5. In the context of the Portuguese and European legislation governing it, Banco de Portugal is tasked with multiple missions. Among the most important without doubt is that of safeguarding financial stability. Broadly speaking, financial stability is effectively essential for preserving international trade, as the financial crisis clearly showed. In 2009, world trade in goods and services declined over 10%, even though since then it has returned to notable growth rates. Without sound global financial institutions successfully carrying out the key roles entrusted to them, the world economy suffers and international trade is one of the first victims, placing the multilateral trading system under further pressure.

6. For understandable reasons, some talk of a certain 'multilateralism fatigue'. All topics should be discussed without dogmatism, as that approach is the most lucid given the novelty and complexity of the modern world.

But there is one aspect that seems non-negotiable to me: the principle that the multilateral methodology – without blocking other dynamics – is a precious good, and must be defended.

It is surely no coincidence that the League of Nations and the United Nations were created at the end of the two World Wars, with the United Nations supplying the original framework for the Bretton Woods system.

One must bear in mind that without operational multilateral institutions, a standard conferring international legitimacy will cease to exist. If this happens, it is not hard to see that the 'multilateralism fatigue' identified by many would be swiftly followed, in all likelihood, by a 'nightmare feeling', arising from the proclamations of bilateralism, more or less regionalised, or, worse still, by the disorderly overlapping of States' unilateral actions.

7. Many of these issues will be debated in this Symposium, which will surely be a great success. Impressed by advances in technology, which surprise us every day and open up new possibilities that were unimaginable before, we tend to underestimate the power of ideas, of knowledge in its broadest sense, of beliefs and of institutions. Nothing could be further from the truth. There is no greater power than that which originates from these factors, as it is they that will ultimately decide the direction taken by technological progress.

In a recent book, Stephen D. King states that "globalisation is driven not just by technological advance, but also by the development of the ideas and institutions that form our politics, frame our economies and fashion our financial systems both locally and globally. When existing ideas are undermined and institutional infrastructures implode, no amount of new technology is likely to save the day."

That seems to me a key insight into our current problems.

I wish everyone two days of intense and fruitful discussion.

Thank you very much for your attention.