

SYNTHESIS OF THE POLICY OPTIONS

No.

9

**THE FUNCTIONING OF THE WTO:
OPTIONS FOR REFORM AND
ENHANCED PERFORMANCE**

The Functioning of the WTO: Options for Reform and Enhanced Performance

Synthesis of the Policy Options*

January 2016

* Elsig, Manfred. 2016. *The Functioning of the WTO: Options for Reform and Enhanced Performance*. E15 Expert Group on the Functioning of the WTO – Policy Options Paper. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

NOTE

The policy options presented in this synthesis are the result of a collective process involving all members of the E15 Expert Group on the Functioning of the WTO. It draws on the active engagement of these eminent experts in discussions over multiple meetings as well as an overview paper and think pieces commissioned by the E15Initiative and authored by group members. Manfred Elsig was this author of the report. While a serious attempt has been made on the part of the author to take the perspectives of all group members into account, it has not been possible to do justice to the variety of views. The policy recommendations should therefore not be considered to represent consensus and remain the responsibility of the author. The list of group members and E15 papers are referenced.

The full volume of policy options papers covering all topics examined by the E15Initiative, jointly published by ICTSD and the World Economic Forum, and launched at the Forum's Annual Meeting at Davos-Klosters in 2016, is complemented with a monograph that consolidates the options into overarching recommendations for the international trade and investment system for the next decade.

E15 INITIATIVE

Jointly implemented by the International Centre for Trade and Sustainable Development (ICTSD) and the World Economic Forum, the E15Initiative was established to convene world-class experts and institutions to generate a credible and comprehensive set of policy options for the evolution of the global trade and investment system to 2025. In collaboration with 16 knowledge partners, the E15Initiative brought together more than 375 leading international experts in over 80 interactive dialogues grouped into 18 themes between 2012–2015. Over 130 overview papers and think pieces were commissioned and published in the process. In a fast-changing international environment in which the ability of the global trade and investment system to respond to new dynamics and emerging challenges is being tested, the E15Initiative was designed to stimulate a fresh and strategic look at the opportunities to improve its effectiveness and advance sustainable development. The second phase of the E15Initiative in 2016–17 will see direct engagement with policy-makers and other stakeholders to consider the implementation of E15 policy recommendations.

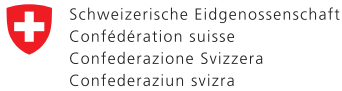
For more information on the E15Initiative:
www.e15initiative.org

ACKNOWLEDGEMENTS

The E15 Expert Group on the Functioning of the WTO is co-convened with:



WITH THE SUPPORT OF



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Confederation

Federal Department of Economic Affairs,
Education and Research EAER
State Secretariat for Economic Affairs SECO



And ICTSD's Core and Thematic Donors:



Government of the Netherlands



Norwegian Ministry of Foreign Affairs

PUBLISHED BY

International Centre for Trade and Sustainable Development (ICTSD)

7 Chemin de Balexert, 1219 Geneva, Switzerland

Tel: +41 22 917 8492 • E-mail: ictsd@ictsd.ch

Website: www.ictsd.org

Publisher and Chief Executive: Ricardo Meléndez-Ortiz

World Economic Forum

91-93 route de la Capite, 1223 Cologny/Geneva, Switzerland

Tel: +41 22 869 1212 • E-mail: contact@weforum.org

Website: www.weforum.org

Co-Publisher and Managing Director: Richard Samans

CITATION

ICTSD and World Economic Forum. 2016. *The Functioning of the WTO: Options for Reform and Enhanced Performance. Synthesis of the Policy Options*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

COPYRIGHT

©ICTSD and World Economic Forum, 2016. Readers are encouraged to quote this material for educational and non-profit purposes, provided the source is acknowledged. This work is licensed under the Creative Commons Attribution-Non-commercial-No-Derivative Works 3.0 License. To view a copy of this license, visit: <http://creativecommons.org/licenses/by-nc-nd/3.0/> or send a letter to Creative Commons, 171 Second Street, Suite 300, San Francisco, California, 94105, USA. ISSN 2313-3805

The E15Initiative is managed by Marie Chamay, E15 Senior Manager at ICTSD, in collaboration with Sean Doherty, Head, International Trade & Investment at the World Economic Forum. The E15 Editor is Fabrice Lehmann

OBJECTIVES AND OUTPUT

The E15 Expert Group on the Functioning of the WTO had three objectives

- Examine the functioning of the WTO over the past two decades and its adequacy to address challenges and opportunities in today's global trading system.
- Identify current shortcomings and the need for reform in the way negotiations are conducted in the WTO.
- Consider options to strengthen the monitoring and deliberative function of the WTO through its various bodies and regular committees.

Overarching questions and issues the Expert Group was tasked to consider

- Explore how the current deadlock in multilateral negotiations can be overcome and how the WTO can regain its centrality in international trade governance.
- Review negotiating approaches in the WTO, including the consensus and single undertaking principles as well as alternative approaches such as plurilateral and critical mass agreements.
- Consider specific institutional reforms to strengthen the deliberative function of the multilateral trading system.
- Assess how regular WTO committees and bodies can be made more effective.
- Evaluate formal or informal mechanisms that could be established to enhance the participation of the private sector and other stakeholders in WTO activities.

