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STRENGTHENING THE GLOBAL TRADE SYSTEM



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Proposals and Analysis

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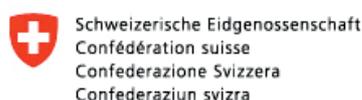
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For more information on the E15, please visit www.e15initiative.org

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CONTENTS

Introduction. <i>By Ricardo Meléndez-Ortiz and Manfred Elsig</i>	1
1. Functioning of the WTO: Mapping the Challenges and Asking the Hard Questions <i>By Manfred Elsig</i>	3
2. WTO in Times of Major Change <i>By Roderick Abbott</i>	17
3. WTO Comitology <i>By Manfred Elsig</i>	22
4. The Decreasing Interest of Business in the WTO: Why Should We Care and How Can We Solve It? <i>By Jappe Eckhardt</i>	25
5. The Relationship Between Plurilateral Approaches and the Trade Round <i>By Brendan Vickers</i>	30
6. A Grand Bargain to Save the WTO from Declining Relevance <i>By John S. Odell</i>	34
About the Authors	37
List of Expert Group Members	39

INTRODUCTION

THE E15 INITIATIVE

A plethora of critical, impending issues mire the multilateral trading system of today. Ensuring food security in times of high and volatile prices, addressing concerns around natural resource scarcity, or scaling up sustainable energy production and diffusion are just a few of many. The fragmentation of production through highly complex global value chains also poses critical challenges at the analytical and policy level.

In the meantime, preferential trade agreements continue to proliferate and have now become the de facto locus to deepen integration and further liberalization. In the face of the Doha deadlock, some have questioned the way in which negotiations are conducted, arguing that the World Trade Organization's (WTO) established practices of decision-making, such as the notion of a single undertaking, are ill suited to the fast-changing challenges of our times.

In the light of these pressing challenges, the E15 Initiative is a process aimed at exploring possible futures for the multilateral trade system. Launched in 2012 by the International Center for Trade and Sustainable Development (ICTSD), the initiative engages top global experts and institutions in thinking ahead on critical issues facing the multilateral trading system, bringing fresh ideas to the policy environment, and solutions and opportunities for governance reform.

IN THIS PAPER

This paper is a compilation of the material that has been produced by the E15 Expert Group on the Functioning of the WTO. The Expert Group has been convened by the ICTSD and the World Trade Institute (WTI) to examine every facet of operations at the WTO from management and administration to the conduct of negotiations and dispute settlement, and cooperation with outside institutions and the private sector.

The overview paper to this compilation sets the context for the launch of the expert group's dialogue. It first examines the state of WTO governance, considering the current state of affairs at the WTO, including a recent shift in several key parameters. The paper then focuses on three aspects of WTO operations—negotiations, the work of committees, and interaction with the business community. It reviews the literature on these three areas, presents prominent arguments, and sets forth a series of questions from which the group began its discussions.

From the first group meetings, several major ideas took root. Experts from the group were asked to expand on these concepts in think pieces that delve into the rationale behind specific ideas for reforming functions at the WTO.

The second paper in this compilation, "WTO in a Time of Major Changes," authored by Roderick Abbott, addresses the need to adapt and change the governance model of the WTO in response to changes in the world trade system. Abbott highlights the emergence of four distinct negotiating groups at the WTO with their own trade interests and agenda—the old Organization for Economic Co-operation and Development (OECD) countries, new emerged economies, other developing countries, and least developed countries. He then proposes the creation of an intermediate body at the WTO to act as a consultative mechanism for managing the relationship between these groups as individual members and as a collective to ensure the WTO's lead role in global trade governance.

Next comes a piece by Theme Leader Manfred Elsig, "WTO Comitology: Unleashing the Potential of Governance Dimensions." Elsig analyzes the work of committees and working groups at the WTO and suggests a series of reforms for both informal and formal governance over these groups that could strengthen the WTO system.

Then there is "The Decreasing Interest of Business in the WTO" by Jappe Eckhardt, who introduces two ideas for reinvigorating business support for multilateralism. These are creating a business forum that meets in parallel to WTO Ministerials, and forming a WTO business advisory council.

The following paper, "The Relationship between Plurilateral Approaches and the Trade Round" by Brendan Vickers, is an in-depth analysis of the plurilateral approach to recent agreements at the WTO. After reviewing the advantages and disadvantages of plurilateral agreements, Vickers outlines the responses to plurilateral agreement proposals and devises recommendations on how the WTO should proceed.

In the final piece by John Odell titled "A Grand Bargain to Save the WTO from Declining Relevance," ideas for breaking the Doha Round deadlock are reviewed. In particular, Odell evaluates the concept of breaking the Doha impasse by expanding the agenda. This would mean concluding the Doha texts that are already complete while simultaneously launching a list of plurilateral agreement negotiations.

The work of the E15 Expert Group on the Functioning of the WTO offers a strong, innovative set of ideas for reforming and improving the role of the WTO as the head of global trade governance. The pieces in this compilation are initial concepts that offer insights into the thoughts and discussions of the leading experts in the working group. While the ideas presented here reflect the views of their authors, they together form a better picture of the possible direction in which the multilateral trading system could evolve to manage trends in the current and future global marketplace.

Further information about the Expert Group on the Functioning of the WTO, the experts, and the latest developments in the E15Initiative can be found at www.e15initiative.org.



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FUNCTIONING OF THE WTO: MAPPING THE CHALLENGES AND ASKING THE HARD QUESTIONS

Manfred Elsig

INTRODUCTION

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 - and 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.

SETTING THE CONTEXT: CHALLENGES TO MULTILATERALISM IN GLOBAL TRADE REGULATION

ROLE OF THE WTO

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 onstitutionlike 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).¹ 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.

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

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).² 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).

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

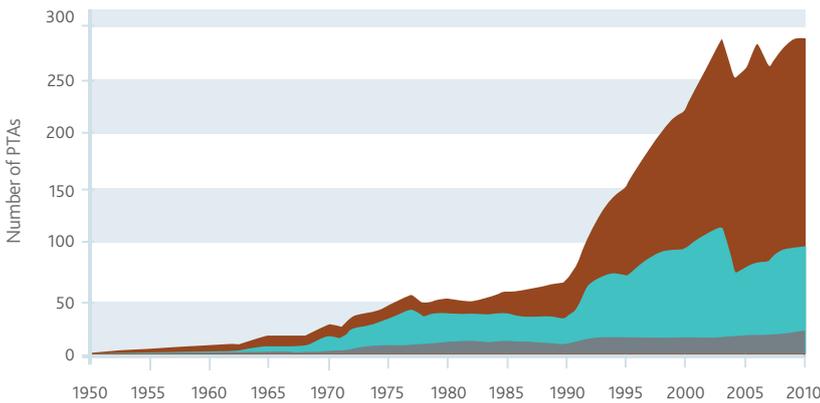


FIGURE 2:

PTAs over time, from World Trade Organization (2011)

LEGEND:

- Developing-developing
- Developed-developing
- Developed-developed

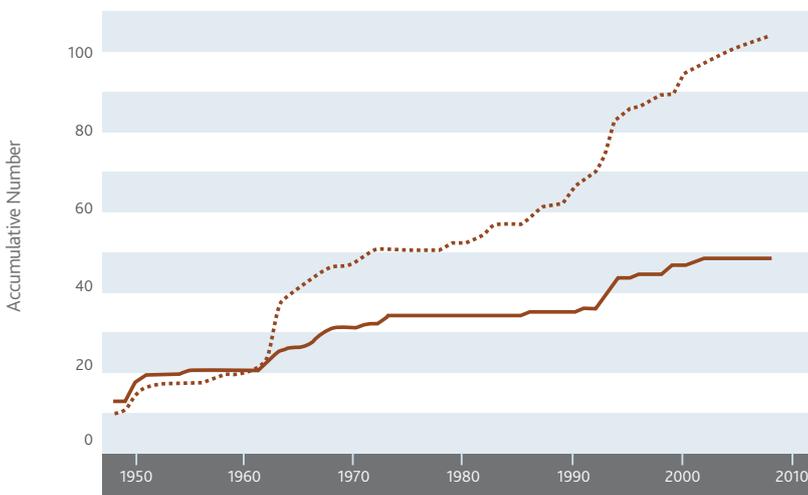


FIGURE 3:

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

LEGEND:

- Industrialised countries
- Developing countries

ADDRESSING GOVERNANCE ISSUES

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.

THE NEGOTIATION FUNCTION OF THE WTO

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

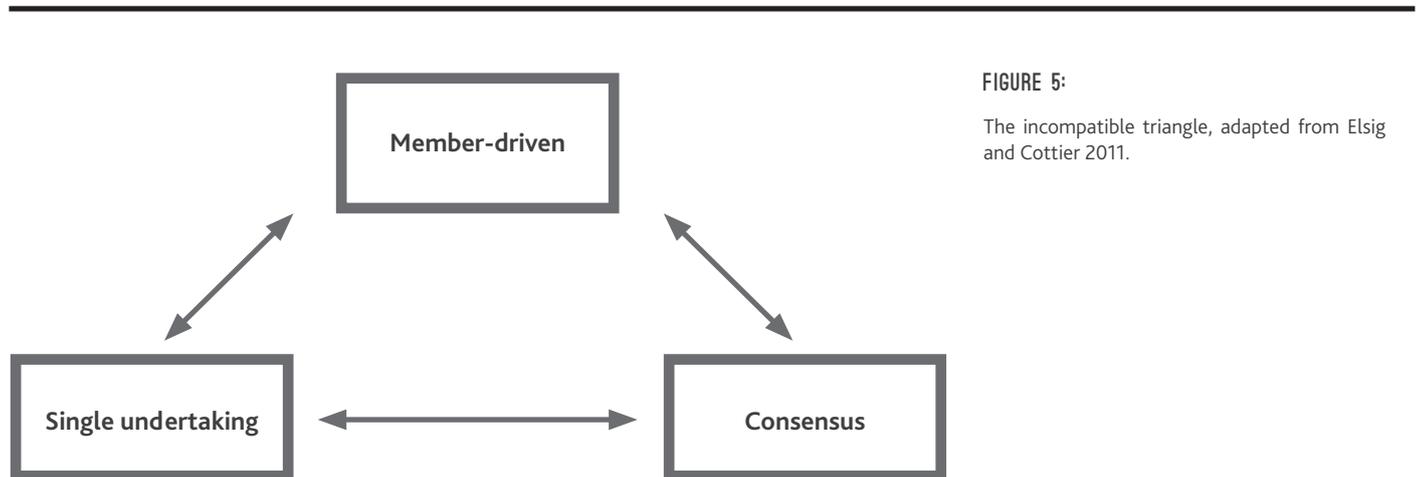


FIGURE 5:

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.³ 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.⁴ 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 2006,⁵

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).⁶ 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.⁷ 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

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).

