



The **E15** Initiative

# STRENGTHENING THE GLOBAL TRADE SYSTEM



## Functioning of the WTO: Mapping the Challenges and Asking the Hard Questions

Manfred Elsig

December 2013

E15 Expert Group on  
Functioning of the WTO

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**Overview Paper**

Co-convened with



# ACKNOWLEDGMENTS

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## Published by

International Centre for Trade and Sustainable Development (ICTSD)  
7 Chemin de Balexert, 1219 Geneva, Switzerland  
Tel: +41 22 917 8492 – E-mail: [ictsd@ictsd.ch](mailto:ictsd@ictsd.ch) – Website: [www.ictsd.org](http://www.ictsd.org)  
Publisher and Chief Executive: Ricardo Meléndez-Ortiz

World Economic Forum  
91-93 route de la Capite, 1223 Cologny/Geneva, Switzerland  
Tel: +41 22 869 1212 – E-mail: [contact@weforum.org](mailto:contact@weforum.org) – Website: [www.weforum.org](http://www.weforum.org)  
Co-Publisher and Managing Director: Richard Samans

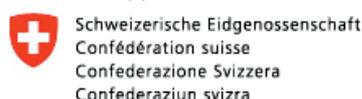
## Acknowledgments

This paper has been produced under the E15Initiative (E15). Implemented jointly by the International Centre for Trade and Sustainable Development (ICTSD) and the World Economic Forum, the E15 convenes world-class experts and institutions to generate strategic analysis and recommendations for government, business and civil society geared towards strengthening the global trade system.

For more information on the E15, please visit [www.e15initiative.org](http://www.e15initiative.org)

The Expert Group on the Functioning of the WTO is co-convened with the World Trade Institute (WTI). [www.wti.org/](http://www.wti.org/)

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**Citation:** Elsig, Manfred. *Functioning of the WTO: Mapping the Challenges and Asking the Hard Questions*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2014. [www.e15initiative.org/](http://www.e15initiative.org/)  
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ISSN 2313-3805

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# ABSTRACT

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The World Trade Organization was created at the end of the Uruguay Round negotiations, and became operational in 1995. Its creation led to a deepening of trade concessions, and the organization provided Members with a highly legalized dispute settlement system to support implementation. As a result of this move towards market integration and legalization, many new actors brought their issues and concerns to the WTO. However, perceptions of its role and impact have changed. Today the organization risks becoming marginalized in providing regulatory solutions, as trade negotiations have moved from the multilateral level to regional-, plurilateral-, and bilateral-level forums. “The balance of power” has shifted towards emerging markets. The Doha Round impasse has less to do with transatlantic differences than with highly industrialized countries and large developing countries disagreeing over the degree of market access and protection for vulnerable sectors of the economy. The preferential trade agreement landscape offers a challenge to the organization. If countries improve selected market access through small group deals, the appetite for negotiating ambitious multilateral solutions might decrease. This “new regionalism” will require a different response from the WTO. This background paper presents some of the key challenges in governing the WTO system and focuses on the negotiation function of the organization, the role of the Committees, and the interaction between the WTO system and the business sector. It is meant as a document to be used to take stock and to launch debates about reform in these three areas.

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# LIST OF ABBREVIATIONS

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APEC	Asia-Pacific Economic Cooperation
EU	European Union
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
LDCs	least developed countries
OECD	Organisation for Economic Co-operation and Development
PTA	preferential trade agreement
RTA	regional trade agreement
SPS	sanitary and phytosanitary
TBT	technical barriers to trade
TPP	Trans-Pacific Partnership
TPRB	Trade Policy Review Body
TPRM	Trade Policy Review Mechanism
US	United States
WTO	World Trade Organization

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# INTRODUCTION

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The World Trade Organization (WTO) is relatively young. It was created at the end of the Uruguay Round negotiations, and became operational in 1995. The work of the WTO can be divided into three functional areas. First, the institution acts as a platform for trade negotiations; second, it administers the regime (which includes implementation of commitments, providing training and technical assistance, and disseminating information based on research activities); third, it offers a dispute settlement mechanism. The first function used to be the most important; however, over time, the other functions have gained in importance and, dispute settlement has now become the prime focus. Scholars note an emerging asymmetry between rule making and rule interpretation that threatens the overall balance of the organization.

Given that the organization has been in existence for a rather short time in its current form, it is surprising that academia and many trade experts have devoted so much effort to analysing its work and offering suggestions on how to improve processes and outcomes. The reason for this attention is that the multilateral system, with the WTO at its centre, matters to nations and their citizens. The WTO was the poster child of global economic governance. However, perceptions of its role and impact have changed. In the late 1990s, public perception was heavily influenced by an alleged pro-free-trade discourse, illustrated by the street protests in Seattle at the WTO's third Ministerial Meeting in 1999. The past ten years, characterized by a stalled trade round, have given rise to concerns about the health of the system because of a lack of performance (Elsig 2010). Today the organization risks becoming marginalized as a provider of regulatory solutions. Trade negotiations have increasingly moved from the multilateral level to regional-, plurilateral and bilateral-level forums.

This background paper takes stock of WTO governance. The second section describes the current context and discusses a number of key parameters that have changed in recent years and which directly impact how the WTO does business. Section 3 picks out three areas (the negotiation function, the behind-the-scenes work of Committees, and the interaction between the business community and the WTO). It reviews the literature, presents key debates, and puts forward questions for discussion. The conclusions are presented in the fourth section.