Expert Group analysis and policy proposals were submitted in two forms

1. Critical issues studied through an overview paper and think pieces commissioned for the E15 Initiative. These papers are referenced on page 12 and can be accessed at <http://e15initiative.org/publications/>.
2. Policy options presented in this synthesis and compiled in the summary table. The options are grouped under three categories:
 - Improving the performance of the negotiation function
 - Strengthening the role and impact of committee work
 - Enhancing the involvement of the business sector

TABLE OF CONTENTS

FOREWORD	2
THE FUNCTIONING OF THE WTO: OPTIONS FOR REFORM AND ENHANCED PERFORMANCE	4
THREE AREAS FOR WTO REFORM	4
POLICY OPTIONS TO IMPROVE THE FUNCTIONING OF THE WTO	7
Improving the Performance of the Negotiation Function	7
Strengthening the Role and Impact of Committee Work	7
Enhancing the Involvement of the Business Sector	8
PRIORITIES AND POLICY STEPS	8
TABLE SUMMARY OF MAIN POLICY OPTIONS	10
EXPERT GROUP PAPERS AND THINK PIECES	12
MEMBERS OF THE EXPERT GROUP	13



FOREWORD

Global solutions to the world's sustainable development challenges require a strong multilateral trading system that guarantees fairness, predictability, and effectiveness. Yet the current deadlock in the WTO Doha negotiations, combined with the proliferation of preferential trade agreements, has raised questions about the present and future ability of the WTO to deliver on these fronts. This has prompted many experts to call for reform of the current functioning of the institution. At the heart of the matter is the need to balance three different and at times competing demands: greater efficiency in the conduct of negotiations; enhanced legitimacy, including by better addressing policy issues of public concern; and greater inclusiveness to overcome power asymmetries.

The debate over institutional reform—whether it is needed, in what form, and via which process—is not new. It has been ongoing ever since the creation of the WTO. The multilateral system itself has not been static in the face of these demands. Reforms—or incremental changes—have been implemented in a number of areas, including at management level, in external transparency, public participation in dispute settlement proceedings, and in the manner in which negotiations are conducted.

The reform debate gained particular traction and relevance in 2008 when the Doha Round froze after several years of intricate negotiations characterized by missed deadlines and few substantive dividends. At the time, critics argued that the rules, principles, and practices of decision-making within the institution—carried over from the old GATT system—were simply ill-suited to the rapidly evolving challenges of our time.

New approaches were called for to overcome the paralysis. For some, the negotiating process had become too politicized and complex, with stark divergences in country expectations from the Doha Round. Others attributed the deadlock to persistent disagreements between advanced and fast emerging economies regarding their respective levels of commitments. Yet others pointed to the evolving reality of global trade, the proliferation of preferential trade agreements, or shifting negotiating interests reflecting new geopolitical dynamics.

In recent years, proposals to reform the negotiating function of the WTO have targeted first and foremost the notion of single undertaking, suggesting instead new approaches such as variable geometry or critical mass agreements. The move towards plurilateral agreements, such as the Trade in Services Agreement or the Environmental Goods Agreement, is symptomatic of this trend. But the approach has been criticized for its exclusive nature and for affecting trade-off opportunities in the Doha negotiations by *de facto* removing certain elements from the equation.

Beyond the negotiating function itself, years of near-exclusive focus on the Doha Round have inhibited institutional evolution and even diminished some of the WTO's permanent, non-negotiating functions such as the work of the regular committees. Yet these bodies have played a critical role in exchanging information, collecting data, overseeing notifications, and informing WTO members about national developments. In this respect, a number of experts have argued that WTO regular committees could be used as a platform to re-energize the system. In addition to their role in reviewing



compliance with existing agreements, these bodies could also contribute to strengthening the deliberative function of the institution by helping to address pressing challenges such as, for example, trade and climate change, exchange rates, or volatile commodity prices, thus preparing the ground for future disciplines.

Additionally, the willingness of the private sector to invest time and resources in multilateral trade negotiations seems to have eroded, reflecting discontent with the slow pace of WTO discussions and a growing feeling that the WTO does not effectively respond to contemporary business concerns, including the efficient operation of global value chains. As a result, private actors have been actively pushing national policy-makers to explore alternative venues to fulfil their trade and investment policy needs, with lobbying efforts shifting from the multilateral arena to bilateral and regional agreements.

As a contribution to the discussions that evolve around these issues, the E15 Initiative joined forces with the World Trade Institute to convene a group of leading experts. The Expert Group's mandate consisted in reviewing the functioning of the WTO since its establishment and its ability to respond to 21st century challenges. Based on this analysis, it examined possible alternative approaches to improve the effectiveness of multilateral negotiations while exploring options to strengthen the monitoring and deliberative functions of the WTO. The Group also considered mechanisms to enhance the participation of the private sector and other stakeholders. The policy options and the different think pieces that support them are the result of this thought and dialogue process.

As co-conveners of the E15 Expert Group on the Functioning of the WTO, we are convinced of the need to provide organized and structured input into the policy and governance debates regarding the future of the multilateral trading system. The policy options are offered to policy-makers and stakeholders alike, in the hope that they provide paths to effectively respond to policy imperatives of societies the world over. In a second phase of the E15 Initiative, we intend to engage policy-makers in advancing these options.