CONCLUSIONS

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.

ANNEX: WTO COUNCILS, COMMITTEES AND WORKING GROUPS

GENERAL STRUCTURE

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-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.

LIST OF COMMITTEES

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

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.)

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WTO IN TIMES OF MAJOR CHANGE

Roderick Abbott

INTRODUCTION

The objective of this paper is to analyse recent trends in world trade and to offer an idea for institutional change in the World Trade Organization (WTO).

The paper will explore this subject in three stages:

- First, it will demonstrate that the international trade world has been changing over the last five to ten years, and is now substantially a different place. Since 2008 there has been an obvious shift in the pattern of economic growth, away from western economies and towards Asia; patterns of trade, and trade and investment flows, have altered beyond recognition; and the fact that 'emerging economies' have emerged is now widely recognised (for example, in the composition of the global G-20).¹ The statistics of world trade are confirming these trends.
- There are now effectively four distinct groups in the WTO: the old 'Organisation for Economic Co-operation and Development' (OECD) countries, the new 'emerged economies,' other developing countries, and the least developed countries. The new group is a reflection of the change in trading power that follows from those changing trends. Each of the four groups has its own trade interests and agenda, and the precise relationship between them—in terms of mutual obligations and expectations—is no longer clear.
- This situation needs to be addressed if the future of the WTO as the institution in charge of global trade governance is to be secured. This is a delicate matter, with vital interests on all sides of the circle; it touches on basic principles such as most favoured nation (MFN) and the concept that there should be the same rights and obligations for all WTO members. However, it is difficult to discuss such an issue within the existing structure and governing bodies of the WTO, which are not well adapted to the deliberate consideration of issues that raise such fundamental concerns.

The paper will argue that what is needed, in terms of institutional change, is an intermediate body between the individual members (the grass roots) and the membership collectively (in the General Council). It will suggest that the functions of such a body should not be just consultative and advisory, but should have some executive character. It should be deliberative, to promote in-depth discussion of strategic issues, and it should engage in preparatory work to be a first filter on the WTO agenda, under a mandate from the General Council (GC).

NEW PATTERNS OF TRADE, INVESTMENT

Former WTO Director-General Pascal Lamy said, "Fifty percent of global trade is now done by developing nations, while last year was the year in economic history in which the South started producing more than the North." He added, "China is a rich country with many poor, or a poor country with many rich, is a question which geopolitics haven't succeeded in answering" (Interview, *Financial Times*, 18 July 2013).

The shift in economic growth and, therefore, trading power to Asia, with higher growth rates in the east than in the west, does not need much further demonstration. It is well established that the bulk of outward investment to the developing world in the years after 2001 was flowing in the direction of China. The European trade strategy "Global Europe", launched in 2006, was explicitly aimed at trade agreements with regions where there was higher growth and good prospects for expansion of trade.² Since 2008, with the banking/mortgage crisis and the recession that followed, recovery has been slow in the west, economic growth rates in Europe have been flat and not much better in the United States (US), while countries such as China and India have been able to maintain their much higher rates of growth.

This has led to new patterns of trade and investment, with larger flows between Asia and Europe and North America; and this trend has been reinforced by the phenomenon of the global supply chain, now increasingly adopted as a business model in sectors such as textile and clothing, electronic devices and automobiles. This was not entirely new: since the 1970s and the days of the "Four Asian Tigers", importers in Europe and in the US had established production facilities in South Korea, Taiwan, and Hong Kong, but the supply chain was relatively direct compared with the present day.

1 Without claiming to define countries that have emerged, I am thinking of China, South Korea, India, Brazil, Mexico, and several of the ASEAN group—Thailand, Malaysia and Indonesia. We might add Turkey and Argentina or Chile. South Korea and Mexico have already been OECD members for some time. Hong Kong and Singapore are, in statistical terms, leading trade entities and centres of trade, investment, and shipping.

2 This has led to negotiations with South Korea (completed), and with India and ASEAN countries, especially Singapore and Malaysia (ongoing).

The current drive has been propelled by the desire to remain competitive in the global market, keeping costs to the consumer low, and it has been stimulated by measures to admit cumulative origin, for example, which has allowed more developing countries to take advantage of the Generalized System of Preferences (GSP) and other preferential schemes. In terms of trade flows, intermediate suppliers such as Sri Lanka, Vietnam, and Mauritius have taken a more visible place in the global picture.

Another sign that trade patterns are being modified is the recent interest in new ways of measuring trade flows—the “Made-in-the-World” initiative in WTO. Measuring the value added at various stages of the manufacturing process, to determine whether a product is American or Chinese, for example, rather than simply relying on customs documentation in the last port of export before the product enters the final market, has meant that the added value of processing can be more carefully allocated along the supply chain. This has led to remarkable results, and potentially to reassessment of bilateral trade surpluses/deficits.³

These shifts of pattern can be easily seen in the remarkable changes in the ‘league tables’ of international economic statistics. Absolute values for gross domestic product (GDP) are not going to be the definitive guide in deciding whether a country has already achieved a level in its economy comparable to the OECD countries or is still emerging; other indicators, such as the GDP figures per head and the data in the World Development Reports have to be studied also. But I note that for some time already China’s GDP has been ahead of those of Japan and Germany; Brazil in 2012 moved above Britain, and more recently India has reached the same

level as Italy. Mexico and South Korea are also shown as among the world’s largest economies.

The shifts in the world trade data are even more striking. Table 1 shows data for 2011, with exports and imports of goods—and of services—aggregated into a single combined total. What this shows is that world trade continues to be largely dominated by the G-8 countries, with five European Union (EU) member states in the leading group, together with the US and Japan. Canada and Russia have been overtaken by China, South Korea and Hong Kong in the top ten. Only nine countries have exceeded the figure of US\$1,000 billion in goods trade; and only two have more than US\$500 billion in services trade.

However, if you look at the trends in comparative terms, with data from ten years ago compared with current figures, and you take trade in goods and in services separately, some features are striking.

- China in 2000 was the 6th/7th largest in trade in goods, but in 2010 it moved up to be first in exports and second in imports (leaving aside the EU as a group).
- India, which had been outside the top group in 2000, was edging into the top 15 in goods and as high as 7th in services trade by 2010.

3 See Figure 1. Studies have shown that items such as Apple’s iPod and iPhone have much greater value added in the US than was previously assumed, and that the value added in final assembly and packaging in China is relatively low.

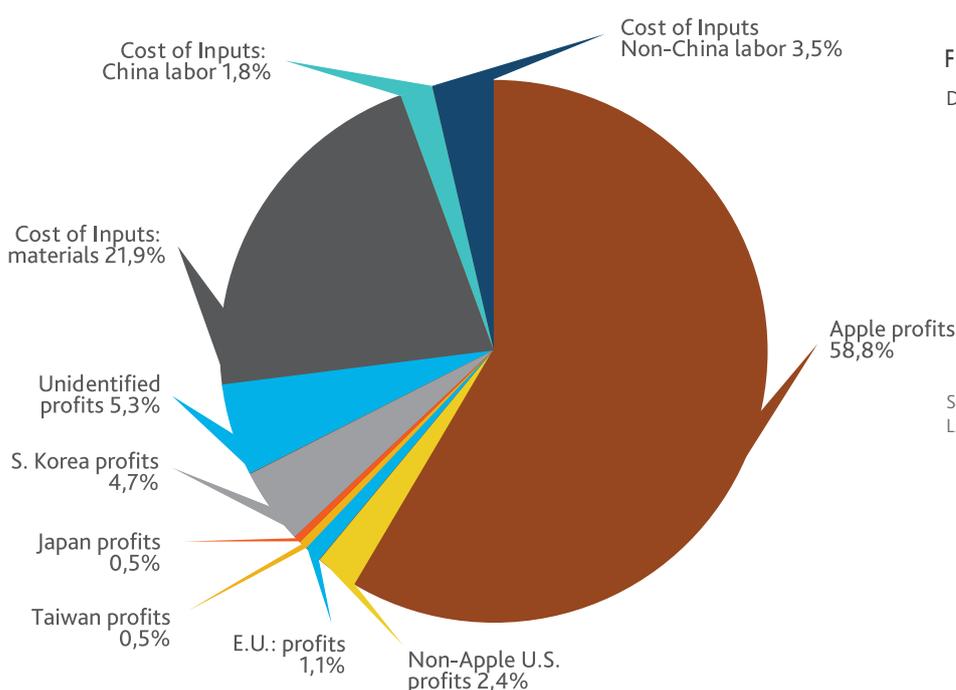


FIGURE 1:
Distribution of Value for iPhone, 2010

Source: “Capturing Value in Global Networks,” Kenneth L. Kraemer, Greg Linden and Jason Derick, July 2011.

The point is that a number of emerging economies have been steadily moving up the table and are now in leadership positions. South Korea, Hong Kong and Singapore have established leading positions in the trade club; and if you pursue the analysis beyond the ten leading countries, Brazil, Turkey and several ASEAN countries begin to show. This raises issues about their status as developing countries or as virtual developed economies.

The same point can be made perhaps more dramatically by measuring world trade on a different basis, where the EU is shown as a single group of countries with common trade policies and WTO commitments. Table B in the Annex shows the top 20 trading countries, with a different country composition since EU member states are no longer shown individually. On this basis, India and Singapore join China, South Korea, and Hong Kong in the top 10 countries, with Mexico just below, followed by Brazil, Thailand, Turkey, Malaysia, and Indonesia in a cluster not far behind.

This demonstrates at the same time the shift of trade power to Asia and the fact that these countries are now comparable to some in the OECD group such as Canada, Switzerland, Australia, and Norway.

It is now time to move to the second proposition, that these changes have led to the creation of a fourth, distinct group within the WTO, located somewhere between the developed OECD countries and the other developing countries. I am certainly not arguing that the newly emerged group is exactly in the same place as the OECD, since there will be points about GDP per head and unequal levels of income within large populations. But neither am I arguing that they need as

much assistance—through preferential trade schemes or Aid for Trade—as other developing countries that have grown less rapidly since 2000 and are less diversified in their trade.

