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WTO Comitology: Unleashing the Potential of Governance Dimensions

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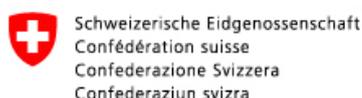
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ABSTRACT

The numerous activities of World Trade Organization (WTO) committees and working groups (the Comitology system) have received little attention. 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.

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.

Compared to other international economic organizations, such as the International Monetary Fund and the World Bank, the WTO makes little use of in-house expertise. The chairs should be allowed a mandate to create ad hoc working groups that are chaired by Secretariat officials or jointly with Member representatives. 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.

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 committees can contribute towards better implementation of the existing rules and in preparing the ground for initiating a new policy agenda.

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LIST OF ABBREVIATIONS

PTAs	preferential trade agreements
RTAs	regional trade agreements
TPRM	Trade Policy Review Mechanism
WTO	World Trade Organization

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-

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.

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 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.

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.

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.

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.

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.

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.

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.

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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