Ricardo Meléndez-Ortiz
Chief Executive, ICTSD

Richard Samans
Managing Director and Member of the Managing Board,
World Economic Forum

Manfred Elsig
Professor, World Trade Institute

THE FUNCTIONING OF THE WTO: OPTIONS FOR REFORM AND ENHANCED PERFORMANCE

THE MULTILATERAL RULES-BASED TRADING SYSTEM HAS BEEN CENTRAL IN HELPING STATES TO COOPERATE AND GRADUALLY OPEN UP BORDERS TO FACILITATE TRADE AND INVESTMENT FOR DEVELOPMENT. IT HAS CONTRIBUTED TO TEMPER UNILATERAL APPROACHES AND TO INTEGRATE EMERGING ECONOMIES OVER TIME. IT HAS ALSO PROVIDED—PARTICULARLY SINCE THE ESTABLISHMENT OF THE WTO—A CREDIBLE AND SOLID MECHANISM TO ADJUDICATE TRADE DISPUTES.

Yet the WTO is currently at a crossroads. The organization is facing what can be called an “adaptability” crisis. The world economy has changed since the WTO was created, and new challenges are adding to an already loaded agenda that includes the unfinished Doha negotiations. The rise of emerging countries and the relative decline of traditional economic powers, their various negotiating demands and approaches, the proliferation of preferential trade agreements (PTAs), and the need to deal with complex new issues, such as climate change, food security, and data flows, are all shaking the foundations on which the organization was built 20 years ago.

A key question is whether the WTO is capable of responding to these challenges or whether there is instead a need to revisit the basic foundations on which the multilateral trading system has evolved over the past near-seven decades since the GATT’s establishment. In this context, the E15 Expert Group on the Functioning of the WTO, jointly convened by ICTSD and the World Economic Forum with the support of the World Trade Institute as knowledge partner, focused its attention on how the WTO makes decisions and develops new rules. Based on this analysis, the Expert Group identified a set of recommendations to strengthen the negotiating and deliberative functions of the organization. These policy options suggest possible avenues for incremental reform to ensure the future success and relevance of the WTO. They are organized under three categories: re-energizing the negotiation function of the WTO; increasing the role and potential of

committees within the organization, particularly in view of agenda-setting and preparation for rule-making; and enhancing the involvement of the business sector in the system.¹

THREE AREAS FOR WTO REFORM

THE NEGOTIATION FUNCTION OF THE WTO REMAINS COMATOSE

For a long time, it was conventional wisdom that the negotiation function is the most important activity of the WTO within its mandate. Now that we are fourteen years into the deadlocked Doha Round, this assessment needs some qualification. What has changed?

One view is that the decision-making triangle is incompatible with the new challenges outlined in Box 1. Elsig and Cottier (2011) picture the WTO system as relying on three pillars: the single undertaking, consensus decision-making, and the member-driven character of the organization (see Figure 1). They argue that this triangle has become unsustainable.

The practice and understanding of the “single undertaking” has made progress in negotiations difficult. Yet there is evidence that the single-undertaking pillar has been weakened.² As a result, plurilateral approaches have undergone a revival. Four types are evident: (i) new mega-regionals (in particular

BOX 1 Background Challenges to the Functioning of the WTO

Six challenges that affect WTO regime management in the early 21st century stand out. These parameters have particularly impacted on the organization's negotiation arm.

- **Collective action problems:** Until the 1990s, the world trading system was characterized as a club in which trade diplomats met behind closed doors to agree on gradual liberalization. The creation of the WTO led to a deepening of trade concessions and provided WTO 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 have brought their issues and concerns to the WTO. Additionally, in reacting to this increasing scale of public attention, the organization has incrementally become more transparent and has worked on its inclusiveness (in particular with internal stakeholders). Yet finding the right balance between allowing WTO negotiators some wiggle room and providing a flow of information on the negotiations has proven difficult.
- **Growing importance of large developing countries in decision-making:** In contrast to previous trade rounds, the setting has clearly moved towards a multipolar trade world. The impasse of the Doha Round is partly a situation in which highly industrialized countries and large developing countries disagree over the type of market access and protection of vulnerable sectors of the economy.
- **Outside options:** The new preferential trade agreement landscape offers a challenge to the organization. Most WTO members have turned their attention towards this negotiation venue. In particular, initiatives, such as the recently concluded Trans-Pacific Partnership (TPP) Agreement and the ongoing negotiations on a Transatlantic Trade and Investment Partnership (TTIP) will play a central role in creating new templates, in affecting the location and development of global value chains, and shaping the content of future PTAs. 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 current one.
- **Disagreement on development objectives:** The WTO is faced with the legacy of the Uruguay Round grand bargain. There is an unfolding expectation-capacity gap that continues to loom large in the current environment of negotiations. For many developing countries, the Uruguay deal was later perceived as asymmetric, and a high number of low-income countries continue to struggle to meet their WTO obligations. This phenomenon has further increased the expectation held by developing countries that the Doha Round will mainly need to deliver on development.
- **The need for positive integration:** Increasing reliance on production networks and outsourcing has led to a growing importance of behind-the-border rules. These range from non-tariff barriers to specific investment clauses, different intellectual property rights regimes, and diverging competition norms. This creates new challenges in the negotiation process, which consists in finding the optimal degree of positive integration (in assenting to standards that are acceptable to all parties involved)—reaching agreement on regulatory cooperation and coherence. In addition, new challenges of positive integration are waiting to be resolved pertaining to 21st century trade topics, including technological advances and tradable services to questions related to data protection.
- **Legalization's effect on commitments:** The WTO is dealing with a somewhat unintended consequence of legalization. The enforcement mechanism of the WTO has led to dynamics that additionally impact on trade negotiations. Under the shadow of a strong dispute settlement system, where concessions can be enforced, parties are sometimes reluctant to commit to future deals, and this has important distributional consequences, as domestic interest groups grow more vigilant.