The key point in this context is that the relationship between these groups needs to be defined in order for the organisation to move forward. The need for this is evident from the standoff in the Doha Round negotiations, where China, Brazil, and India acted within the core G-5 group as representatives in some sense of all developing countries. At lower levels in the negotiations—in agriculture and over food security—the position of developing countries has become even more fragmented with common interest groups flowering on all sides, at times in opposition to one another. What is required is to define the rights and obligations—and perhaps expectations—of the various groups towards one another in order for a less conflictual approach to be the norm.

For example, it makes little sense that Brazil and India argue that they need the same special and differential treatment as all other developing countries when the reality is that their trade performance shows that they are already competitive in global markets. For them to keep to this position in the name of solidarity with others is in fact to evade their responsibilities to work within the multilateral system. Similarly, it makes no sense for China to claim that it is a “recently acceded member” if that means that they expect to contribute less to the negotiation in a way similar to others such as Vanuatu or Samoa. On the other side of the equation, it equally makes no sense for the US and the EU to insist that all developing countries should aim at impossible targets, in terms of levels of bound tariffs post-Doha, or much expanded services commitments compared with existing levels, whereas

TABLE 1:

Trade in Goods and Services and Combined Total (US\$ billion)

Note: Based on data from WTO International Trade Statistics that include intra-EU trade, and therefore show the exports and imports of all WTO Members (including the EU member states' trade with each one another).

TRADE IN GOODS & SERVICES, and COMBINED TOTAL			
EU	4,483	1,428	5,911
US	3,746	976	4,722
China	3,641	419	4,060
Germany	2,726	542	3,268
Japan	1,678	285	1,963
France	1,310	330	1,640
UK	1,111	444	1,555
Netherlands	1,260	252	1,512
Italy	1,080	219	1,299
Korea	1,079	192	1,271
Hong Kong	968	177	1,145

it might work to ask for such efforts from the "emerged" group.⁴

This brings us to the third proposition: that one means of addressing this kind of issue lies in a change in the institutional architecture. As stated above, an intermediate body is needed between the current 159 members, who can be consulted individually, and the GC, which acts for them collectively—one is too time consuming as a vehicle for securing the consensus views of all members, and the other is too large for the proper debate of sensitive and important issues.

The question of the right institutional architecture for strategic discussions and decision-taking within an organization of 150 members or more is not a new problem. Within international organizations—and notably the United Nations group—it has been generally solved by creating an executive body of the kind proposed. A smaller group debates the issues in depth and makes recommendations to the membership in a plenary format.⁵

To quote another trade expert,

Unlike the IMF and World Bank, the GATT does not have an executive body or a board comprising a sub-set of members... Such executive boards facilitate decision-making by concentrating discussions within a smaller but representative group of members. (Hoekman 2002)

Why has WTO never done the same? The General Agreement on Tariffs and Trade (GATT) in its day did set up a body of this kind, called the Consultative Group of 18 (CG.18), which was established in 1975 and met at regular intervals until 1985. This provided a bridge from the end of the Tokyo Round through to the start of the Uruguay Round. The intention behind the group was to discuss both "existing and emerging" issues of trade policy, and to recommend to members how the organization should react to such issues. The group was chaired by the Director-General (Olivier Long, later Arthur Dunkel) and serviced with papers from the Secretariat, as well as notes from the members. In theory limited to 18 members, in practice it grew almost immediately to 25 or more.⁶

The CG.18 discussed issues such as how the rules for examining balance of payments measures could be improved, and the need for better coordination with the International Monetary Fund (IMF) on monetary reforms. Trade in services (not yet integrated into GATT) was also discussed and proved to be highly contentious with widely divergent opinions. Annual reports were made to the Council but members were not obliged to follow up on recommendations.

The major weakness was that the group did not have—and was not intended to have—any executive function or a direct role in preparing decisions in the GC. Given frequent lack of consensus, it developed into little more than a talking shop.

In the background to this experience was—and is—the difficulty in taking decisions when a consensus of all the members is required. The Marrakesh Agreement does lay down voting procedures, as did the GATT 1947; but it also stipulates that the normal procedure is to arrive at a consensus. Since the days of the CG.18, the problem has become more difficult because of the growth of the membership and more active participation by members—following the establishment of the WTO. Current practices of consultation involving regional or functional groups of members can stretch out the decision making process to many months.

There are of course other consultation mechanisms: the Green Room process, with its varying shapes and formats, and informal consultations between the Chairs and members in the work of Committees (specific trade issues) or in negotiating contexts.

This suggests that it would be wise to found any proposal for a new intermediate body on the concept that 'the new is built up on the basis of existing processes.' Trade representatives and policy-makers are a fairly conservative breed, and prefer gradual evolution to radical reform. The model for the new body would therefore be partly the Green Room—a smaller selective forum for more open exchanges than is possible in the Councils or Committees—and partly the process now applied to Trade Policy Reviews and monitoring of trade measures—where interaction between Secretariat factual reports and the views of members leads to a consensual agreement on the issues.

Thus, in terms of the agenda, the new body should be able to discuss any matter of interest within the ambit of the WTO agreements, but it would be chaired by the Chairman of the GC rather than the Director-General. This would allow a smaller, representative group to engage in the more deliberate and considered exchanges that are needed when delicate issues that relate to the institution and the relationship between different members arise.

A principal item for discussion initially would be the question raised earlier in this paper: the emergence of four main groups among the membership and how they should interact with

4 | A recently published study of trade integration in the 21st century, by the Peterson Institute, makes this same point. "China has become the world's largest trader and a major beneficiary of the current rules of the game. It will be called upon to shoulder more of the responsibilities of maintaining an open system."

5 | In the UN itself, and in the agencies in Geneva (ILO, WHO, WIPO, UNCTAD, among others) this pattern is well established and works reasonably well even when treaty making is involved.

6 | One problem arose from EC participation. The EC was a member of the group, together with its member states, several of whom attended, especially at the start when discussions outside the historic GATT areas of tariffs and non-tariff barriers was expected; and additional members from groups such as EFTA and ASEAN also attended. Instead of 18 it was often 25 or more.

one another. This will inevitably lead to some degree of re-examination of the relationship between developed and developing countries that has existed since the 1960s—an asymmetrical balance between full obligations, the same for each member, and the concept of non-reciprocal rights enshrined in the phrase ‘special and differential treatment.’

Another recent paper by trade experts makes this same point,

The WTO seems to be different [from the IMF]... because it works on the basis of the exchange of concessions, which ensures that all players feel that they have derived a fair political ‘bargain’. Reciprocity ensures political buy-in to cooperation. Periodic negotiations in the GATT/WTO have updated this political contract between countries, redressing some old grievances and papering over others, with the implicit understanding that there will be a future occasion to take up the unsolvable problems of the day.⁷

It would also, I suggest, have an executive function, to prepare the agenda of the GC, and could in particular discuss more general issues arising from the management of the main agreements—the GATT 1994, the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the Agreement on Government Procurement (GPA). Horizontal matters such as the relationship between Article I on MFN and the growing number of regional or preferential trade agreements could also be on its agenda. It would not discuss specific negotiating matters, which have to remain within the responsibility of each member; but it could usefully debate a wider issue such as whether the Doha Round should be continued under the same mandate or in some way updated to include topical issues that touch the field of international trade—climate change or global warming, and the potential impact of measures to mitigate its environmental effects, for one.

There are of course some important but lesser issues that would need to be resolved if such a new body is to be established. These include its size and composition (a mix between Ambassadors in Geneva and policy-makers from capitals?), and whether membership would be fixed for a given period or rotate among members annually or every few years. In any event, it must be duly representative of all the members and all regions. As author of this proposal, I do not think it is my function to settle all these issues, which should be discussed by members as the question advances. It should be clear, however, that any disagreement on these matters should not prevent the new body from being set up if there is broad agreement that it is needed for the purpose I have described.⁸

7 | “The Hyperglobalization of Trade and its Future,” by Subramaniam and Kessler, Peterson Institute, Washington, DC.

8 | I will not hide, however, that my preference would be for around 20 members (a structure similar to the G-20) with appropriate representation from all the major groups and regions. Rotation of members would allow, over time, a wider selection of countries to participate.

ANNEX

In a first group 1-10: China, Korea, Hong Kong, India and Singapore. In a second group: Mexico (for goods) and Brazil, Turkey, and three members of ASEAN.

TABLE 2:

Exports and Imports, Goods and Services Combined, with Intra-EU Trade Excluded, 2011 (\$ billion)

GOODS		SERVICES
EU		EU
US		US
China		China
Japan		Japan
South Korea	5	India
HK		Singapore
Russia		South Korea
Canada		HK
Singapore		Canada
India	10	Switzerland
Mexico		Russia
Taiwan		Australia
S Arabia		Brazil
UAE		Thailand
Australia	15	Taiwan
Brazil		Norway
Thailand		Malaysia
Switzerland		Turkey
Malaysia		Indonesia
Indonesia	20	Israel

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WTO COMITOLOGY

Manfred Elsig

INTRODUCTION

Committee work seldom makes it to the headlines of major international newspapers or internet blogs. Similar to other international organizations, the focus in the World Trade Organization (WTO) has been on negotiations over treaty commitments and on questions regarding compliance. What stand out are the thousands of pages of treaty law detailing rights and obligations, and a dispute settlement system that is frequently used and is considered to have a good implementation record. But the numerous activities of WTO committees and working groups, under the radar screen of WTO politics, have received less attention. While a systematic assessment of their mandate, operation, and impact has never been carried out (to my knowledge), there exists considerable potential for more informal and formal governance that would help strengthen the system. Following a short analysis of the current system, this think piece will suggest a number of changes that would enable the WTO Comitology to further optimize information gathering and sharing (regime management function), provide incentives for exchanging experience and expertise (learning function), as well as prepare the ground for new regulatory initiatives (rule initiation function)

WHAT WE KNOW AND WHAT WE DON'T KNOW

The WTO is a member-driven organization, and this has been strongly reflected in the work of its committees and working groups (hereafter the Comitology system).¹ These platforms are the prime institutions where representatives of WTO Members meet regularly. Meetings within these forums take place largely independently from the course of the negotiations. There are 21 committees and five working groups, not counting the committees directly dealing with the negotiations.²

Participation in these administrative bodies is what keeps the Geneva-based trade diplomats occupied. These bodies perform a number of functions including administrating treaties, providing information and exchanging views, monitoring new developments, interacting with other international organizations, and learning about new policy initiatives; or in the words of Lang and Smith, "Committees receive notifications of new regulatory measures submitted

by Members, compile databases of these measures, monitor the ratification of legal texts, conduct technical verification of documents, ..., and request and discuss background documents from the Secretariat in preparation for all of these activities" (2009, p. 578). While many of these activities sound rather technical, they are far from being so. And although many of the meetings seem long and dull, they offer opportunities for "discussion, contestation, elaboration, and justification" (Lang and Smith 2009, p. 579). In particular, the work by Lang and Smith (2009) suggests that there exist opportunities that can be further explored. These authors undertook a selected survey of activities carried out by two committees, which shows that such committees may have different, and sometimes evolving, mandates; they perform functions related to oversight, monitoring, and the development of new policy options. The authors also suggest a potential for more than just information exchange, namely the development of micro-environments conducive to learning, adaptation, and innovation.