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# SETTING THE CONTEXT: CHALLENGES TO MULTI- LATERALISM IN GLOBAL TRADE REGULATION

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## ROLE OF THE WTO

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What is the role of the multilateral trading system with an international economic organization at its centre? The dominant economic theory suggests that institutions assist in lowering barriers to trade by addressing the temptation of important trading nations to free-ride (Bagwell and Staiger 2002). States have an incentive to cheat, and economic institutions such as the WTO help bring mutual gains for the participating actors. The international law literature sees the purpose of the WTO as providing predictability and fostering the rule of law, at times providing for institutionlike protection of rights (WTO 2007). The mainstream view in international relations is of an organization that helps address free-riding, provides transparency and, by doing so, increases compliance (and, therefore, stability of trade relations) (Keohane 1984).<sup>1</sup> One key feature is that it helps constrain the misuse of power (Grant and Keohane 2005). Expectations also vary greatly among the WTO membership. At one extreme is the notion that the WTO should mainly function as a forum for international cooperation to deal with the conflicting mercantilist interests of its members. In this case, the main objective of the system is to avoid or resolve conflicts, and the best way to do so is by gradually reducing obstacles to trade. At the other extreme, some view the system as an institution that should go beyond mere arbitration of commercial interests and contribute through its rules and disciplines to the advancement of public policy objectives (development, poverty reduction, sustainability, fairness, and so on). Whatever perspective one takes on the purpose and the legitimacy of the system (see Elsig 2007), on balance, voices of support trump those of critics on the need for the multilateral system.

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1 | Realists suggest that powerful states dominate design and outcome of trade organizations to suit their own interests (for example, Gruber 2000).

## CHANGING PARAMETERS FOR TRADE NEGOTIATIONS

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Here we discuss a number of challenges that the WTO system faces. Some are general trends that impact many international economic organizations, while other developments are WTO-specific. Six important parameters have changed in the past 20 years.

First, the system has moved from a club model to a multistakeholder model for governing trade relations. Up to the 1990s, the world trading system was portrayed as a club where trade diplomats met behind closed doors to hammer out solutions to gradually lower barriers to trade. In the 1990s, the organization started to attract the interest of a variety of actors. The creation of the WTO led to a deepening of trade concessions and provided its Members with a highly legalized dispute settlement system to support implementation. As a result of this move towards market integration and legalization, many new actors brought their issues and concerns, sometimes only remotely linked to trade, to the WTO. Since the late 1990s, the WTO has undergone an adjustment process in reacting to this increasing public attention. Incrementally, the organization has become more transparent and has worked on its inclusiveness (with internal stakeholders in particular). While it became clear that the old way of doing business would not work in the 21st century, the opening up of internal politics to the public has significant costs for the organization (see Stasavage 2004), as internal discussions are more easily leaked and negotiators' room for manoeuvre is curtailed. Finding the right balance between allowing WTO negotiators some wiggle room and providing a flux of information on the negotiations has proved difficult.

Second, the General Agreement on Tariffs and Trade (GATT) system created in 1947 was dominated by the United States (US) and embedded within a strong liberal consensus among experts (Ikenberry 2006, Ruggie 1982). The GATT system was often portrayed as having been set up and managed by a benign hegemon. However, during the last successful trade round, the leadership became more broadly shared. The European Union (EU), represented by the European Commission, started to become more assertive in trade negotiations, while the QUAD group (which included Japan and Canada in addition to the transatlantic partners) served as an important informal platform for agreeing on major issues enabling the round to move forward. Today "the balance of power" has shifted towards emerging markets. This shift is predicted to further increase looking at trade and gross domestic product (GDP) data forecast. We have moved from a bipolar trade world in the 1980s to a multipolar one. In particular China, Brazil and India play an important role in the system, acting on their own or as part of coalitions (Narlikar 2011). The Doha Round impasse is less a matter of transatlantic differences than of highly industrialized countries and large developing countries disagreeing over the degree of market access and protection for vulnerable sectors

of the economy (for example, the US–India standoff over a special safeguard mechanism in the agricultural sector).<sup>2</sup> The inner core trying to advance the negotiation agenda informally includes the US, the EU, Japan, Canada, China, India, Brazil, and Australia. The number of concentric circles of decision-making has further increased.

Third, the new preferential trade agreement (PTA) landscape offers a challenge to the organization. Many countries have turned their attention towards this type of negotiation venue, driven largely by exporter discrimination concerns (Dür 2007, Manger 2009, Elsig and Dupont 2012a). As a consequence, if countries improve selected market access through small group deals, the appetite for negotiating ambitious multilateral solutions might decrease. In particular, initiatives such as the Trans-Pacific Partnership (TPP) Agreement and the idea of launching an EU–US free-trade zone show new potential sources of discrimination on the horizon. This is likely to lead to additional dynamics among states to remedy potential disadvantages emanating from these agreements. We may not see many new PTAs, but we may see efforts to update existing ones. Whatever the complementarity to the multilateral trading system, potential substitution effects, or emerging discrimination, this "new regionalism" will require a different response from the WTO than the one under existing procedures.

Fourth, the WTO is faced with the legacy of the grand bargain (market access for developing countries vs. services/intellectual property rights for developed countries) of the Uruguay Round described by Sylvia Ostry (2002). For many developing countries, the effects on trade flows (and the lack thereof) have led to the perception of an asymmetric deal where they cannot reap the benefits of the original bargain. In addition, many low-income developing countries struggle to implement their WTO obligations. This has increased the expectations of a large group of developing countries that the Doha Round will have to deliver on development. These expectations need to be weighed against demands by industrialized countries to improve market access in developing countries. Therefore, it is difficult for the WTO to deliver, given the stark differences in countries' expectations of the round. This expectation–capacity gap looms large in the current negotiations. The growing demands by developing countries have led to more participation (at least in the formal meetings) by an increasing group of state representatives from the South. Figure 2 shows how the number of GATT/WTO Members from developing and developed countries has increased over time. In addition to the growth in overall numbers, the average size of WTO missions has also increased, which leads to more active participation in the system (Elsig 2011).