the TPP and TTIP), which are negotiated under the exception rule for regional trade agreements; (ii) plurilaterals within the ambit of the WTO excluding most-favoured-nation (MFN) treatment (e.g. public procurement) or (iii) providing MFN treatment for non-participants (e.g. information technology);

and (iv) plurilaterals which are linked to, but separate from, the WTO system (e.g. Trade in Services Agreement—TiSA). Notwithstanding limited progress tangential to the Doha Round negotiations, there needs to be some form of conclusion of these talks.

THE POTENTIAL OF COMMITTEES IS NOT FULLY EXPLOITED

In the shadow of the stalled negotiations, important activities occur 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 each other about national developments, and in particular by assisting in implementing the WTO obligations which parties committed to. An interesting issue is the degree to which various committees could be used as platforms to rekindle the interest in certain areas of trade regulation.

An interesting issue is the degree to which various committees could be used as platforms to rekindle the interest in certain areas of trade regulation.

An important element in all committees is the focus on increasing transparency regarding the trade policy measures implemented by states. While some committees actively oversee conventional notification requirements about planned regulatory reforms (e.g. the Committee on Technical Barriers to Trade and the Committee on Sanitary and Phytosanitary Measures), the committees also allow for discussion and reflection. The question arises whether regular committees could initiate a discussion on pressing challenges that are not really addressed in the negotiations (e.g. climate change, exchange rates). While the focus of the regular committees

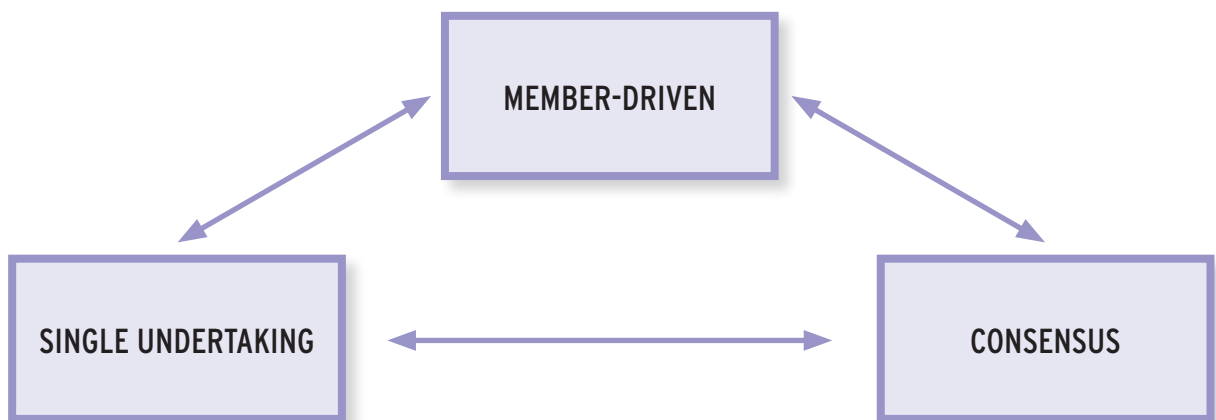
is on compliance, what would be needed to use existing institutional venues to go beyond this role and offer a more deliberative function?

THE LACK OF INSTITUTIONALIZED EXCHANGE OF INFORMATION WITH THE PRIVATE SECTOR

During the past decade, the willingness of private sector actors to invest time and resources in multilateral trade negotiations seems to have been eroded. This increasing ambivalence towards multilateral trade reforms is due to a combination of complacency, discontentment with the slow pace of WTO discussions in general and the standstill of the Doha Round in particular, and a growing feeling that the organization does not effectively respond to today's business concerns, such as the operations of global supply chains. As a result, private actors have been actively pushing national policy-makers to explore venues other than the WTO to fulfil their trade policy needs.

If the WTO wants to reverse this trend, it seems vital for the organization to engage more than it does at present with large and small businesses in developed and developing countries. The best way to ensure more active involvement of private actors is to set up a system that enables the WTO and the private sector to interact more systematically and in a more structured manner. Despite the WTO's efforts to engage with private actors through *ad hoc* practices, the multilateral trading system still lacks "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."³

FIGURE 1 | The Incompatible Triangle



Source: Adapted from Elsig, M., and T. Cottier. 2011. "Reforming the WTO: the Decision-Making Triangle Revisited." In *Governing the World Trade Organization: Past, Present and Beyond Doha* edited by T. Cottier and M. Elsig. Cambridge: Cambridge University Press.