Other Comitology institutions that have received attention in the broader governance literature are the Committee on Regional Trade Agreements (RTAs) and the Trade Policy Review Body. The Committee on RTAs was created in response to one of the most notable challenges to the multilateral system (leading to an exemption of the most-favoured nation principle). In recent years, its mandate has been expanded and a "transparency" mechanism has been agreed upon to reflect heightened attention. In this respect, WTO Members mandate the Secretariat to inform the Membership more systematically about developments by surveying the existing landscape. Other potential functions, however, such as deliberating, exchanging practical experience in negotiating preferential trade agreements (PTAs), providing guidelines on the design of PTA law, and so on, are not taken up explicitly by the Committee. The incremental increase in data gathering activities is an illustration of the need to improve overall information. Yet, lack of more active monitoring, absence of critical engagement with stumbling block versus stepping stone arguments related to PTAs, and failure to provide overall guidance reveal the limits of current activities.

The Trade Policy Review Mechanism (TPRM), with its highest authority, the TPRM body, is another often cited example of regime management and beyond. The purpose of this mechanism is to make individual WTO Members' trade policy decisions more transparent, allow for an informed discussion about domestic activities, and for benchmarking, thereby increasing overall compliance with commitments. Scholarly literature differentiates between first order compliance (compliance with actual obligations) and second order

1 In the European Union (EU) there are various types of committees that make up overall EU Comitology. They have advisory, management, and regulatory functions.

2 See http://www.wto.org/english/thewto_e/secre_e/current_chairs_e.htm.

compliance (compliance with rulings) (von Stein 2013). The TPRM is more likely to influence first order compliance, in the long run. As to second order compliance, Members have expressed strong concerns that TPRM-related official documents should not be used in actual dispute proceedings. Over time, we have witnessed a qualitative improvement in the operations by the implicit decision to allow the WTO Secretariat more wiggle room when collecting information, conducting analysis, and presenting its findings. While these are encouraging signs, criticism of the TPRM is mainly directed at the lack of impact domestically. This relates in particular to the failure of the mechanism to encourage a specific type of learning or emulation, namely the potential diffusion of certain policy innovations occurring in other constituencies. Discussions mainly take place in a self-contained environment in Geneva, little participation of high-level capital-based officials is visible, and there is a lack of true deliberation and contestation in the collective assessment (Elsig 2010).

While the administrative bodies mentioned above are known beyond the Geneva trade community, we lack knowledge about mandates, proceedings, and effects of many other institutions within the WTO Comitology. However, there is ample anecdotal evidence from trade diplomats that debates are often lengthy and make insufficient progress. The following section summarizes the three key functions and discusses ways of unleashing the existing potential of these institutions.

REFOCUSING ON THE MAIN FUNCTIONS: THE ROAD AHEAD

If the WTO wants to enhance overall performance, its negotiation function needs to undergo substantial procedural reforms, and its administrative capacities need to be improved. The work of the various bodies does not replace the need to agree on new rules in the context of negotiations, but committees can contribute towards better implementation of the existing rules and in preparing the ground for initiating a new policy agenda. These objectives may overlap as I will discuss below. Within the Comitology system, three functions stand out:

The so-called regime management function captures the broad set of activities that together provide an environment in which states offer information about how they comply with their procedural and substantive commitments. In a narrow sense, regime management provides transparency by collecting, compiling, and exchanging information. Regime management does not necessarily include a normative assessment of the information provided. Neither does it include a preoccupation with questions such as how well commitments are implemented, what policy innovations have occurred, or which of these could be exported to other constituencies. For this next critical step to occur, learning is a key component of Comitology operations. The

learning function is a cornerstone for the health of political organizations, and its overall quality is usually captured by the degree of debate and deliberation that occurs internally. A precondition for debate and deliberation, however, is that participating WTO Members are willing to de-link committee work from the actual negotiations. There needs to be broad consensus about the work of each of these administrative bodies in order to promote transparency, meet jointly defined goals, allow for informal and open exchange of views and perceptions (not country positions), and build trust among participating actors. If true deliberation occurs (states overcoming the rigid world of negotiation briefs), the focus on lessons learned will help in discussing the potential weaknesses of the existing system and push actors to brainstorm about taking initiatives to improve processes and tackle substantive issues. If new rules are to emerge, these committees should be the prime locus where ideas are tabled and discussed (rule initiation function). In the next section, I discuss some proposals formulated to increase the performance of all three functions.

RECOMMENDATIONS

The following are some of the activities that should assist in performing the outlined functions.

1. More Systematic Data Management

One of the challenges is how to organize, present, and diffuse the wealth of available information. The WTO, as the leading multilateral trade institution, should prioritize and optimize processes of information management. The WTO should serve as a key information hub on regulatory matters. The information compiled needs to be used for specific benchmarking exercises following agreed indicators. Existing attempts, such as monitoring potentially protectionist measures during economic and financial crises, are a step in the right direction, but need to be more systematic. There is a demand for surveillance of new trade-policy relevant developments in WTO Members' constituencies. In order to do this, more resources should be devoted to data compilation, statistics, and data management.

2. Improving Leadership and Coordination

Generally, the WTO suffers from a lack of leadership in the sense that too little attention to committee work and too much rotation affects group cohesiveness. One way to address this is to devote more resources and allocate more time to chairs of committees. Currently, many committee chairs are usually selected for a one-year term. This is not long enough to create an optimal working environment for achieving the goals outlined above. Chairs should be elected for a three-year period and receive additional support from Secretariat officials. These Secretariat officials could be organized in a new Division for Comitology-related work, or the existing support should be consolidated. In addition,

a standing body of chairs should be created to ensure that the information exchange among chairs, and with the WTO Director-General, works properly and overall coordination is strategically sought.

3. More Use of In-house Expertise

What is striking about the WTO compared to other international economic organizations, such as the International Monetary Fund and the World Bank, is how little use is made of the in-house expertise. WTO officials could do more than occasionally write non-papers to summarize the issues at stake. The chairs should be allowed a mandate to create ad hoc working groups that are chaired by Secretariat officials or jointly with Member representatives. More systematically involving (and empowering) WTO staffers is important as they are the guardians of the multilateral system and have the required expertise.

4. Improving the Quality of Exchange

A precondition for moving towards quality deliberation is the availability of sufficient relevant information. If the circle of experts is too small, there is a danger that important information will be lacking. It is important to invite key experts to internal meetings to include their experience and expertise in the deliberations. For instance, in the case of the RTA Committee, it is important that chief negotiators of these PTAs visit Geneva regularly to discuss how they deal with issues such as WTO compatibility of PTA obligations, share their experience, and allow for input and feedback from other WTO Members. The Committee on Sanitary and Phytosanitary Measures (SPS Committee), for instance, could intensify its relations with standardization bodies beyond existing exchanges and seek more interactions with health experts. Initiatives for cross-institutional cooperation with other international organizations should be encouraged.

5. Creating More Room for Deliberation

For deliberation to occur, good quality information is important. Another necessary condition is the creation of an environment for informal gatherings (alongside more formal meetings) to build trust and understanding between participating actors. The chairs of the groups have the pivotal role in depoliticizing discussions and buffering against existing hierarchies. If necessary, chairs can initiate the creation of ad hoc brainstorming or drafting groups, propose walks in the woods, and demand assistance and advice from outside experts and mediators in order to allow for deliberative processes to occur.

6. Locking in Domestic Decision-makers

There needs to be greater involvement and buy-in of domestic decision-makers. Committees need to devise a strategy on how to engage with capital-based officials and members of parliament. Their selective participation in some of the committees should be drastically increased. In the case of

the trade policy reviews, these should be discussed in the countries concerned. Different ministries (for example, finance, tax, or environment) and members of parliament should be encouraged to participate in some form in the deliberations. Trade Ministers should be more involved in certain committee activities either as facilitators or as friends of the committee.

7. Building Bridges to the Public

The public's support is important for the legitimacy of the system. There are various ways to engage with the public. While informal exchanges behind closed doors are important to allow for deliberation and to build trust, targeted initiatives to engage with the wider public are needed. These could range from providing live coverage of certain events that are managed by a committee, to allowing for a public debate when meetings take place outside Geneva, to inviting online feedback on ongoing work. Written submissions to the committees by accredited business and non-governmental actors should also be encouraged. These briefs should be disseminated among WTO Members.

CONCLUSIONS

The work of committees is the least studied function of the WTO. This brief argues that the contribution of the various committees towards managing the day-to-day activities could be increased. In particular, these platforms allow for deliberation, learning, and potentially the elaboration of new ideas. This, in turn, can bring about the initiation of new rules developed under a common understanding. In order to unleash the full potential of committees, this brief has sketched a number of small changes in procedural rules within the existing system.

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THE DECREASING INTEREST OF BUSINESS IN THE WTO: WHY SHOULD WE CARE AND HOW CAN WE SOLVE IT?

Jappe Eckhardt

INTRODUCTION

It is widely acknowledged that the interest of the business community, and hence their willingness to invest time and resources, in the Doha Development Agenda (DDA) has eroded over time. The most obvious reason for this is the slow pace of World Trade Organization (WTO) discussions in general, and the lack of progress in the current Doha Round in particular. An additional reason for the waning enthusiasm of business in the DDA is that new issues, which are of increasing importance for companies worldwide, are not part of the Doha agenda. Partly as a result of these developments, business representatives have been pushing national policymakers to explore venues other than the WTO to fulfil their trade policy needs. Especially notable 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.

It is crucial for WTO to reverse this trend of decreasing business support for multilateralism, especially now. The head of WTO, Roberto Azevedo, has indicated that he is committed to finding a way out of the current impasse, and that there is a need to infuse trust and confidence into the WTO negotiating system. Putting in place arrangements that increase business involvement in WTO could play a critical role in re-energizing the Doha Round and making the organization more effective, and strengthening its legitimacy.