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2 | For a game-theoretical discussion of the negotiation deadlock, see Elsig and Dupont (2012b).

Fifth, we witness important changes in the way the production of goods and provision of services are organized across borders. The increasing reliance on production networks and outsourcing leads to a growing importance of existing behind-the-border rules. This creates new challenges in the negotiation process. While in the early days of multilateral trade liberalization, progress in negotiations occurred within a framework of reciprocal lowering of trade barriers, such as tariffs (a so-called form of negative integration), we have now moved towards addressing barriers that exist behind the border. These obstacles range from non-tariff barriers to specific investment clauses, different intellectual property rights regimes and diverging competition norms (WTO 2011). The unfolding challenge is in finding the optimal degree of positive integration (in agreeing standards that are acceptable to all parties involved). This situation presents a more difficult cooperation problem (Aggarwal and Dupont 2008). It may prove difficult to find one-size-fits-all norms for the various measures related to domestic regulation that affect trade.

Sixth, we deal with a somewhat unintended consequence of legalization. The enforcement mechanism of the WTO ("the jewel in the crown") has led to dynamics that potentially hinder progress in trade negotiations. Under the shadow of a strong dispute settlement system, where concessions can actually be enforced, parties are reluctant to commit to future deals, and this has important distributional consequences as domestic interest groups grow more vigilant (Goldstein and Martin 2000). In addition, the long shadow of cooperation (Fearon 1998) leads to even more value-claiming tactics that hinder quick progress in negotiations. International relations literature has been quite sceptical about the legalization leap that occurred during the Uruguay Round. Also, some Members of the Appellate Body are uneasy about having the power to rule while legislative response is not easily available for WTO Members (Ehlermann 2003).

Communicative number of PTAs in force, 1950-2010, notified and non-notified PTAs, by country group

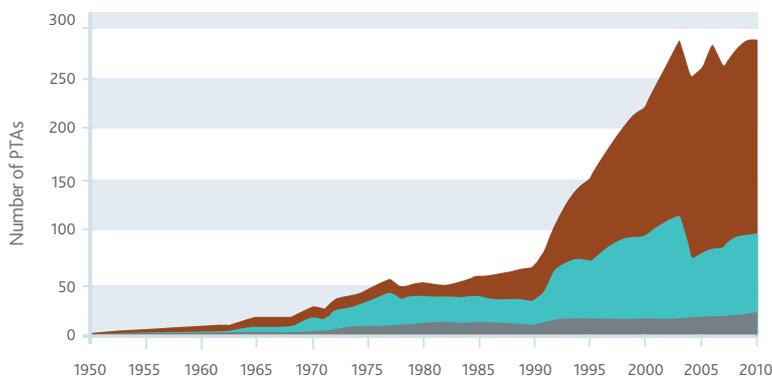


FIGURE 2: PTAs over time, from World Trade Organization (2011)

- LEGEND:
- Developing-developing
  - Developed-developing
  - Developed-developed

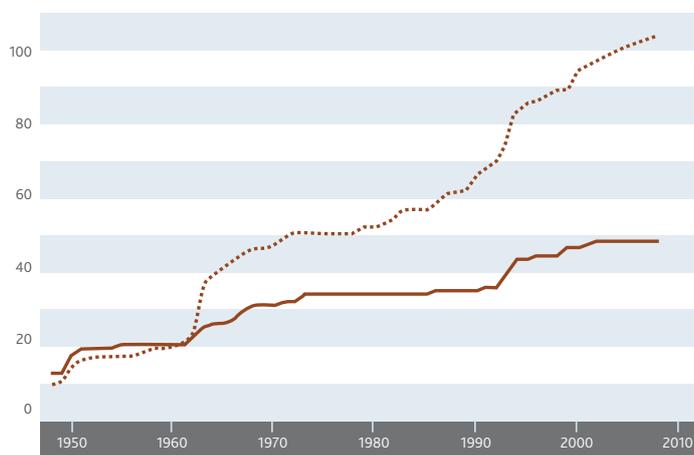


FIGURE 3: Number of GATT/WTO Members, from Elsig and Cottier 2011.

- LEGEND:
- Industrialised countries
  - Developing countries

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# ADDRESSING GOVERNANCE ISSUES

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The structural challenges outlined above are important when focusing on how the WTO is governed. Structural and procedural issues cannot be easily disentangled. There have been many examinations of the role and governance of the WTO; most prominently two expert groups have assessed it—the so-called Sutherland Group (WTO 2004) and the Warwick Commission (2007). In addition, numerous contributions by experts and scholars focus on issues related to governance (for example, Deere-Birkbeck and Monagle 2009, Steger 2009, Cottier and Elsig 2011, Narlikar et al. 2012, Meléndez-Ortiz et al. 2012).

Now, we focus on three areas where the E15 initiative aims to stimulate discussion. We provide a short overview of key issues, address how the WTO system has been reacting to challenges and put forward some ideas to be pursued.

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## THE NEGOTIATION FUNCTION OF THE WTO

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For a long time, the conventional wisdom was that the negotiation function was the most important activity of the WTO within its mandate. Now that we are 12 years into the Doha Round, this statement needs some qualification. The WTO has produced few outcomes based on negotiations since the late 1990s when it concluded the Information Technology Agreement, the Basic Telecom Agreement, and the Financial Services Agreement, which were characterized by a “critical mass” approach. In addition, a part of the membership negotiated and concluded a plurilateral, club-like agreement on public procurement. These outcomes resulted from Uruguay Round leftovers that were successfully tackled. The Doha Round, however, which started in 2001, has been deadlocked for some years.