POLICY OPTIONS TO IMPROVE THE FUNCTIONING OF THE WTO

IMPROVING THE PERFORMANCE OF THE NEGOTIATION FUNCTION

It is clear that for the WTO to matter in the years to come it needs to produce tangible results through negotiations. At the same time, the non-conclusion of the Doha Round presents a big challenge because it reminds those inside and outside the system that the WTO cannot deliver. Therefore two proposals are put forward. One is to finish the round and seek—if possible—another more sustainable grand bargain. The second suggestion is to actively provide more guidance for plurilateral approaches (beyond PTAs and mega-regionals).

POLICY OPTION 1 - Seeking a final grand bargain

The new deal could be constructed by combining specific commitments where progress has been made over time with an explicit acceptance of the move towards using plurilateral approaches within the ambit of the WTO (and therefore putting an end to the single undertaking approach). One side of the bargain would therefore be composed of major elements of the Doha agenda based on current results where near universal support exists in areas such as agriculture, non-agricultural market access, rules, and trade facilitation. This first side of the bargain would be conditional on a second side: authorization of future negotiations of a specified list of plurilateral agreements (PAs). Article II.3 of the WTO Agreement authorizes such agreements that bind only the states that sign them.⁴ Designers of the package could select particular plurilaterals in part to generate the interest of disaffected constituencies.

POLICY OPTION 2 - Designing optimal plurilaterals to save the negotiation function

Related to the above, the creation of a committee or a working group on the institutional development of PAs is suggested. This committee would be tasked with elaborating proposals and rules for the different types of PAs, namely: PAs that extend benefits to all WTO members on an MFN basis (unconditional plurilaterals); PAs that extend benefits only to signatories (conditional non-MFN plurilaterals); and rules for sectoral agreements (not yet linked to the WTO—e.g. TiSA). Beyond the procedural rules, the committee should work towards finding the appropriate approach and set-up for specific market access demands. This re-examination should also pay particular attention to the potential impacts on those that choose not to participate.

STRENGTHENING THE ROLE AND IMPACT OF COMMITTEE WORK

The WTO membership should seek to increase the potential impact of the work carried out collectively by committees. The following objectives in particular might allow the system to further mature and elaborate the “Geneva-way” through consultation, debate, and deliberation on new avenues for rule-making.

It is clear that for the WTO to matter in the years to come it needs to produce tangible results through negotiations.

POLICY OPTION 3 - Strengthening the role of the Secretariat

There are two elements to this policy option.

- More systematic data management: The WTO should serve as a key information hub on regulatory matters based on its experience as a venue where notifications are collected and trade policy reviews conducted. There is a demand for more surveillance of new developments in trade policy in the constituencies of WTO members. More resources should thus be devoted to data compilation and management.
- Making more 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. More systematically involving (and empowering) WTO staffers is important as they are the guardians of the multilateral system and have the required expertise.

POLICY OPTION 4 - Improving leadership and coordination

The WTO suffers from a lack of leadership in the sense that too little attention to committee work and too much rotation affect group cohesiveness. To address this, chairs should be elected for a three-year period and receive additional support from Secretariat officials. These officials could be organized in a new division for committee-related work or the existing support could be consolidated. In addition, an official standing body of chairs should be created to ensure that the information exchange among chairs, and with the WTO Director-General (DG), is further improved.

POLICY OPTION 5 - Improving the quality of exchange and deliberation

A precondition for moving towards quality deliberation is the availability of sufficient relevant information. Key experts should be invited to internal meetings to share their expertise

during the deliberations. Initiatives for cross-institutional cooperation with other international organizations should also be encouraged. Another necessary condition is the creation of an environment for informal gatherings (alongside more formal meetings) to build trust and understanding between participating actors. If necessary, chairs can initiate the creation of *ad hoc* brainstorming or drafting groups, and demand assistance and advice from outside experts and mediators in order to allow for deliberative processes to occur.

POLICY OPTION 6 - Locking in domestic decision-makers

It is necessary to develop 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 further increased. In the case of the trade policy reviews, the results of these reports should be discussed more prominently in the countries concerned.

POLICY OPTION 7 - Building bridges to the public

The public's support is important for the legitimacy of the system. Targeted initiatives to engage with the wider public are needed. These could include providing live coverage of certain events that are managed by a committee, allowing for a public debate when meetings take place outside Geneva, and inviting online feedback on ongoing work. Written submissions to the committees by accredited business and non-governmental actors should also be encouraged.

ENHANCING THE INVOLVEMENT OF THE BUSINESS SECTOR

Although the WTO is an intergovernmental organization and decisions are taken exclusively by member governments acting collectively, the business community has an important stake in the organization's performance. Its support is key to the success of the system. While many informal and formal channels of interaction exist in domestic political settings, at the WTO there is a need for more engagement. This interaction should be designed as an open, two-way process to assist in building a shared understanding of challenges and policy options, allowing for critical feedback and the elaboration of new ideas for regulatory innovation in rule-making. Two new platforms for institutionalized interaction are proposed.

While many informal and formal channels of interaction exist in domestic political settings, at the WTO there is a need for more engagement with the business community.