The rest of this think piece is structured as follows. The next section shows how far support of the business community for the DDA has eroded, and what has caused this. The following section discusses two possible ways to ensure a more active involvement of the business sector with the WTO—the establishment of a business forum (which should take place at the same time as the ministerial meetings) and a business

advisory council. The conclusions are contained in the final section.

PROBLEM STATEMENT

It is clear to everyone who follows the DDA negotiations closely and talks to representatives of the business community that the interest of firms in the current trade round has diminished. Although it is difficult to measure the exact (lack of) commitment of business to the Doha Round, one can use the official participation of associations representing business interests during WTO Ministerial Conferences over time as a proxy (Figures 1 and 2). Figure 1 illustrates the development of total interest group participation (business, NGOs and labour unions) in WTO Ministerial Conferences in the 1996–2009 period. It shows that, after a peak at the Cancun Ministerial in 2003, the number of attending non-state actors decreased substantially.

Looking at the participation over time of each of the three earlier mentioned groups separately (Figure 2), we see that the attendance of business groups has gone down since Cancun.

The decreasing political activity of corporations and business associations in the Doha Round has been debated by academics and decision-makers. Some have argued that the lack of business interest in the DDA negotiations can be traced back to the satisfactory functioning of the WTO dispute settlement mechanism. That is, it may be that in a “number of countries, firms seem to have concluded that the technical, comparatively less public, disputes process offers better opportunities for their non-market strategy than supporting the negotiating process” (McGuire 2012, p. 332). It is, however, not very likely that there is a direct relationship between the use of the dispute resolution mechanism and support (or lack thereof) for the DDA. Dispute settlement provides sector- (or even company-) specific remedies that do not have broad applicability. Even what is probably the largest and most complicated case in its history—Boeing/Airbus—is of little interest to companies outside the aerospace sector.¹

Moreover, as Figure 3 reveals, the number of dispute settlement complaints has decreased, not increased, over time (with a record high of 50 complaints in 1997 and a record low of eight complaints in 2011), especially from 2003 onwards.

1 | I thank Bill Reinsch for pointing this out to me.

Another often-heard explanation for the absence of business involvement in the Doha Round is that most of what matters to firms was achieved during the Uruguay Round. In other words, the decreased support of business for the DDA negotiations may be partly due to the fact that many firms nowadays take the free flow of goods and services for granted. Although it's probably true that complacency plays some kind of role here (mainly for developed country firms), this cannot explain why at first the interest of business in the Doha Round increased sharply. As Figure 2 shows, the attendance of business groups was high during the Cancun Ministerial (2003). It was only after the 2003 MC that the interest of business started to erode.

A more plausible explanation for the lack of business involvement in the Doha Round is that the business community sees the current round as a dead-end street and thinks that some of the new issues they care about most—such as digital trade, intellectual property rights protection,

issues related to state-owned enterprises, the functioning of global supply chains, and the increasing importance of electronic commerce—are not on the negotiating table at the moment. Why is the lack of business involvement a problem? For an organization desperate for increased trust and confidence in its negotiating system, lack of support from the business community (one of the groups most affected by decisions on global trade rules) is very bad news. If businesses have the feeling that their interests and concerns are not taken into account, they will not help to promote an understanding of the core principles of WTO, or invest resources in trying to overcome the current impasse. Moreover, by not engaging with business more, WTO is missing a great opportunity to tap the expertise and knowledge of the sector. The latter could help to enrich the nature and the quality of the information the organization receives, which in turn could help to solve some of the pertinent problems it faces at the moment.

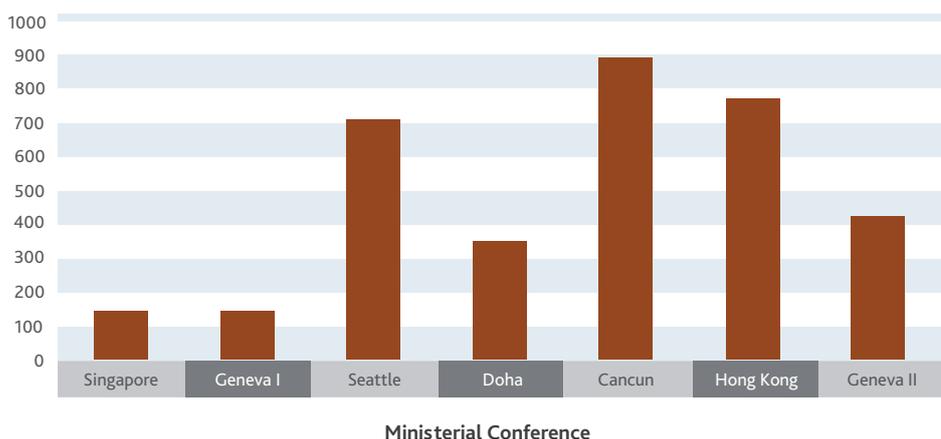


FIGURE 1:

Interest Group Participation During WTO MCs, 1996–2009

LEGEND:

Number of interest group

Source: De Bièvre and Hanegraaff 2011.

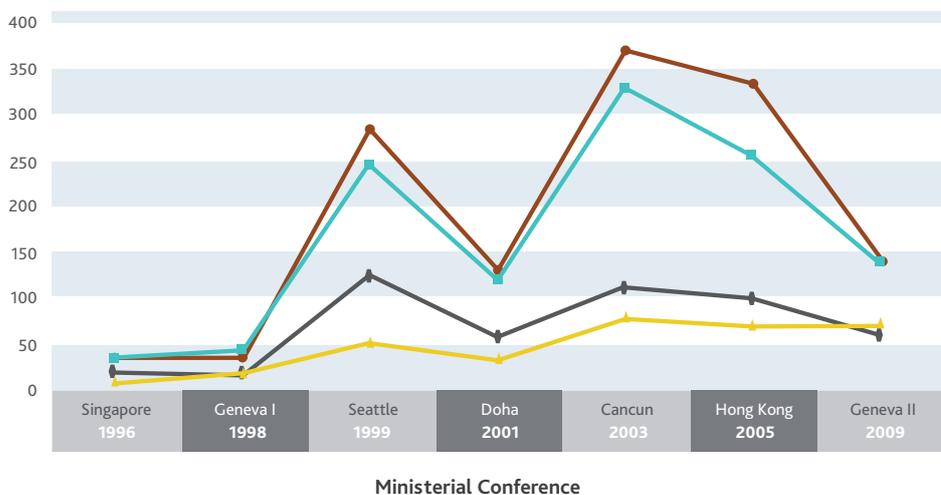


FIGURE 2:

Participation of Business, NGOs, and Labour Organizations at WTO MCs, 1996–2009

LEGEND:

Business
 NGOs
 Other
 Labour

Source: De Bièvre and Hanegraaff 2011.

RESPONSES

The best way to ensure a more active and constructive involvement of the business sector with WTO is to set up a system that enables WTO and business to interact much more systematically, and in a more structured manner than is currently the case. I suggest two ways in which WTO could try to accomplish this—a business forum (BF), and a WTO business advisory council (BAC). In the remainder of this section I will discuss both options. However, it is important to note that at present WTO is one of the few international/regional organizations that has no formal BF and/or a BAC. As Table 1 shows, most other organizations have at least one of the two, and in many cases, both. I have looked for inspiration at how the organizations mentioned in Table 1 have organised their BFs and BACs.

BUSINESS FORUM

The first idea would be to organise a formal BF at the same time as (or perhaps starting a few days earlier than) the Ministerial Meeting, where business leaders meet to share and learn from one another and advice the heads of state and government. The prime purpose is to present concrete suggestions to decision-makers. More specifically, like the B20 (an event organized during the G-20 meetings), “its main purpose consists in developing recommendations and issuing relevant commitments from the business leaders and business organizations to deal with nowadays issues.”² Ideally, it will function as a reality check for governments, since they need business sector support for the negotiations as well as for the ratification of the results agreed.

The practical organization of the BF should be a joint initiative by the WTO secretariat and representatives of the business community. The International Chamber of Commerce (ICC) is a possible candidate to coordinate the work on the business side. The ICC, or a steering group composed of important business representatives, should be responsible for the content of the programme and for inviting all participants. Presidents of business associations/chambers of commerce, preferably

of all WTO members (or at least of all regions of the world), as well as chief executive officers (CEOs) and chairmen of a selected number of global companies from developed and developing countries should be present at the forum.

During the forum, members of the business community will meet in a number of thematic working groups, which could, for instance, be chaired by a company CEO and a president of a business organization, and come up with concrete recommendations. These proposals will be presented to the heads of state and government and should be addressed in the final conclusions of the Ministerial Meeting. Throughout the entire forum, there should be regular meetings between the participants and high-level government representatives.

I am well aware of the fact that many business representatives are sceptical when it comes to these types of forums. They are often seen as big show-off events, without much substance, during which business usually has no possibility of getting in touch with high-level decision-makers. That is why it is of utmost importance that the meetings have substance, are well structured, well prepared (that is, have a clear agenda), and that business is able to provide high-level input to the deliberations of the ministers, especially when it comes to ‘agenda setting.’ The forum should give the business community a possibility to be heard. Business would not appreciate, and therefore not participate in, a discussion of “done deals.” Business should have a chance to have an interactive discussion with negotiators/ministers.

A promising first step on such a BF has already been taken. The ICC, the Evian Group, and the International Centre on Trade and Sustainable Development (ICTSD) organized a one-day event during the Ministerial Conference in Bali—the Bali Business Forum (BBF). Besides discussing the key issues on the international trade agenda, a key objective of the BBF was to identify “ways for the private sector to be more effectively engaged in WTO activities.”

2 | See <http://www.b20businesssummit.com/b20/>, last retrieved 25 July 2013.

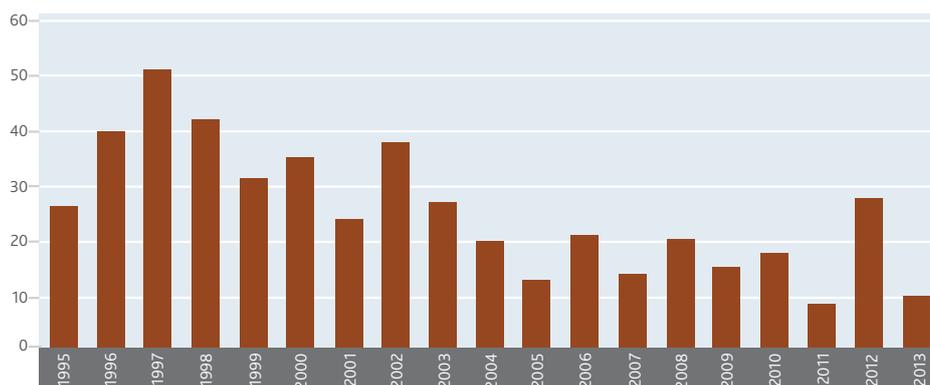


FIGURE 3:

Total Number of WTO Dispute Settlement Cases Per Year, 1995–2012

LEGEND:

■ Number of Complaints

Source: WorldTradeLaw.net. Figures for 2013 last updated on 31 July.