### What has changed?

The first question is whether the negotiation process in the Doha Round differs from that of the Uruguay Round. What can be observed is that there is more participation, particularly by developing countries. The information asymmetry between different contracting parties is also less significant, expertise is more widely spread among the membership, and the formal small group meetings allow for broader participation reflecting the interests of additional parties. There seems to be greater inclusiveness, yet, many deals are discussed in informal small group meetings, mostly outside the WTO premises. Small group outcomes are pivotal for success but are not sufficient for progress to be made. Before agreement in the core group can be multilateralized

in the Geneva process, opportunities need to be provided for input from the membership at large. Judging from the evolving processes, one could argue that the system has incrementally adjusted (without rule changes) to demands for more participation. Also, there has been less criticism about lack of inclusiveness than in the past.

While many outside experts are disappointed with the slow progress in negotiations, there has been little debate about this within the system. The Ministerial Conference in 2009 was set up partially to review WTO governance issues; however, only a few countries made formal submissions, and those that were presented were largely general in nature and did not lead to much engagement and discussion in the Ministerial gatherings.

### Is the decision-making triangle incompatible?

The setup and rules for negotiations have come under criticism for the lack of progress. While many of the challenges described in section 2 might to a large extent explain the lack of movement in the negotiations, the institutional setting has also come under scrutiny in academia and among practitioners and has been pinpointed as an additional factor that inhibits progress.

Elsig and Cottier (2011) picture the current system as relying on three pillars—single-undertaking approach, consensus decision-making and member-driven system (Figure 3). They argue that this triangle has become incompatible. Using a counterfactual argument, they investigate the effects of loosening one of the three pillars and discuss three different scenarios. In scenario one, the WTO gives up a strict reading of the single undertaking and moves towards a system that allows for forms of variable geometry. Of the proposals that have been put forward, the critical mass initiative has received the most attention. Other proposals include the possibility of allowing for early harvest or moving towards a legislative system where issues would be taken up as they arise. Scenario two foresees a system in which the consensus principle would be weakened by moving towards qualified majorities in selected negotiation areas. While key decisions could still be taken by consensus, other lower-level (or secondary) decisions could be negotiated under the shadow of some form of voting (for example, Cottier 2010). The third scenario assumes that a big obstacle to tabling concessions rests on sovereignty concerns embodied in the member-driven character of the organization. This reluctance to delegate limits the autonomy of Chairs (who are recruited from among the membership) in negotiations. In addition, Member dominance keeps the WTO Secretariat (as a potential representative of a public good) on the sidelines in the negotiation process. Are there ways to empower some actors to address the problem of lack of incentives for individual Members to table concessions and move from value-claiming to value-creating negotiation strategies (see Odell 2009)?

## Reform proposals?

So far, much of the discussion has centred on experimenting with ways to abandon the single-undertaking approach. The critical mass approach has been advocated by a number of experts (for example, Warwick Commission 2007). The key issue is finding the right balance for those who want to move forward in their attempt to liberalize without creating negative effects on those not participating. This idea has already been described in the Sutherland Report (WTO 2004: 38), which says,

There should be a re-examination of the principle of plurilateral approaches to WTO negotiations. This should pay particularly sensitive attention to the problems that those not choosing to participate might face. Further, the approach should not permit small groups of members to bring into the WTO issues which are strongly and consistently opposed by substantial sections of the rest of the membership.

- So our first question relates to the design of variable geometry. What is the difference between plurilaterals and critical-mass approaches and how do these differ from sector approaches that are delinked from the WTO proper (for example, the new negotiations on an international services agreement)? Which approach is most suitable for what type of regulatory issue, and how should processes be designed (see Hoekman 2012 on the role of the mostfavoured nation clause)?

Many other ideas that have received less attention could be worth exploring, including the following:

- The WTO has a well-trained corps of trade experts. The Sutherland Report (WTO 2004) has already suggested that the WTO "needs a convincing and persistent voice of its own," and it sees the Secretariat as an actor to actively promote WTO principles. How can the Secretariat's expertise and institutional memory be used more efficiently? Might the Secretariat be mandated more often to independently prepare reports and papers on behalf of WTO Members? In the negotiation process, how can the Secretariat, as the guardian of the treaties, be given a more prominent role, such as by chairing subgroups that are asked to prepare draft texts?

- The Chairs of the various negotiating committees play a key role in the negotiations. WTO Ambassadors are usually selected to chair a group. The question is how can the Chairs be further empowered by the WTO Membership to more actively search for solutions and suggest, in a personal capacity, policy options to be pursued? Is the support from the WTO Secretariat sufficient, or should more assistance be institutionalized? Could each Chair be supported by deputy chairs and be allocated more resources?
- Is it necessary that all decisions are taken by consensus? Could we move towards a system that would allow some form of qualified voting for a well-defined spectrum of decisions (Cottier and Takenoshita 2003)? The Sutherland Report (WTO 2004) suggested studying the problems "associated with achieving consensus". As a first step, it suggests that if Members hold out against a 'broad consensus', they need to certify that they do so only to protect a 'vital national interest'. What other mechanisms would constrain the use of veto powers?
- Is there a way to re-launch the idea of either geographical or functional groups to limit the number of actors around the negotiating table? How can these groups be strengthened (for example, by allocating them more resources)? Should the Membership move towards a system of formal recognition of coalitions (Narlikar 2011)? Could there be an advisory council composed of representatives of regions and established groups within the WTO that would provide input for the negotiations?
- How can we get more buy-in to the decision-making procedures by the Trade Ministries based in the capitals? Can more formalized (or informal) processes be created and specific roles assigned to Trade Ministers? If lack of leadership is an often cited obstacle to progress, could leaders be brought into the process more actively? The Sutherland Report has proposed five-yearly summit meetings, annual Ministerial meetings and quarterly meetings of high-level officials. Is this feasible, and what would be the advantages and disadvantages of an increase in interaction?
- Below the level of Ministers, could we have a new group, similar to the former Consultative Group of 18, composed