POLICY OPTION 8 - The creation of a Business Forum

The first idea would be to organize a formal Business Forum at the same time as the ministerial meetings. The prime purpose would be to present concrete suggestions to decision-makers. Specifically, like the B20 (organized during the G20 meetings), the Forum would put forward recommendations and engage in issuing relevant commitments from business leaders and business organizations to deal with current issues.⁵

POLICY OPTION 9 - The creation of a Business Advisory Council

A more far-reaching (and perhaps more controversial) proposal is to establish a WTO Business Advisory Council (BAC). The BAC could promote the interests of the business community by advising and engaging with the WTO Secretariat and WTO members on a broad range of issues.

PRIORITIES AND POLICY STEPS

The majority of proposals put forward by the Expert Group can be implemented in the short to medium term if the WTO members show willingness. None of the policy options would require major institutional changes. What is clear is that the initiative to address governance issues needs to grow from within the organization. The measures are briefly considered below in order of their urgency along with the potential policy steps to be taken for implementation.

NEGOTIATIONS

First, there needs to be a strong new coalition that substitutes for missing leadership in the negotiations. The DG should receive a special mandate to propose the contents (not just the contours) of the Doha package deal. A built-in agenda for a limited number of unresolved issues (analogous to the Uruguay Round) should be created to allow some form of flexibility for states (but opt-outs need to be limited) and future multilateral and plurilateral negotiation approaches for issue areas (that are excluded from the round) should be defined. This should also be done under the responsibility of the DG in consultation with the chairs of the key negotiation groups.

Second, a special committee is to be created that focuses on how best to design plurilateral approaches (both those that follow MFN logic and that restrict MFN). Such a group should be composed jointly of Geneva-based and capital-based officials, and one of the Deputy DGs should chair the committee. It should be limited to 20–25 participants reflecting the broad WTO membership, both in terms of

regional representation and level of development. This committee should meet regularly, every second meeting being held in one of the main WTO member's capitals. A small group of Secretariat officials should be asked to support the work.

COMMITTEE WORK

Two things need to be done to further improve the functioning of committees. First, a review should be conducted by the WTO Secretariat, under the supervision of the DG, to make a factual assessment of the inner workings of the committees. Then, a group of independent academics should be appointed to carry out a survey of WTO members to collect systematically the views and opinions of those participating in various committee activities. The DG should then prepare a report for the WTO members to garner additional input. Second, in light of these proposals, the DG would hold informal consultations with all the committee chairs before elaborating an action plan on how to move forward to increase the capacity of the committees. The findings would be presented to the entire WTO membership and discussed before the official start of a ministerial meeting to foster understanding and support from capital-based officials.

THE BUSINESS SECTOR

To pursue the initiative to find common platforms of exchange between the ministers, the negotiators, and the business sector, large conferences should be organized both in Geneva and worldwide where WTO chairs have been created. The purpose of the conferences would be to collect additional information on the exact needs of business actors for increased interaction and to share insights on existing practices. The conferences should also help business leaders agree on the representation. The ICC and the World Economic Forum could jointly chair this process. Selection should take into account the type of business sector, the size of the companies (providing a strong representation of sectors characterized by small and medium-sized enterprises), as well as regional characteristics.

Following these bottom-up “caucuses,” the next step would be for the business sector to put forward a roster of representatives from which it could appoint up to 30 participants for the Business Advisory Council.⁶ Members of the BAC would be invited by the chairs of negotiation groups for informal exchanges and would be encouraged to interact regularly with WTO ambassadors. There would also be two formal meetings a year at which the DG and the committee chairs represent the WTO membership. Once the BAC is established, it could be tasked to organize the Business Forum to be held alongside the ministerial meetings.

Endnotes

1. The Expert Group chose to lay emphasis on the negotiation and deliberation capacities of the system. It did not address other key aspects such as the dispute settlement mechanism, which seems to work rather well, nor technical assistance, capacity building, outreach activities, or research and statistics. Also, the Group focused on the business sector as a key outside constituency to highlight the limits and the potential of increased interaction. These lessons can be illustrative for other interested stakeholders and their relations with the system, such as civil society organizations.
2. The single package approach was *de facto* given up at the Ministerial Conference of 2011 (see WT/MIN(11)/11, page 3). In addition, at the 10th Ministerial Conference held in Nairobi in December 2015, WTO members agreed to abandon the all-encompassing approach to the Doha Round negotiations.
3. Deere-Birkbeck, C. 2012. “The Future of the WTO: Governing Trade for a Fairer, More Sustainable Future.” In *The Future and the WTO: Confronting the Challenges. A Collection of Short Essays* edited by R. Meléndez-Ortiz, R., C. Bellmann, and M. Rodriguez Mendoza. Geneva: International Centre for Trade and Sustainable Development (ICTSD).
4. Art. X.9 of the Agreement on Establishment of the World Trade Organization, which requires consensus for plurilaterals, might need to be revisited.
5. It could be possible to build on a first experience at the Bali Ministerial Conference in 2013, where the International Chamber of Commerce (ICC), the Evian Group, and ICTSD organized a pilot test for a Business Forum.
6. This proposal might only be feasible if the WTO membership also explores the possibility of a Civil Society Advisory Council that would have a similar function to that of the BAC.