BUSINESS ADVISORY COUNCIL

A more far-reaching, and perhaps more controversial, proposal is to establish a WTO BAC. The BAC could promote the interests of the business community by engaging, understanding, and advising the WTO Secretariat and WTO Members on a broad range of issues. Ideally the BAC and the BF would be complementary, —that is, organizing the BF could be one of the key activities of the BAC. Other activities the BAC could undertake are:

- identify priority areas for consideration by WTO and its Members;
- advise on setting the agenda for the Ministerial Meetings;
- provide policy recommendations to WTO and its Members;
- provide WTO and its members with timely information on WTO policies and their implications for business and industry; and
- respond when the various WTO forums request information about business-related issues or to provide the business perspective on specific areas of cooperation.

Of course, the practical organization will be much more challenging than in case of the BF, and many key obstacles have to be overcome. Establishing a full-fledged BAC could take some time and should probably be seen as an incremental long-term process. A first step could be to indicate some key areas of interests and set up working groups that could meet regularly (and/or have an online platform for discussion). One option would be to start with meetings during the BF and, just like with the BF, the ICC could facilitate and organize this. Meetings can gradually become more regular and should ideally not be held at the same location every time. After the initial step of establishing working groups and organizing regular meetings, the BAC can be formalized step by step. The level of formalization is something that can be decided along the way. It is questionable if the BAC needs a formal secretariat in Geneva, but there should at least be some kind of coordinating body. It could be useful in this regard to compare the structures of the existing advisory councils mentioned in Table 1.

Another key question is who should become a member of the BAC and who appoints the members. Most organizations with a business council have a structure in which the Member States decide about membership of the council, and usually one (or more) business representative(s) of each country is/

TABLE 1:

Overview of International Organizations with an Advisory Council and/or a Business Forum/Dialogue

Organization	Advisory council	Business forum/dialogue
African Development Bank (AFDB)	Private Sector Liaison Officers (PSLO) Network (See World Bank Group)	
Asian Development Bank (ADB)	Private Sector Liaison Officers (PSLO) Network (See World Bank Group)	
APEC	The APEC Business Advisory Council (ABAC)	APEC CEO Summit
ASEAN	ASEAN Business Advisory Council (ASEAN BAC)	ASEAN Business forum
European Bank for Reconstruction and Development (EBRD)	Private Sector Liaison Officers (PSLO) Network (See World Bank Group)	
G20		The Business 20 (B20) and Labor Union 20 (L20)
International Monetary Fund (IMF)		Civil Society Policy Forum (organized together with WBG)
MERCOSUR		Mercosur Business Forum
OECD	The Business and Industry Advisory Committee to the OECD (BIAC)	The OECD Forum
UNEP	Strategic Approach to International Chemicals Management (SAICM), for example	Business and Industry Global Dialogue
World Bank Group (WBG)	Private Sector Liaison Officers (PSLO) Network. Coordinated by the WBG Enterprise Outreach Services (EOS)	Civil Society Policy Forum (organized together with the IMF)

are included. However, all these organizations are much smaller than the WTO. In the case of WTO, with its 159 members, the question is whether it is feasible and practical to have a member of each country included. If indeed each country can “nominate” one member, it makes most sense to include the major business organisations of each country. Like in the BIAC, it is possible to also include some supranational business organisations. Alternatively, one could think of a structure with regional representation. Whatever structure is chosen, it is crucial to ensure that representatives of businesses in least developed countries, as well as SMEs, are not sidelined.

CONCLUSIONS

In this think piece I have argued that the business community has lost interest in the DDA negotiations mainly because WTO does not offer sufficient opportunities for business to get involved in WTO affairs in a meaningful way. Engaging the business community more in the work of WTO is important, as it could help to solve the challenges WTO faces today. If WTO wants to reverse the trend of the business sector partly turning its back on multilateralism, it seems vital for the organization to engage much more than it does at present with large and small businesses in developed and developing countries.

At the moment, business has the opportunity to get engaged in WTO affairs. The organization arranges a 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 organization has been hosting since 2001. In addition, industry lobbying within the WTO takes place on a large scale during WTO trade rounds (Poletti 2012) and dispute settlement cases (Eckhardt and De Bièvre 2013, Shaffer 2003). However, despite efforts by the organization 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.”

I have suggested two concrete initiatives that could increase business involvement: a business forum and a business advisory council. Of course, this will not solve all problems WTO is facing at the moment or immediately lead to an increase in business support for the DDA. But the business community will definitely appreciate the effort and be willing to listen and contribute to any effort taken in this direction. After all, business representatives have indicated time and

again that, despite the problems of the last 10 years or so, they still see WTO as an important institution that deserves their full attention and support.

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THE RELATIONSHIP BETWEEN PLURILATERAL APPROACHES AND THE TRADE ROUND

Brendan Vickers

INTRODUCTION

Less than 20 years after its establishment, the World Trade Organization (WTO) confronts the challenge of remaining relevant and credible for 21st century global economic governance. The WTO's failure to oversee any multilateral liberalization or create new rules for governing a dynamic global trading system has raised concerns about the efficiency and efficacy of the organization's legislative function. Notwithstanding the diminished ambitions and expectations of many WTO Members, the Doha Development Agenda (DDA) remains stalled. By contrast, regional trade agreements (RTAs) continue to proliferate, including such "mega-regionals" as the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) negotiations. The latter regularly incorporates many "WTO-plus" commitments to regulate a range of new-generation trade issues, diverting attention away from the stalled Geneva juggernaut.

Amid the Doha impasse, there is growing academic and policy debate about new approaches or pathways for governing world trade, lest the WTO be rendered irrelevant¹ (Low 2009; Lawrence 2006; Cottier and Takenoshita 2008). Several critics argue that the WTO's set-piece negotiations, namely consensus-based bargaining underpinned by the Single Undertaking, lead to an overly politicized and inefficient process. If the WTO is to progressively and responsively develop multilateral trade regulation suited to the realities and demands of the modern trading system, there is need for greater flexibility and efficiency—or even "variable geometry" in terms of Members' rights and obligations. Within this debate, considerable attention is being focused on reviving plurilateral negotiations, that is, negotiations among a sub-set of able and willing WTO Members to create new rules or liberalize markets in areas of mutual interest.

This policy brief explores the relationship between plurilateral agreements and the WTO, specifically in the context of the Doha Round. It proceeds in three sections.

The first section briefly explains the current situation regarding plurilateral negotiations in the WTO, as well as the advantages and disadvantages of this approach. The second section outlines some of the broad responses to proposals for plurilateral negotiations, including the far-reaching Trade in Services Agreement (TiSA). The policy brief concludes with two key recommendations for the future.

PLURILATERALS AS "NEW PATHWAYS" FOR TRADE GOVERNANCE

The persistent deadlock in the DDA negotiations points to a lack of efficiency in the WTO's legislative track. One solution proffered is to revive plurilateral negotiations, which are not unfamiliar terrain in the WTO landscape (albeit during a different historical era when the multilateral trading system was dominated by the so-called "Quad" countries).

At the outset, however, it is important to be candid about the motivation for seeking new or alternative approaches for WTO negotiations. The recurrent failure to reach consensus in the Doha Round may have less to do with procedural design and more to do with domestic political and economic factors constraining WTO Members, particularly given the fragile conditions of the world economy. Some developing-country negotiators may even assert that the alleged inefficiency of the consensus principle is only raised when smaller developing countries and larger emerging economies refuse to join the rich countries' consensus (which was "multilateralized" in previous trade rounds (Ismail and Vickers 2011)).²

This is a pivotal point—there is no "procedural panacea" that will magically resolve the spectrum of substantive differences over core DDA matters (for example, from agriculture to services, while the much vaunted trade facilitation text is still riven with brackets). In other words, "Constitutional and procedural refinements at best could ease the path to making decisions and concluding negotiations," (Harbinson 2009).

That said, plurilateral approaches should not be a priori discounted or rejected as a means for advancing more efficient multilateral outcomes.

Plurilateral negotiations in the WTO would indeed settle some Members' demands for greater efficiency of the organization's legislative track. Importantly, plurilateral

1 Without claiming to define countries that have emerged, I am thinking of China, South Korea, India, Brazil, Mexico, and several of the ASEAN group—Thailand, Malaysia and Indonesia. We might add Turkey and Argentina or Chile. South Korea and Mexico have already been OECD members for some time. Hong Kong and Singapore are, in statistical terms, leading trade entities and centres of trade, investment, and shipping.

2 This has led to negotiations with South Korea (completed), and with India and ASEAN countries, especially Singapore and Malaysia (ongoing).

approaches are neither novel nor revolutionary to the multilateral trading system. The Tokyo Round (1973–79) had produced nine agreements covering largely non-tariff measures, to which the General Agreement on Tariffs and Trade (GATT) parties could subscribe on a voluntary à la carte basis. Formally within the WTO, there are only two plurilateral agreements, namely the Agreement on Trade in Civil Aircraft and the Agreement on Government Procurement (GPA). During the 1990s, a "critical mass" of leading exporters of information technology, telecommunications, and financial services also negotiated their own agreements to open new commercial opportunities, although these are not formally within the WTO's ambit. Moreover, RTAs could strictly be regarded as plurilateral agreements too, conditional upon the requirements of GATT Article XXIV or the General Agreement on Trade in Services (GATS) Article V.

There are obvious attractions to pursuing plurilateral approaches. Theoretically, such agreements could advance a more progressive and responsive WTO agenda, reduce the diversion of liberalization initiatives to RTAs, provide more efficient differentiation in the levels of rights and obligations among a community of highly diverse economies, and provide a mechanism for promoting greater efficiency at lower cost in WTO negotiations (Low 2009). For example, the GPA allows non-signatories, such as China, to steadily negotiate their access and commitments, providing a "building block" for multilateralism.