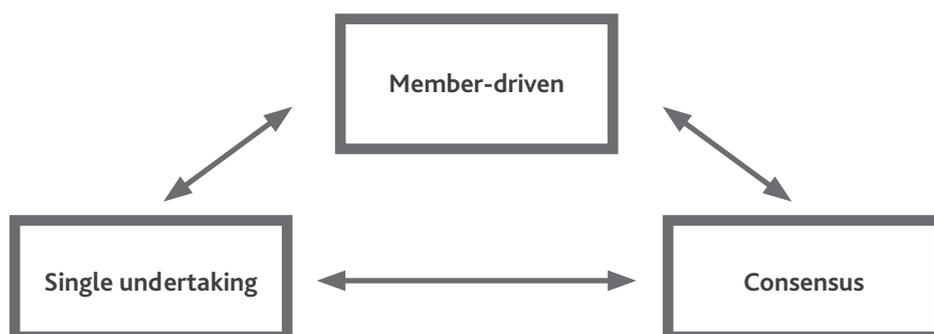


FIGURE 5:

The incompatible triangle, adapted from Elsig and Cottier 2011.

of senior trade officials? This group served important functions at the beginning of the Uruguay Round negotiations. It was not a decision-making or an executive body but one that gave guidance during the negotiation process.

- How can we further empower developing countries' participation while allowing for certain groups to move forward more quickly? Could there be a graduation system (Cottier 2006) where obligations kick in after the countries' competitive industries have reached a certain threshold? Put differently, could the discussion move away from country-related development indicators to industry-specific progress?

## THE ROLE OF COMMITTEES: INFORMATION EXCHANGE AND "NORM" ELABORATION

In the shadow of the stalled negotiations, a second large area of WTO activity occurs within numerous WTO Committees. While the mandates of the regular or special Committees might differ, they all operate towards managing the regime. They do so by exchanging information, collecting data, overseeing notification processes where WTO Members inform one another about national developments, and in particular by assisting in implementing the WTO obligations that parties have entered into.<sup>3</sup> In addition, these interactions might often lead to an exchange of views on best practices, and eventually to the elaboration of new norms. An interesting question is how has the work of regular committees been impacted by the stalled round, and to what degree could various Committees be used as platforms to re-energize interest in certain areas of trade regulation. What are the ways of strengthening the work of the regular WTO Committees and freeing them from a business-as-usual approach?

The focus on increasing transparency about states' trade policy measures is important in all Committees. While some Committees actively oversee classical notification requirements about planned regulatory reforms (for example, the TBT Committee on technical standards and the SPS Committee on sanitary and phytosanitary measures), the Committees also allow for discussion and reflection. This latter function is important; however, the mandates are not always clear as to the degree to which discussion should lead to more deliberation and, eventually, to the elaboration of new shared norms. The question arises whether regular Committees can initiate a discussion on pressing challenges that are not addressed in the negotiations (for example, climate change and trade, exchange rate, high and volatile food prices, and so on). While the focus of the regular Committees is on compliance, what would be needed to use existing institutional venues to go beyond this role and offer a more deliberative function?

## Regime management in the background: Gap in research

What is puzzling is the lack of research into the functioning of WTO Committees. Very few attempts have been made at a systematic study. Lang and Scott (2009) emphasize the potential of Committee work to create shared knowledge that could lead to the elaboration of new shared norms.<sup>4</sup> Most contributions focus on the Trade Policy Review Committee and suggest a widening of its mandate (Chaisse and Matsushita 2013, also Abu-Ghazaleh 2013) to bring in more stakeholders (Hoekman 2012), to be tougher on WTO Members (Keesing 1998, Zahrnt 2009) or to discuss the reports in the countries concerned (Zahrnt 2009). Another Committee that has received attention is the Regional Trade Agreements (RTA) Committee. Given the importance of the growing numbers of PTAs, the Committee has been asked to do more, most notably the development of a transparency mechanism in 2006. Bridges wrote on 5 July 2006,<sup>5</sup>

The draft decision sets out a series of notification requirements for Members that are signatories to RTAs. They will be required to provide the WTO with detailed information on the signing and implementation of deals, covering, for example, the pact's scope, rules of origin requirements and specific tariff concessions. Individual RTA members will have to provide import data for each other as well as the rest of the world.

In addition, the Secretariat was asked to prepare "factual presentations (containing no 'value judgments')" on each agreement. The new mechanisms also called for formal meetings to discuss these agreements. Notwithstanding progress in the work of the Committee (and a re-evaluation), it remains to be seen to what extent the increasing transparency about PTAs leads to scrutiny of the WTO compatibility of some of the agreements.