TABLE SUMMARY OF MAIN POLICY OPTIONS

POLICY OPTION	TIMESCALE	CURRENT STATUS AND GAP	HOW TO GET THERE
Improving the performance of the negotiation function			
1. Break the stalemate with a new grand bargain including major elements of the Doha Round and authorization for a defined set of non-MFN plurilaterals	Short term	<ul style="list-style-type: none"> Greater inclusiveness less information asymmetry Mismatch in expectations from the Doha Round Most negotiations under the Doha Round have been deadlocked for a number of years The notion of single undertaking is questioned 	<ul style="list-style-type: none"> Build a coalition of “friends of the Doha Round” DG could receive a mandate to propose bridging solutions to close the Doha Round Create a built-in agenda and define approaches for issues currently excluded from the Round
2. Create a committee or working group focusing on plurilaterals to monitor and guide, particularly when not MFN	Short term	<ul style="list-style-type: none"> Enhanced focus on plurilateral approaches (e.g. Trade in Services Agreement, Information Technology Agreement II, Environmental Goods Agreement) 	<ul style="list-style-type: none"> Establish a special committee made of 20-25 Geneva-based and capital-based officials chaired by one Deputy DG meeting both in Geneva and capitals focusing on how best to design plurilateral approaches (both inclusive and exclusive ones)
Strengthening the role and impact of committee work			
3. Strengthen the role of the Secretariat by: <ul style="list-style-type: none"> Enhancing data management Making more use of in-house expertise 	Short term	<ul style="list-style-type: none"> Dominance of WTO members keeps the Secretariat on the sidelines of negotiations Unmet demand for surveillance of new developments in trade policy (e.g. monitoring of protectionist measures) Limited use of in-house expertise 	<ul style="list-style-type: none"> Enhance resources devoted to data compilation, statistics, and data management Develop information portals/creation of information hubs on regulatory matters Chairs should be allowed to create <i>ad hoc</i> working groups chaired by Secretariat with members
4. Improve leadership and coordination	Short term	<ul style="list-style-type: none"> Limited attention paid to committee work High rotation of chairs (one-year term) Informal coordination among different committee chairs 	<ul style="list-style-type: none"> Initiate a review by the Secretariat under the supervision of the DG providing a factual assessment of the inner workings of the committees Initiate an independent survey collecting the views of members about the functioning of the committees
5. Beyond compliance, improve the quality of exchange in committee work and create more space for deliberation	Medium term	<ul style="list-style-type: none"> Current focus of committees remains on compliance with limited space to initiate a discussion on new challenges (e.g. climate change, exchange rate, food price volatility) Limited use of external expertise (e.g. other IGOs) Limited space for informal/depoliticized debate 	<ul style="list-style-type: none"> Based on those reviews and a report by the DG, initiate informal consultations with all the committee chairs and elaborate an action plan to be approved by members
6. Improve the buy-in of domestic decision-makers	Short term	<ul style="list-style-type: none"> Limited involvement of capital-based officials, non-trade ministries, or members of parliaments (MPs) 	<ul style="list-style-type: none"> Discuss trade policy review reports more broadly with domestic constituencies (e.g. different ministers, MPs).
7. Build bridges with the public	Short term	<ul style="list-style-type: none"> Limited opportunities for targeted discussions with the wider public outside of Geneva 	<ul style="list-style-type: none"> Provide live coverage of certain WTO events Allow for public debate when meetings take place outside Geneva Invite online feedback on ongoing work Allow written submission to certain committees by business/NGOs

POLICY OPTION	TIMESCALE	CURRENT STATUS AND GAP	HOW TO GET THERE
Enhancing the involvement of the business sector			
8. Create a “Business Forum” at the margin of WTO ministerial meetings	Short term	<ul style="list-style-type: none"> • Willingness of private sector to invest time and resources in multilateral negotiations has partly shifted to regional negotiations 	<ul style="list-style-type: none"> • Replicate and perpetuate first experience of the Bali Business Forum organised in 2013 by ICC, the Evian Group and ICTSD
9. Create a Business Advisory Council to channel interaction between the private sector and the multilateral trading system	Medium term	<ul style="list-style-type: none"> • Current interaction though informal/formal processes at the domestic level and in an <i>ad hoc</i> manner at the WTO but no institutionalised mechanism for routine interaction at the WTO 	<ul style="list-style-type: none"> • Convene a series of large conferences in Geneva and in universities where WTO chairs have been created, to collect information about business needs and discuss best practices (these could be chaired by the World Economic Forum or ICC) • Business to propose a roster of representatives from which to appoint 30 participants elected for three years • Establish similar process for a Civil Society Advisory Council

EXPERT GROUP PAPERS AND THINK PIECES

The papers commissioned for the E15 Expert Group on the Functioning of the WTO can be accessed at <http://e15initiative.org/publications/>.