However, this is perhaps a narrow response to the WTO's negotiating deadlock. The reality is that developing countries today constitute the bulk (almost two-thirds) of the WTO's membership. They have a political expectation to be represented and included at every stage of the negotiating process, especially to ensure that trade opportunities are made available to all Members on a more equitable basis, and trade rules do not subvert their development prospects. Modern multilateral governance in the WTO must thus satisfy three competing demands, namely greater efficiency as well as inclusiveness and legitimacy. Seen from that perspective, there are obvious downsides to strictly efficiency-seeking plurilateral agreements, such as the proposed TiSA among a sub-set of WTO Members.

Two key concerns, therefore, stand out. First, plurilateral or "critical mass" negotiations are likely to introduce a two-speed system in the WTO, compromising the principle of inclusiveness. This is best expressed as follows: "If developing countries are exempted from participation in clubs, they will forever be trying to catch up, they will not be playing their part in the continual evolution of the system and in the development of consensual knowledge about the system, and they will continue to complain about having to implement rules they had no part in drafting," (Wolfe 2008). The Sutherland Report expressed similar concerns that a differentiated process would enshrine a "multiclass membership structure" that takes the multilateral trading system backwards rather than forwards (Sutherland et al. 2004). Any plurilateral negotiation will, therefore, have

to address the legitimate concerns of excluded partners or "outsiders" that this process simply resurrects the old "Principal Supplier Principle" of the GATT era, which had the effect of locking out developing countries and marginalising them from the negotiations.

Second, with regard to legitimacy, new rules must be accepted as appropriate and legitimate by all WTO Members, and not only the major powers. This will not happen if plurilateral decisions impose negative welfare outcomes on a sub-set of WTO Members, especially smaller developing countries. For example, deeper liberalization amongst the major trading nations in the proposed Non-Agricultural Market Access (NAMA) "zero-for-zero" sectoral negotiations may erode the existing preferences enjoyed by the least developed countries (LDCs) and other small vulnerable economies.³

These tentative observations suggest that the institutional design and normative framing of future plurilateral approaches will need to satisfy the principles of transparency, inclusiveness, and multilateralism in order to incrementally take the WTO forward rather than backwards. In the context of the Doha Round impasse, many developing countries are concerned that proposals for plurilateral initiatives only seek to raise the level of ambition beyond the Doha Mandate (that is, extracting greater market access commitments) and erode the development content of the Doha Round.

Current plurilateral proposals also appear to focus only on issues of specific interest to mainly developed countries, such as services.⁴ Agricultural reform is notably absent from this agenda. For example, there has been no proposal or support for a plurilateral negotiation—or "coalition of the willing"—to ambitiously and expeditiously address cotton, which is a matter of vital importance to impoverished West African nations. This does not imply a wholesale rejection by many developing countries of more efficient approaches or even single track negotiations to advance multilateral outcomes. For example, there is strong support among developing countries (and even some developed countries) for an LDC Package, which in some ways approximates a plurilateral initiative. However, it bears recalling that the reason for adopting the Single Undertaking at the end of the Uruguay Round and "multilateralizing" the Tokyo Round Codes was precisely to stem fragmentation and restore symmetry in terms of rights and obligations to the rules-based system. Moreover, a broad-based Doha Round based on the Single Undertaking was seen as necessary to break out of the deadlock of the unsuccessful single-issue negotiations on agriculture and services generated by the Uruguay Round's "built-in" agenda and reinstate issue-linkage as the negotiating construct.

3 See Figure 1. Studies have shown that items such as Apple's iPod and iPhone have much greater value added in the US than was previously assumed, and that the value added in final assembly and packaging in China is relatively low.

4 The TiSA negotiations appear to be more of a political tactic (or "plurilateral ploy") to put pressure on the DDA's stalled services negotiations, especially the emerging economies led by Brazil, China, and India.

DESIGNING PLURILATERAL AGREEMENTS

The Agreement Establishing the WTO clearly provides for plurilateral agreements. What is at stake concerns the issue area of the plurilateral agreement (that is, agenda item, plus market access versus rule-making); what will get included or excluded; and how the different plurilateral agreements will balance out against one another.

Within the context of the Doha Round, the majority of developing countries have been unwilling to support or endorse new approaches or new issues until the “unfinished business” of the present and previous trade rounds is satisfactorily addressed. In many respects, this revolves around agriculture, the real litmus test of a development outcome. The failure to ambitiously address distortions in global farm trade means that agriculture remains a “21st century” issue amid other emerging and more complex debates, such as global value-chains. But many developing countries’ opposition to plurilateral approaches is perhaps a more pragmatic strategy in the Doha context than principled position. The successful conclusion of the DDA, albeit a limited agreement but consistent with the development mandate, could be the linchpin that unlocks consideration of new approaches, under very specific conditions, and for very discrete issues (rather than systemic concerns). In that context, plurilateral negotiations could theoretically take three forms:

- Plurilateral agreements that extend benefits to all WTO Members on a most-favoured nation (MFN) basis (that is, unconditional plurilateral).
- Plurilateral agreements that extend benefits only to signatories (that is, conditional non-MFN plurilateral).⁵
- RTAs negotiated under GATT Article XXIV or GATS Article V, notified to the WTO.

In the context of the Doha impasse, a number of WTO Members identified as the “Really Good Friends” (RGF)⁶ of services have embarked on closed club-like negotiations to establish a TISA. The latter is a textbook example of a conditional plurilateral agreement that suspends the MFN principle, in contrast to the “open plurilateralism” of the Information Technology Agreement (ITA) concluded in 1996.⁷ The TISA has been criticized by some developing countries and progressive civil society formations for undermining the principles of inclusiveness, transparency, and multilateralism, while eroding the Doha Round’s development mandate. According to available reports, the negotiations have not been pursued in an open and transparent manner, with both the WTO Secretariat and would-be “observers” excluded from the meetings (Sauve 2012). It is envisaged that the agreement will be a conditional MFN plurilateral agreement, conferring rights and benefits only upon signatories. However, the TISA is being modelled on the GATS rules in order to provide a “credible

pathway to future multilateralization” (European Commission Memo 2013).

Seen from that perspective, the TISA offers valuable lessons on how future plurilateral negotiations should not be conducted, especially if they are to be sanctioned by the wider WTO membership as Annex 4 instruments. Since plurilateral agreements are not prohibited by the WTO but require consensus for their incorporation into the wider WTO architecture, the institutional design and normative framing for such exercises should be very carefully considered. There may also be a case that different plurilateral agreements should balance out against one another, although this enters uncharted territory and could lead to the same kinds of negotiating brinkmanship that have dogged the Doha Round, undermining efficiency considerations.

CONCLUSIONS

This think piece has argued that modern multilateral governance in the WTO must satisfy three competing demands—greater efficiency of rule-making, inclusiveness of all WTO Members, and legitimacy of outcomes, including plurilateral agreements included in the WTO architecture. Purely efficiency-seeking plurilateral approaches removed of any equity considerations, or plurilateral ploys to politically advance the Doha Round, will not be sanctioned by the wider WTO membership.

Looking ahead, two priorities loom large for strengthening the WTO and perhaps advancing the organization’s legislative function in an incremental manner.

REAFFIRMING AND STRENGTHENING THE CONSENSUS PRINCIPLE

The first order priority should be to strengthen the consensus principle and discipline its use/abuse by some WTO Members. It is not unimportant that the consensus principle has distinguished the WTO as a more formally democratic organisation than its Bretton Woods counterparts.

Serious consideration should be given to the Sutherland Report’s recommendation to strengthen the consensus

5 To avoid free-riding, these agreements may be “multilateralized” with MFN benefits only once a critical mass of WTO Members participate in the initiative.

6 The RGF bloc includes Australia, Canada, Chile, Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Mexico, New Zealand, Norway, Panama, Pakistan, Peru, South Korea, Switzerland, Taiwan, Turkey, the United States (US), and the Member States of the European Union (EU).

7 The ITA was unique in its construction as an open agreement where the founding Members agreed to eliminate tariffs on a minimum list of products. This was extended to all Members of the WTO, including those who are not signatories of the agreement, according to the WTO’s MFN principle.

principle. In an attempt to reduce the blocking measures resorted to by some Members, the Sutherland Report suggests that there should be a responsibility by the WTO Member seeking to block a decision to declare, in writing, that the matter is one of vital national interest to it. Consensus-based decision-making is more sustainable and efficient in the long term, since it compels WTO Members to build convergences in their positions and make compromises in the interests of the system as a whole. The consensus rule also applies for admitting plurilateral agreements under the WTO's Annex 4.

FRAMING AND DESIGNING OPEN PLURILATERALS

In the current Doha Round context, there is unlikely to be WTO-wide consensus for launching "new issue" negotiations until the "unfinished business" of the present and previous trade rounds is satisfactorily addressed. However, the requirement of consensus to establish plurilateral agreements under the WTO's Annex 4 provides developing countries with some bargaining leverage. For example, it is conceivable that astute developing countries could sanction a plurilateral negotiation in exchange for ambitious movement on their own areas of concern. Under very specific conditions and for very discrete issues, plurilateral negotiations could incrementally advance multilateral regulation in an open manner among a "critical mass" of WTO Members.⁸ The second priority is thus to ensure that future plurilateral agreements are designed, framed and implemented in ways that do not undermine the principles of inclusiveness, transparency and multilateralism.

There are two possible models for designing plurilateral agreements, namely the TiSA (closed) and the ITA (open) approaches. The argument of this policy brief is that the latter design would best accommodate and reinforce the principles of inclusiveness, transparency, and multilateralism. To meet these criteria, plurilateral agreements should not be discriminatory and should be extended to all WTO Members on an MFN basis; be open to full participation of the WTO Membership (even if this involves staged participation); be sufficiently transparent to enable Members to assess the benefits of joining them; and provide sufficient flexibilities for developing countries, including special and differential treatment (SDT) in terms of technical assistance and capacity support, to implement the agreement.

8 The "critical mass" criteria will need to be developed in an open and transparent manner (for example, 80–90% share of world trade in a specific product or sector).

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A GRAND BARGAIN TO SAVE THE WTO FROM DECLINING RELEVANCE

John S. Odell

BREAK THE STALEMATE WITH A GRAND BARGAIN

The establishment of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) constituted historic achievements of international cooperation compared with the world before 1947. This multilateral institution embodying common rules, and a relatively automatic legal dispute settlement system open to all Members, large and small, is unusual. This is a place where multilateral rules may help check the power advantage that the most powerful states enjoy outside its walls. The system was successful in achieving its main original goals until the past decade, when it became more controversial. Today our WTO is losing its relevance, as the world economy continues to change while its diverse Members have been unable to agree on any major new rules since 1999. The powerful and others are going elsewhere for trade agreements, establishing preferential institutions among themselves.