## Reform proposals?

Some of the work that involves Committees has undergone assessment; however, few of these assessments have been conducted by external actors (for example, review of the technical assistance and capacity building programmes of the WTO).<sup>6</sup> In the area of the Trade Policy Review Mechanism (TPRM), we have witnessed a number of procedural adjustments (see also Laird and Valdes 2012). In the runup to the 2009 Ministerial Conference, there were some proposals to strengthen the work of WTO Committees. In

3 For an overview of the Committee structure, see Appendix 1.

4 For a sceptical view, see Steinberg 2009.

5 See <http://www.iprsonline.org/weekly/06-07-05/story3.htm>.

6 Strategic Review of WTO-provided Training and Technical Assistance (TRTA), WT/COMTD/W/152 and WT/COMTD/W/153.

particular, India suggested a number of discussion points.<sup>7</sup> These covered issues such as the need to enhance the WTO trade information system, most prominently the Trade Policy Review Body (TPRB) process. But it also suggested that the Secretariat “may make factual presentations on developments in various members on their disciplines covered by a committee”. Moreover, India suggested inviting outside experts to present their views and advocated a stronger mandate for monitoring developments in PTAs and for developing non-binding best practice guidelines for negotiating new agreements. Finally, it suggested the establishment of an “omnibus legal system” that would address all forms of preferential market access for least developed countries (LDCs) in a coherent way.

However, besides the TPRM Committee and the RTA Committee, we know very little about the functioning of many of the other Committees (for a list, see appendix) and the potential and prospects for reform. Given that this area of hidden WTO governance has not received great attention, we propose a set of questions for debate.

- Information and transparency are important features of the WTO regime. How can the work of Committees be improved to make the most out of the information collected? If one takes transparency to mean internal transparency, how can one streamline the mandates under which these committees work so that Members get a clear sense of the results that Committee work produces? If one takes transparency to mean external transparency, that is, informing the public, what type of authority would such an exercise require?
- Committees also serve the important role of exchanging information about best practices. How can the level of quality in these Committees be improved, for example, by bringing in experts from capitals? What can be done to allow for “learning” in an environment that is buffered from the actual negotiations? Concerning the most researched WTO Committee, the TPRM, how can the quality and impact of its work be improved? Could country reviews be presented and discussed in the countries concerned?
- What needs to be done to make interaction in the Committees more oriented towards finding consensus in norm interpretation and building an understanding of the need to elaborate new norms? How can the setup and support be improved? How can regular Committees also serve as forums to address new issues/challenges related to their respective topics?
- Should there be an external assessment of the WTO Committees’ work in order to pinpoint strengths and weaknesses and allow for a more informed discussion? What can be done in specific Committees in terms of mandates and procedures?

- Could one envisage the establishment of an intermediary apparatus between the Committees and the General Council? Could such an entity take up grassroots innovative or deliberative committee work, process and refine it so that it nears proposal-quality and then present it to the General Council, which would then not have to be concerned with minute questioning because that process would have already taken place one level below.
- An additional issue that Committees seem to be facing is the lack of participation of senior diplomats. How can one incentivize Members to effectively send senior officials to participate in the work of Committees? How do we address the concerns of some developing and least developed countries that lack sufficient staffing to allow such high-level participation?

## INVOLVEMENT OF THE BUSINESS SECTOR IN THE WTO

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During the past decade, the willingness of the business sector to invest time and resources in multilateral trade negotiations seems to have eroded. This increasing ambivalence towards multilateral trade reforms is due to a combination of complacency (that is, taking the free flow of goods and services for granted), discontent with the slow pace of WTO discussions in general and the standstill of the Doha round in particular, and a growing feeling that the WTO does not effectively respond to today’s business concerns, for example the operations of global supply chains and the increasing importance of electronic commerce. As a result, business representatives have been actively pushing national policy-makers to explore venues other than the WTO to fulfil their trade policy needs. Especially notable in this regard is the shift in lobbying efforts from multilateral trade deals to bilateral agreements (Davis 2009, Drezner 2006), as the latter take less time to negotiate and are usually shaped in such a way that they include more of the issues regarded important by the business community.

If this trend of the business sector partly turning its back on multilateralism is to be reversed, it is vital for the WTO to engage much more with large and small businesses in developed and developing countries. This is important for several reasons. For one, business sector involvement and support could play a crucial role in re-energizing the Doha Round. Second, a more active involvement of the sector could make the WTO more effective and strengthen its legitimacy. By taking on board the input of the business sector, the WTO would involve one of the groups that are most influenced by decisions on global trade rules. Third, it can help to promote an understanding of the core principles of the WTO if businesses have the feeling that their interests

and concerns are being taken into account. Fourth, it would enable the WTO to tap the expertise and knowledge of the business sector. By engaging more with business, the WTO has the opportunity to enrich the nature and quality of the information it receives at all stages of WTO decision-making and in all functions the WTO serves.

The best way to ensure more active involvement of the business sector with the WTO is to set up a system that enables it to interact with companies, small and large, much more systematically and in a more structured manner than is currently the case.

### **The present state of business involvement**

Before we discuss what can be improved in terms of the interaction between the WTO and the business sector, it is important to note that the WTO and its Members seem to acknowledge that transparency and some degree of active engagement with business, and civil society more broadly, are in the interests of the organization. The WTO has included a section on the relations with societal interests in its charter. Article V: 2 of the Marrakesh Agreement states that the General Council is authorized to "make appropriate arrangements for consultation and cooperation with nongovernmental organizations concerned with matters related to those of the WTO." In other words, the WTO and its Members have acknowledged, since the beginning, that the participation of the business sector is perfectly in line with the intergovernmental character of the organization (WTO 2004). However, the current engagement is essentially based on a series of ad hoc mechanisms and practices, but the system has no permanent formal mechanisms.

Since the adoption of the Marrakesh Agreement (and the establishment of the WTO in 1995), the organization and its Members have taken several initiatives to encourage a greater level of engagement from the business sector (WTO 2004, Deere-Birkbeck 2012). In 1996, for instance, the General Council adopted guidelines that were aimed at, among other things, enhancing transparency and developing communication with the business sector and other non-state actors. Over the years, the WTO has organized an increasing number of outreach events in which it engages with business, such as briefings for non-state actors on WTO Council and Committee meetings, plenary sessions of ministerial conferences and symposiums on specific issues, which representatives from the business sector and other non-state actors can attend, and the annual public forum, which the WTO has been hosting since 2001 (between 2001 and 2005 it was called the public symposium).