Abbott, Roderick. 2013. *WTO in Times of Major Change*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Eckhardt, Jappe. 2013. *The Decreasing Interest of Business in the WTO: Why Should We Care and How Can We Solve It?* E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Elsig, Manfred. 2016. *The Functioning of the WTO: Options for Reform and Enhanced Performance*. E15 Expert Group on the Functioning of the WTO – Policy Options Paper. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Elsig, Manfred. 2013. *Functioning of the WTO: Mapping the Challenges and Asking the Hard Questions*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Elsig, Manfred. 2013. *WTO Comitology: Unleashing the Potential of Governance Dimensions*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Odell, John S. 2013. *A Grand Bargain to Save the WTO from Declining Relevance*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Vickers, Brendan. 2013. *The Relationship between Plurilateral Approaches and the Trade Round*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

MEMBERS OF THE EXPERT GROUP

Manfred ELSIG – *Theme Leader and Co-Convenor*
Professor, World Trade Institute (WTI)

Miguel RODRIGUEZ MENDOZA – *Theme Leader and Convenor*
Former Deputy Director-General, World Trade Organization (WTO)

Ricardo MELÉNDEZ-ORTIZ – *Convenor*
Chief Executive, International Centre for Trade and Sustainable Development (ICTSD)

Roderick ABBOTT
Former Deputy Director-General, World Trade Organization (WTO) / Member of the Steering Committee and Advisory Board, European Centre for International Political Economy (ECIPE)

Rubens BARBOSA
President, Rubens Barbosa & Associados

Carlos Primo BRAGA
Director, Evian Group, International Institute for Management Development (IMD)

Jean-Guy CARRIER
Secretary General, International Chamber of Commerce (ICC)

Carsten DANNÖHL
EU Government Affairs Manager, Caterpillar

Carolyn DEERE BIRKBECK
Senior Researcher, Global Economic Governance Programme, University of Oxford

Jeffrey DUNOFF
Director, Transnational LLM Program, Temple Law School

Cédric DUPONT
Associate Professor, Graduate Institute of International Studies (Geneva)

Jappe ECKHARDT
Assistant Professor, University of York

Magdi FARAHAT
Principal Advisor on Trade, United Nations Economic Commission for Africa (UNECA)

David HARTRIDGE
Senior WTO Counsellor, White & Case LLP

Bernard HOEKMAN
Professor, Robert Schuman Centre for Advanced Studies, European University Institute

Alejandro JARA
Former Deputy Director-General, WTO Senior Counsel, King & Spalding

Pascal KERNEIS
Managing Director, European Services Forum (ESF)

John S. ODELL
Professor Emeritus, University of Southern California

Reinhard QUICK
Managing Director, Verband der Chemischen Industrie e.V. (VCI)

Bill REINSCH
President, National Foreign Trade Council (NFTC)

Shree Baboo C. SERVANSING
Consultant and Team Leader, ACP-EU Technical Barriers to Trade Programme

Debra STEGER
Professor, University of Ottawa

Datuk M. SUPPERAMANIAM
Former Permanent Representative of Malaysia to the WTO

Xinquan TU
Deputy Director of the China Institute for WTO Studies, University of International Business & Economics (UIBE)

Guillermo VALLES GALMÉS
Director, International Trade in Goods and Services, and Commodities Division, United Nations Conference on Trade and Development (UNCTAD)

Brendan VICKERS
Head of Research and Policy, Department of Trade and Industry South Africa

Christophe BELLMANN – *Group Manager*
Senior Research Fellow, ICTSD

The experts all participated in their personal capacity. The analysis and policy recommendations are not attributable to any institution with which members of the E15 Expert Group are associated.

E15 INITIATIVE: EXPERT GROUPS AND TASK FORCES

In the quest for effective responses to the challenges faced by the global economy at this time, foremost experts were invited to contribute to 15 thematic groups as well as three task forces addressing horizontal issues. The groups met regularly between 2012 and 2015 with the goal of delivering a set of policy options on the occasion of the WTO's 20th anniversary. These options are intended to animate discussions and feed the present and future international trade and investment policy agenda for sustainable development. The full volume of policy options papers, jointly published by ICTSD and the World Economic Forum, and launched at the Forum's Annual Meeting in Davos-Klosters in 2016, is complemented with a monograph that consolidates the options into overarching recommendations for the international trade and investment system for the next decade. The second phase of the E15 Initiative in 2016–17 will see direct engagement with policy-makers and other stakeholders to consider the implementation of E15 policy recommendations.

E15 INITIATIVE THEMES

- 1 – Agriculture and Food Security
- 2 – Clean Energy Technologies
- 3 – Climate Change
- 4 – Competition Policy
- 5 – Digital Economy
- 6 – Extractive Industries
- 7 – Finance and Development
- 8 – Fisheries and Oceans
- 9 – Functioning of the WTO
- 10 – Global Trade and Investment Architecture*
- 11 – Global Value Chains
- 12 – Industrial Policy
- 13 – Innovation
- 14 – Investment Policy
- 15 – Regional Trade Agreements
- 16 – Regulatory Coherence
- 17 – Services
- 18 – Subsidies

* Policy options to be released in late 2016

Implemented jointly by ICTSD and the World Economic Forum, the E15Initiative convenes world-class experts and institutions to generate strategic analysis and recommendations for government, business and civil society geared towards strengthening the global trade and investment system for sustainable development.



International Centre for Trade
and Sustainable Development



COMMITTED TO
IMPROVING THE STATE
OF THE WORLD