This is a troubling development for all who value multilateral institutions for governance of the world economy, including those—most of us—who have been critical and believe the present WTO needs improvement. Governments' hands are full dealing with urgent challenges at home and abroad. But it would be a shame if urgent demands crowded out serious thinking about the long-term value of this important world institution until it was too late to save it.

New ideas circulated of late offer an ambitious yet possibly feasible way out of the impasse that would put the WTO back on the map. The proposal would break the Doha impasse by expanding the agenda, simultaneously launching a set of new plurilateral negotiations under WTO discipline that could be multilateralized over the medium and long terms.

In 2012, Hufbauer and Schott proposed such a grand bargain, but it has received relatively little public discussion so far. The present version is inspired by their initiative and by Hoekman and Mavroidis (2013), and borrows liberally from both. Lawrence (2006) also had proposed creating “a club

of clubs.” One side of the bargain would be major elements of the Doha agenda—including the 2008 chairs' texts on agriculture and Non-Agricultural Market Access (NAMA) in addition to smaller items that have been the focus of talks since 2008. This first side would be conditional on a second side—authorization of future negotiations of a specified list of plurilateral agreements (PAs), of which the Agreement on Government Procurement (GPA) is an illustration.

One major reason for the WTO's declining relevance is that business has largely lost interest in WTO talks as means for addressing problems that concern them. Key constituency groups have told their governments that they do not see enough gain for themselves in the deals on the Geneva table and have pressed for regional and mega-regional deals instead. Thus a political rationale behind this proposal is to bring those constituencies back to support a WTO deal by adding to the agenda some new PAs that would interest them.

On the first side, all Members could gain by harvesting fruits of a decade's labours on the existing agenda. They could ban farm export subsidies altogether, lower bound limits on agricultural subsidies and tariffs, and address tariff peaks in manufacturing, while in effect exempting least developed and small and vulnerable economies from new commitments that they are not ready to accept. Developed countries say they cannot agree to these elements as they stand, so this first side of the bargain would require them to fall back from their current positions.

Hence the second side—but note that it would not add any new (post 2008) WTO obligations for any country to open its own market. Instead the WTO membership would only need to authorize subsets of Members who choose to do so to negotiate new PAs among themselves. Article II.3 of the WTO Agreement authorizes such agreements that bind only the states that sign them. Designers of the package could select particular PAs in part to generate interest from disaffected constituencies. For instance, they could include pacts to liberalize services trade in general; PAs on particular services such as telecommunications beyond basic services; and zero for zero tariff deals in particular sectors of goods trade. (If some Members concluded a PA on services or any other issue independently of a grand bargain, doing so would probably reduce the value and the odds of ratifying the remaining less-grand bargain.) None of these plurilaterals could change rights or obligations already adopted by consensus of the whole WTO; they could only create new rights and obligations for the subset. If interested Members were not prepared to grant their agreement's benefits to non-signatories, that agreement could be applied to other WTO Members on a conditional most-favoured nation (MFN) basis. All Members would be welcome to join but they would not receive the MFN benefits of the deal unless they joined.

WTO approval of a new PA requires consensus, according to Hoekman and Mavroidis (2013), citing Article X.9 of the 1994 WTO Agreement. Hufbauer and Schott (2012) believe three-

fourths of WTO Members could authorize a conditional MFN agreement by approving a waiver under WTO Agreement Article IX.3. Either way, every WTO Member would be welcome to participate in these discussions and decisions, which would confer legitimacy on the results.

POSSIBLE OBJECTIONS AND RESPONSES

In discussions of the plurilateral option, several thoughtful expert objections have been raised (Vickers 2013 and in works cited there).

- 1) PAs are by definition less inclusive than multilateral agreements signed by all members.
- 2) If they also depart from unconditional MFN treatment, they would discriminate against countries that are asked to approve their creation.
- 3) PAs would formalize a two-tier system in world trade to the disadvantage of those not in the top tier.
- 4) The proposed deal should be rejected because the Doha round was to be the development round, and rich countries still have not delivered enough on their promise to correct imbalances of the Uruguay round and before.

One response is that Members could require certain multilateral disciplines for future plurilaterals that would address their disadvantages and enhance the possibility that they will increase the WTO's vitality and centrality. The following illustrate possible requirements.

- a) All WTO Members are eligible to participate in the initial negotiation, voluntarily. After the PA is in force, signatories must negotiate with any non-signatory WTO Member that wishes to join at that time. Thus these pacts could be expanded, and possibly serve as vehicles for multilateralizing the rules they develop. At the same time this alternative to the single undertaking model would also help Members avoid new rules they feel are inappropriate for them.
- b) A PA must cover substantial trade in the covered area, for example 50 percent of the world as was the case with the GPA.
- c) Disputes arising under each PA must be adjudicated through the WTO Dispute Settlement Understanding (DSU) including the common Appellate Body. This requirement will increase the relevance of the multilateral DSU and help prevent forum shopping and fragmentation of world trade case law, which can increase costs for firms in many countries. The roster of panellists could be restricted to the PA's signatory states. The option of retaliation in case of non-compliance could also

be restricted to suspension of provisions of the PA in question; cross-retaliation could be prohibited (Lawrence 2006).

- d) PA signatories must report regularly to the WTO on measures taken. The WTO could establish a body to conduct regular joint surveillance for the sake of transparency and the interests of non-participating countries.

If Members also made unconditional MFN mandatory, they could undermine the entire bargain. Unconditional MFN treatment would, of course, be better for multilateral principles and the interests of non-signatories. But countries considering a PA under WTO disciplines might well be reluctant to follow this path if one or more large trading states were able to reap the benefits without making any contribution. The unconditional MFN approach may not be sufficiently attractive to draw potential constituencies away from their alternative, which is a set of discriminatory deals on a regional or mega-regional basis. PA advocates should, however, be less concerned about free-riding by small Members. Thus it might be worth exploring a provision that would extend agreements' benefits to non-signatories whose economies are below certain thresholds defined for instance in terms of gross domestic product (GDP) and GDP per capita.

One response to the fear of creating a two-tier system is that no one will be excluded; every WTO Member will be welcome to join each of these PAs. Second, we already have a two-tier system, one under precious little multilateral discipline. Many Members are giving discriminatory preferences to partners regionally, and in some cases agreeing to deeper integration measures that go beyond WTO rules. This year the European Union (EU), the United States (US), and Japan are discussing new mega-regional preferential trade agreements (PTAs). Firms on the inside of a PTA may indeed increase their productivity relative to those on the outside because they are forced to do so by stronger competition. But blocking a deal in Geneva cannot prevent this economic divergence. The choice is between bringing the phenomenon under greater uniform WTO discipline, and not doing so.

Regarding past imbalances and Doha's development goal, current rules unjustly favour the interests of the most powerful, and so these arguments were worth making. But we also need to recognize that after more than a decade those arguments probably have achieved all they are going to achieve. Approving this grand bargain would harvest gains on "old issues" including agricultural subsidies and peak industrial tariffs that developing countries have long demanded, though it would leave work to do. To block this deal today in the hope of leveraging greater concessions out of the EU and the US without adding new gains for them would only sacrifice available gains on old issues and allow our common institution to continue its decline, in effect if not in intent.

THIS BARGAIN WOULD BE SUPERIOR TO THE ACTUAL ALTERNATIVE

Perhaps the most compelling pragmatic response to concerns about discriminatory plurilaterals approved by the WTO is that the alternative we are getting is worse (Hoekman and Mavroidis 2013).

- 1) The WTO is deadlocked and its institutional competition from PTAs has grown stronger since 2008.
- 2) The proliferating PTAs also discriminate.
- 3) Moreover, although GATT Article XXIV was designed to provide some discipline, this article is almost never enforced.
- 4) PTAs have no obligation to accept a new member, so are free to exclude and might be less effective vehicles for multilateralization.
- 5) There is no requirement that disputes arising from PTAs must be adjudicated within the WTO. In fact, many are developing their own *sui generis* dispute settlement institutions.
- 6) Some recent PTAs have been adopting rules that are not found in the WTO, and hence escape the multilateral regime entirely.
- 7) Some PTAs are not as transparent as might be wished. In sum, discriminatory PTAs are arguably subject to less multilateral discipline than could be applied to the proposed PAs. The grand bargain could, therefore, produce an improvement over the actual alternative for all who value multilateralism, including Members who opt out of the new PAs at present.

If such PAs were created, substantial world trade in the covered goods and services would be liberalized to a greater extent and on at least a plurilateral basis likely encompassing several regions, not just one, or would apply common rules to this trade. And if traders in those sectors see that the WTO is again a productive venue for advancing their interests, the intensity of their demand for alternatives to the WTO should wane. WTO Members might woo customers back into the store by making the store more appealing. And Members could do so while also harvesting major gains from Doha and without accepting any additional WTO obligations to open their own markets.

SAVE OUR MULTILATERAL INSTITUTION

This essay's main goal was to spotlight the WTO as a valuable common institution for the long term and to promote a remedy that could save it from becoming irrelevant. Less powerful and faster-growing countries have as much at stake in the vitality of this institution as slower-growing traditional leaders.

If this proposal seems convincing, what should be done now? Director-General Roberto Azevêdo might call informal meetings to discuss fresh ideas such as this grand bargain. A group of former chairs of the WTO General Council could voice support in public as well as informally. Business leaders could endorse it. Trade ministers could instruct their ambassadors to make a serious effort to find mutually beneficial agreement along these new lines. Group of Twenty (G-20) heads of government could give a similar policy direction.

If this proposal does not seem convincing, which course of action would be more effective for achieving this institutional goal? The single undertaking approach has arguments in its favor, but more than a decade of effort in this diverse world has not produced a single undertaking, and has produced widespread frustration. Continued impasse would drive the WTO farther off the stage. A final Doha deal limited to small pieces like the 2013 Bali deal will probably be too small commercially and politically to accomplish this important institutional goal. During the next decade will the stature and role of the WTO decline further, and what will that world be like?

In contrast, imagine the reaction if WTO ministers were to adopt the bolder package outlined here. The deal could be described as one with something for everyone, and even one that went further than any government had proposed. The media would salute and cheer the ministers and the Director-General for a surprising, heartening achievement in the common interest. This dramatic news could shift the attention of world investors, traders, and governments back to Geneva for the next decade or more.

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