Another sign that the WTO is reaching out to the business community is that, as a result of the decision by the General Council in 2002 to derestrict documents, many official documents are made accessible to non-state actors at the same time as they become available to Members. The business sector can now follow WTO negotiations through first-hand sources; this makes the WTO negotiations

more transparent. At the same time, online outreach has improved, and the number of online forums to which the business community and other non-state actors are invited has increased steadily. Finally, the topic of transparency and business involvement is also increasingly discussed during official meetings, such as ministerial conferences. In 2005, the WTO Ministerial Declaration (Hong Kong) included the following statement (quoted in Deere-Birkbeck and Monagle 2009),

We invite the Director-General to reinforce the partnerships and coordination with other agencies and regional bodies in the design and implementation of technical assistance programmes, so that all dimensions of trade-related capacity building are addressed, in a manner coherent with the programmes of other providers. In particular, we encourage all Members to cooperate with the International Trade Centre, which complements WTO work by providing a platform for business to interact with trade negotiators, and practical advice for small and medium sized enterprises (SMEs) to benefit from the multilateral trading system.

Apart from these initiatives taken by the WTO to increase transparency and invite business representatives to public events, the business community is also involved in WTO affairs and decision-making through other (more informal) channels. That is, firms and business groups may try to influence WTO decision-making by lobbying decisionmakers at the national and international levels. Although most scholars have focused on political mobilization and influence of firms on national and regional trade policy making (most notably in the EU and the US), an increasing body of literature also looks at lobbying in the context of the WTO. Some scholars have looked, for instance, at the role of business during WTO trade rounds, like the current Doha Round (for example, Poletti 2012), while others have focused on the involvement and influence of firms in WTO litigation and adjudication (Davis 2012, Shaffer 2003, 2006). All these studies show that industry lobbying within the WTO takes place on a large scale and that business, under certain circumstances, influences WTO decision making.

Despite efforts by the WTO to engage with the business community, and the fact that industry lobbying is widespread in WTO affairs, the multilateral trading system still lacks, in the words of Deere-Birkbeck (2012, p. 123), "adequate routine mechanisms and processes for the constructive engagement of stakeholders, whether from unions, nongovernmental organizations, academia, or the business sector, in ways that feed into decision-making processes to ensure trade rules respond to public concerns and expectations." If one wants to put in place such routine mechanisms and processes for engaging the business sector in WTO affairs, one of the key questions is who, within the WTO, should be responsible for developing and maintaining relations with the business sector? Is this the responsibility of the WTO itself—and if so, should it be done by the Secretariat or the External Relations Division—or should the Member governments shoulder most

of the responsibility for establishing and retaining contacts with the business community? For Bhagwati (2001) the answer to this question is straightforward—the Members are responsible. He sees no rationale for giving the business sector a role in WTO decision-making independent of governments. In the Sutherland Report (WTO 2004), we find a more nuanced answer. Although it is suggested that the primary responsibility rests with the Members, it is acknowledged that the WTO also has a role to play when it comes to relations with societal interests. However, it is up to the membership to develop clear objectives for the WTO Secretariat's (not the External Relations Division's) relations with business.

### Reform proposals?

Even though the business community is involved in WTO affairs in many ways, there is no WTO agreement or any document stating its rights and responsibilities in its dealings with the organization. Many other intergovernmental organizations have elaborated formal mechanisms to deal with the business sector and non-governmental organizations (for example, formal accreditation mechanisms often backed by financial resources). This lack of clarity has spurred debates among policymakers (inside and outside the WTO), academics and others about how societal interests could and should be engaged in the work of the WTO and who should take the lead in this process. So far this debate has not led to any concrete steps towards a more active and formalized involvement of business in WTO affairs. The following questions could be reflected upon:

- In most other international forums the business community is much more involved than in the WTO. For instance, in the Asia-Pacific Economic Cooperation (APEC), business is involved through the APEC Business Advisory Council (ABAC), while the Organisation for Economic Co-operation and Development (OECD, with its Business and Industry Advisory Committee, BIAC), the G-20 (with its B-20 meetings) and the United Nations Environment Programme (through, for example, the Strategic Approach to International Chemicals Management, SAICM) have set up formal arrangements to encourage active participation by the business sector (Bayne 2011, Morrison and Pedrosa 2007). Why is business participating more in these international organizations than in the WTO, and what can the WTO learn from this? Issues worth exploring are whether it is the business community that has a bigger motivation to influence decision-making in these other organizations and, if so, why (for example, are the topics discussed more relevant to them)? And are the institutional structures in these organizations such that they allow for stronger business involvement?
- The WTO system serves various functions (such as negotiation, capacity-building, problem-solving, monitoring, research and information exchange, and dispute settlement), and each of these functions "may demand different roles for the WTO Secretariat, its Director-

General, coalitions of WTO Members, and non-state stakeholders, whether from business, academia, or civil society" (Deere-Birkbeck 2009). So, which decisionmaking processes and functions of the WTO should the business sector become involved in? In the literature one can find various proposals regarding the exact role business should play within the WTO system. Most of these proposals focus on mechanisms for receiving input from business groups. Steger and Shpilkovskaya (2009), for instance, suggest allowing non-state actors (like the business sector) to be observers during (Committee) meetings. Others suggest involving businesses in the WTO's research work (Ostry 2002) or consulting the business community during the election of a new Director-General (Deere-Birkbeck 2009). Still others see a role for business in dispute settlement, for instance, by further opening up the dispute settlement system to submissions and consideration of *amicus curiae* briefs by non-state actors (Warwick Commission 2007) or giving firms the standing to bring trader-state cases to the dispute settlement system (Hufbauer and Scott 2012).

- There are also more far-reaching proposals that centre on the creation of permanent arrangements for business to become involved in WTO decision-making. Abu-Ghazaleh (2013), for instance, suggests establishing a Private Sector Advisory Committee, made up of CEOs and senior business leaders, which could work with the Director-General and the Secretariat and advise Members on specific issues. Stoler (2012) is more specific, and proposes the creation of a "Working Party on Coherent Approaches to 21st Century Issues." In this working party, in which participation by relevant international business groups should be facilitated, questions regarding WTO-plus trade agreement provisions in the WTO could be discussed.
- One issue raised is whether the business sector should also be more directly involved in the trade negotiation rounds. Members can already decide who to pick for their negotiating team, and they have the freedom to include people from the business community (Bhagwati 2001). In addition, governments can inform and consult business groups of their own choosing before, during, and after the negotiations. Should the WTO go a step further by allowing business to take part in negotiations, independent of governments, or add parallel (negotiation) tracks in order to give it the chance to become more involved? Before such arrangements are implemented, questions regarding confidentiality and the limits of transparency should be answered. It is also important to look at the logistical challenges and the likelihood of reaching agreements if, in addition to Members, large numbers of business representatives were to take part in WTO negotiations.
- Another issue often mentioned in discussions on the role of the business sector in the WTO is the financial and administrative burden this puts on the organization. Other international organizations, which have developed

extensive contact with the business community and other societal interests, made large amounts of financial and human resources available to set up these arrangements. The WTO has a tight budget and few people for its outreach work, which is a constraint on the extent and forms of engagement it can undertake with the business sector (WTO 2004). A pertinent question is whether the financial means as well as the human resources available for the WTO's dealings with the business community should be increased.

- Another topic that could be explored is who should represent the business community in its dealings with the WTO. Should this be only umbrella organizations or individual firms as well? And on the basis of what criteria, and by whom, should this selection be made?
- Finally, it is worth exploring whether business should be treated differently from other societal interests (for example, non-governmental organizations).

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## CONCLUSIONS

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This background paper has presented some of the key challenges in governing the WTO system and has focused in particular on the negotiation function of the organization, the role of the Committees and the interaction between the WTO system and the business sector. It is meant as a document to be used to take stock and to launch debates about reform in these three areas. It has raised a number of questions for elaboration and reflection. Whatever direction the Membership of the WTO agrees to pursue in reforming the way decisions are made and implemented, and whatever modes of organizing relations with the business sector (and other stakeholders) are developed, organizational reform alone will not be sufficient to address the challenges multilateralism faces today. Yet, questioning the status quo on process and interaction is important and a step forward in building multilateralism.

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# ANNEX: WTO COUNCILS, COMMITTEES AND WORKING GROUPS

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## GENERAL STRUCTURE

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The daily work of the WTO falls within the ambit of the General Council. This body is composed of representatives of all Members, although, under different terms, it also meets as the Dispute Settlement Body and the Trade Policy Review Body, and carries out the diverse functions and tasks assigned to it under the Marrakesh Agreement and the Dispute Settlement Understanding (for the Dispute Settlement Body).

At the level below the General Council, and operating under its guidance, there are three more Councils, each responsible for a general area of trade—the Council for Trade in Goods, the Council for Trade in Services, and the Council for Trade for Trade-Related Aspects of Intellectual Property Rights. These Councils perform the tasks that the General Council and their associated agreements entrust them with. Each body can establish its own rules of procedure, subject to the approval of the General Council.

Further down the institutional chain are the subsidiary bodies that each of the aforementioned Councils has the right to establish. The subsidiary bodies can formulate their own rules of procedure, subject to the approval of the Councils concerned.

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## LIST OF COMMITTEES

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### Reports directly to the General Council

Committee on Trade and Environment

Committee on Trade and Development (Subcommittee on Least Developed Countries)

Committee on Regional Trade Agreements

Committee on Balance of Payments Restrictions

Committee on Budget, Finance and Administration

### **Reports directly to the Council for Trade in Goods, and to the General Council**

Committee on Market Access

Committee on Agriculture

Committee on Sanitary and Phytosanitary Measures

Committee on Technical Barriers to Trade

Committee on Subsidies and Countervailing Measures

Committee on Anti-Dumping Practices

Committee on Customs Valuation

Committee on Rules of Origin

Committee on Import Licensing

Committee on Trade-Related Investment Measures

Committee on Safeguards

### **Reports directly to the Council for Trade in Services, and to the General Council**

Committee on Trade in Financial Services

Committee on Specific Commitments

### **Informs the General Council or Goods Council of its activities**

Information Technology Agreement Committee

### **Informs the General Council of its activities**

Trade in Civil Aircraft Committee

Government Procurement Committee

## **WORKING GROUPS**

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In addition to Councils and Committees, the work of the WTO also takes place in temporary subsidiary bodies named working groups.

Working Group on the Relationship between Trade and Investment

Working Group on the Interaction between Trade and Competition Policy

Working Group on Transparency in Government Procurement

Working Parties on Accession

Working Party on Preshipment Inspection

Working Group on Trade, Debt and Finance

Working Group on Trade and the Transfer of Technology

(Source: [http://www.wto.org/english/res\\_e/booksp\\_e/analytic\\_index\\_e/wto\\_agree\\_02\\_e.htm](http://www.wto.org/english/res_e/booksp_e/analytic_index_e/wto_agree_02_e.htm).)

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